



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not reportable

Case no: J 2151/15

In the matter between:

**CHEMICAL, ENERGY, PAPER,
PRINTING, WOOD AND ALLIED
WORKERS UNION**

Applicant

and

First Respondent

MHLANGABEZI MELANI

Second Respondent

LAWRENCE NZELE

RULING: APPLICATION FOR LEAVE TO APPEAL

VAN NIEKERK J

- [1] This is an application for leave to appeal against the entire order granted by this court on 1 December 2016 when the court held the disciplinary action initiated against the first applicant to be in breach of the applicant's constitution and therefore null and void. I will assume for present purposes that the applicant is authorised to bring this application.
- [2] The primary ground on which the applicant relies is that the court misconstrued the applicant's constitution and its disciplinary code. To the extent that the applicant relies on a construction of clause 53 of the constitution to contend that read with clause 7.6, there is a general delegation of authority to the general secretary to institute disciplinary action against the first respondent, it is clear from the wording of clause 53 that the clause applies to any person who is either employed by or a member of the applicant. Moreover, clause 35(2) makes it clear that it is the REC or the NEC that is required to follow the guide when seeking to institute disciplinary proceedings.
- [3] To the extent that the applicant relies on clause 7.6 of the code, the plain meaning of the clause is that the 'secretariat acting in their capacity as representatives of the NOBC's' means, as the court held, the secretariat acting with a mandate from the NOBC. The wording does not admit of an interpretation, such as the applicant contends, to the effect that an individual member of the NOBC has the power to act on his or her own initiative.
- [4] In relation to the requirement of consultation referred to in paragraph 7.7 of the code, while it is correct that the code is a guideline that does not in itself permit departures from the code for no justifiable reason. The code requires consultation. No consultation took place.
- [5] Finally, in regard to the applicants point on waiver, the code makes clear that disciplinary proceedings are to be conducted expeditiously. If the proceedings initiated in October 2015 were a continuation of the 2014 proceedings, they were in breach of this requirement. If they were proceedings *de novo*, they were not authorised and did not follow on the required consultation with regional office

bearers.

- [6] In my view, there is no reasonable prospect of another court coming to a different conclusion. None of the grounds relied upon by the applicant has any merit. The application stands to be dismissed. There is no reason why costs should not follow the result.

I make the following order:

1. The application for leave to appeal is dismissed, with costs.

ANDRÉ VAN NIEKERK
JUDGE OF THE LABOUR COURT
Chambers
4 April 2017