



REPUBLIC OF SOUTH AFRICA

Not reportable
Of interest to other judges

THE LABOUR COURT OF SOUTH AFRICA, DURBAN

JUDGMENT

Case no: D 242/15

In the matter between:

Francois Jacques SANSON

Applicants

& 19 others

and

**MOBILE TELEPHONE NETWORKS
(PTY) LTD**

First Respondent

CCMA

Second Respondent

HUMPHREY NDABA N.O.

Third Respondent

Heard: 31 March 2015

Delivered: 31 March 2015

Summary: Urgent application – pending CCMA award in terms of LRA s 186(2)(a).

JUDGMENT

STEENKAMP J

Introduction

- [1] The applicants, all employees of MTN (the first respondent), seek urgent interim relief in the following terms:

“That [MTN] be and is hereby interdicted from implementing its decision to remove the applicants’ company cars with effect 1 April 2015 pending the outcome of the arbitration dispute lodged with [the CCMA] under case number KNDB1004/15, alternatively agreed compensation.”

Background facts

- [2] The applicants all work for MTN as radio engineers. In the course of their work they have to use company cars. MTN supplied each of them with a company car and a petrol card. They could also use that for personal use up to a certain limit.
- [3] In December 2014 the company decided to scrap the use of company vehicles. It communicated this decision to its employees on 9 December 2014 effective 1 April 2015.
- [4] The applicants referred an unfair labour practice dispute relating to the provision of benefits to the CCMA in terms of section 186 (2)(a) of the LRA on 26 January 2015.
- [5] The dispute was unsuccessfully conciliated on 26 February 2015. It was set down for arbitration on 23 March 2015. The parties agreed to further talks and arbitration resumed on 26 March 2015. On that day, for the first time, MTN raised various points in limine. The parties argued those points. The arbitrator indicated that he would make a ruling on the points in limine within seven days.
- [6] The result was that the applicants stand to lose their company cars today, 31 March 2015, without the CCMA having resolved the underlying dispute.
- [7] It is against that background that the application has to be considered.

Evaluation / Analysis

- [8] I will deal first with the question of urgency and then the requirements for interim relief. In doing so, I also take into account the principles set out by the Labour Appeal Court in *Gradwell*.¹

urgency

- [9] Mr *Mthembu*, for MTN, objects that the matter is not urgent; alternatively, that the urgency is self-created.
- [10] At first blush, one would have sympathy with that argument, as the applicants were informed in December 2014 already that they would lose their company cars on 1 April 2015. However, as they point out in the founding affidavit, they followed the correct procedure in referring a dispute to the CCMA rather than approaching this court initially. It is only when the company belatedly raised the point in limine, that remain unresolved, that the matter became urgent. The urgency was created by the first respondent and not by the applicants.

prima facie right

- [11] This court must decide whether the applicants have established a prima facie right whilst still being open to some doubt.
- [12] The applicant have established at least such a right, pending the decision on the merits by the CCMA. The benefit of a company car form part of the terms and conditions of employment. The employer changed it unilaterally.

apprehension of harm

- [13] There is a well-founded apprehension of harm, albeit not irreparable. Should the applicant be unsuccessful, they cars will be taken away today, on the eve of the Easter holidays. It is so, as Mr *Mthembu* submitted, that they will be returned if the applicants are ultimately successful. But in the interim the applicants are suffering substantial harm.

¹ *Member of the Executive Council for Education, North West Provincial Government v Gradwell* (2012) 33 ILJ 2033 (LAC).

adequate alternative remedy

[14] The applicants have, quite properly, pursued the alternative remedy prescribed by the Labour Relations Act, by referring an unfair labour practice dispute to the CCMA. That is the remedy in due course; but they need interim relief pending the resolution of that dispute.

[15] As Murphy AJA said in *Gradwell*:²

“A final declaration of unlawfulness on the grounds of unfairness will rarely be easy or prudent in motion proceedings. The determination of the unfairness of a suspension will usually be better accomplished in arbitration proceedings, except perhaps in extraordinary or compellingly urgent circumstances. When the suspension carries with it a reasonable apprehension of irreparable harm, then, more often than not, the appropriate remedy for an applicant will be to seek an order granting urgent interim relief pending the outcome of the unfair labour practice proceedings.”

[16] That is exactly what the applicants have done in these unfair labour practice proceedings.

balance of convenience

[17] The balance of convenience clearly favours the applicants. They are merely asserting the continuation of a right that has traditionally accrue to them as employees pending the final determination of the underlying dispute. On the other hand, the first respondent, a multi-million Rand company, will suffer very little harm by extending the benefit until the underlying dispute is finalised.

Conclusion

[18] The applicants have satisfied the requirements for interim relief pending the determination of the dispute at the CCMA. With regard to costs, I have to take into account the requirements of both law and fairness in terms of section 162 of the LRA. There is an ongoing employment relationship

² *Supra* para 46.

between the parties. The underlying dispute is yet to be resolved. In those circumstances I do not deem a cost order at this stage to be appropriate.

Order

The first respondent [MTN] is interdicted from implementing its decision to remove the applicants' company cars with effect 1 April 2015 pending the outcome of the arbitration dispute lodged with the CCMA]under case number KNDB1004/15.

Steenkamp J

APPEARANCES

APPLICANT: Dean Caro (attorney).

FIRST RESPONDENT: Adv Mthembu
Instructed by Mashiane, Moodley & Monama Inc,
Durban.