



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: C925/15

In the matter between:

ZELDA HOLTZMAN

Applicant

and

PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA

Respondent

Heard: 6 November 2015

Delivered: 10 November 2015

JUDGMENT

RABKIN-NAICKER, J

[1] This urgent application came before me on 6 November 2015. On 27 October 2015 the parties agreed on a timetable for the filing of answering and replying papers and heads of argument, which was made an order of court by my brother Lagrange J. The order also provided that the disciplinary proceedings sought to be suspended would not proceed until this matter had been heard.

[2] The relief sought by the applicant is set out in the Notice of Motion as follows:

- “1. Directing that all forms and notices be dispensed with and that the matter be heard as one of urgency in terms of Rule 8 of the Labour Court Rules;
2. That the Respondent be interdicted and refrained from proceeding with the disciplinary hearing scheduled (on short notice) to be commenced with **WEDNESDAY 28 OCTOBER 2015** as provided for in the respondent's notice of disciplinary hearing dated Thursday 22 October 2015;
3. That the Respondent be interdicted and refrained from commencing with the aforementioned disciplinary hearing pending the outcome of an unfair labour practice dispute under case number **WCT13510/15** relating to the Protected Disclosure which dispute is scheduled for hearing before Senior Commissioner Piet van Staden from Monday 23 November 2015 up until Friday 27 November 2015;
4. That the Respondent is to pay the costs of the application; and
5. Further and/or alternative relief.”

[3] It was only at the hearing of the matter that I was informed that a Jurisdictional Ruling was to be issued by the CCMA on Monday 9 November 2015. The Ruling would deal with the CCMA's jurisdiction to arbitrate an unfair labour practice dispute relating to an alleged protected disclosure under case number WCT13510/15.

[4] I raised my concern that given the relief sought, the ruling may well render this application moot. On 9 November 2015, the Ruling was handed down by Senior Commissioner Piet van Staden in which he found that the CCMA does not have jurisdiction to hear the said dispute. In the result, his Ruling comprises the outcome of the applicant's referral under case number WCT13510/15. The relief sought in paragraph 3 of the Notice of Motion would, if granted, have no practical effect.

[5] The applicant would have been better advised to seek a postponement of the disciplinary proceedings pending the issuing of the Jurisdictional Ruling. This was a most suitable an alternative remedy in the circumstances.

[6] Mr Nortje for the applicant submitted that if the Jurisdictional Ruling was in the respondent's favour, the applicant would have at least been partially successful in preventing the disciplinary hearing from starting on 28 October 2015. I agree with Mr Stelzner for the respondent, that the reason for the halting of the proceedings was for the purpose of filing of answering papers to an application brought on very short notice. The application cannot be considered partially successful for cost considerations.

[7] The Respondent is not seeking costs in the matter.

[8] In the result I make the following order:

- I. The application is dismissed;
- II. There is no order as to costs.

Rabkin-Naicker J

Judge of the Labour Court of South Africa

APPEARANCES:

On behalf of the Applicant: Adv J Nortje with Adv Z Cornelissen

Instructed by: Riley Inc

On behalf of the Respondent: Adv RGL Stelzner SC

Instructed by: Webber Wentzel Attorneys

LABOUR COURT