



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

Case no: JR 1559/13

In the matter between:

SATAWU OBO W. MOKUBJANE

Applicant

and

COMMISSIONER P. MBATSANA

First Respondent

**COMMISSION FOR CONCILIATION MEDIATION
AND ARBITRATION**

Second Respondent

ROAD ACCIDENT FUND

Third Respondent

SAMUEL KGOSI

Fourth Respondent

Heard: 01 July 2015

Delivered: 03 July 2015

**Summary: Review jurisdictional ruling – failure to properly assess the
jurisdictional point in terms of rule 14**

JUDGMENT

MATLEJOANE, AJ

Introduction

- [1] This is an application to review and set aside the jurisdictional ruling made by first respondent, to whom I shall refer as (“the commissioner”). In terms of the ruling the commissioner found that the second respondent did not have jurisdiction to conciliate or arbitrate the dispute. The applicant has also applied for condonation for the late filing of the review application. Both applications are unopposed. The delay of 48 days, is in my view not extensive and I find the explanation set out in applicants’ founding affidavit to be reasonable and acceptable.

Background Facts

- [2] The applicant who is employed by third respondent as senior officer in Task Grade 12 entry, declared a dispute of unfair labour practice. It would appear that applicant was kept at a lower grade of Task Grade 12 entry while the fourth respondent who is on the same job description, duties and responsibilities is on a higher grade of Task Grade 12 mid-scale on a higher remuneration scale.
- [3] The applicant then lodged a formal grievance about the matter. He was informed during 28 February 2013 that his matter “*was extensively deliberated upon at Executive level and the feedback received was pretty much the same as explained above*”. The feedback referred to it would seem was that salary matters should be raised with the line manager to allow Line Management prerogative in terms of the Remuneration Policy to take its course. It was for that reason that he referred a dispute to the third respondent regarding the unfair labour practice relating to promotion.

Principles

- [4] In *Numsa v Driveline Technologies (Pty) Ltd*¹ the Labour Appeal Court ruled that the parties were not bound by the manner in which the conciliating commissioner characterised the dispute. Such characterisation, the majority found, has “no bearing on the future conduct of the proceedings. The forum for subsequent proceedings is determined by what the employee alleges the dispute to be”².
- [5] The approach of the Labour Appeal Court in *Numsa v Driveline* (above) was followed in *Goldfields Mining SA (Pty) Ltd v CCMA*³ where Van Niekerk J concluded that conciliating commissioners are not required to investigate the nature of the dispute or to direct which forum must subsequently deal with the matter.
- [6] In the present instant, the commissioner has characterised the dispute as an unfair labour practice when completing the certificate of outcome but in his ruling he characterises the dispute as discrimination which in effect oust the jurisdiction of the second respondent. There is no correlation between the certificate of outcome and the subsequent ruling.
- [7] In *Goldfields*, it was found that jurisdictional issues such as the nature of the dispute, should be decided at the arbitration or adjudication phase, and that conciliating commissioners should determine only such issues as whether the dispute was referred on time, whether it should have been referred to a bargaining council or the CCMA and, perhaps whether the dispute concerned a matter of mutual interest.

The Grounds for Review

¹ [2000] 1 BLLR 20 (LAC)

² At par. 9

³ [2009] 12 BLLR 1214 (LC)

- [8] The applicant contended that the commissioner's conclusion that the parties to the dispute were of the same mind about the dispute route the matter had to follow cannot be said to be one that a reasonable decision-maker could reach.
- [9] It was further argued on behalf of applicant that based on the material before him, it cannot be said that his conclusion that the dispute is about discrimination was one that a reasonable decision-maker could reach.

Evaluation

- [10] The case of the applicant before the arbitrator was that the third respondent had perpetrated an unfair labour practice by keeping him at a lower grade of Task Grade 12 entry while the fourth respondent who is on the same post is on a higher grade of Task Grade 12 mid-scale which is a higher remuneration scale.
- [11] In light of the above, I am in agreement with the applicant that the CCMA does have jurisdiction to entertain the dispute brought before it and accordingly in refusing to entertain the dispute on the ground of lack of jurisdiction the commissioner committed a material error of law which rendered his decision incorrect. The view is in line with the approach adopted in *Bombardier Transportation (Pty) Ltd v Mtiya NO*⁴ Van Niekerk J added that a conciliating commissioner faced with a jurisdictional challenge may elect to determine the jurisdictional question or to defer it to the arbitration phase. Generally, it was held, challenges to the effect that the dismissed person was not an "employee" or that she was never dismissed are not truly jurisdictional issues as contemplated by rule 14 and should be deferred to arbitration. The commissioner ought to be guided by the nature of challenge, the extent to which matters are intimately bound up with the substantive merits of the

⁴ [2110] 8 BLLR 840 (LC)

dispute, the determination of difficult questions of mixed law and fact, and the need for evidence to resolve them. The Court found, rule 14 does no more than require conciliating commissioner to give proper consideration to any jurisdictional point raised, including an assessment of whether it is a true jurisdictional point and if so, whether it is reasonably capable of being disposed of prior to conciliation, or property left to the arbitration stage⁵.

[12] In light of the above, I find the applicant have made out a case for the review of the ruling made by the commissioner.

Order

[13] In the premises, the following order is made:

13.1 The late filing of the review application is condoned.

13.2 The ruling made by the commissioner under case number GATW 4045-13 is reviewed and set aside.

13.3 The ruling is substituted with an order to the effect that second respondent has jurisdiction to entertain the dispute referred to it by applicant.

13.4 The matter is remitted to the second respondent for consideration by a commissioner other than the first respondent.

⁵ At par. 16

Matlejoane AJ

Acting Judge of the Labour Court

Appearances:

For the Applicant: M.M Baloyi of M.M Baloyi Attorneys

No appearance for the Respondent