



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JR186/14

CRITERION EQUIPMENT (PTY) LTD

Applicant

and

DAIZY MANZANA N.O

First Respondent

**DISPUTE RESOLUTION CENTRE FOR
THE METAL AND ENGINEERING
INDUSTRIES BARGAINING COUNCIL**

Second Respondent

GIWUSA obo G MANANA

Third Respondent

Decided: In chambers

Judgment: 12 May 2017

Summary: Leave to appeal -- application for leave to appeal dismissed.

RULING ON LEAVE TO APPEAL

HOWES, AJ

Introduction

- [1] This is an application for leave to appeal in respect of the whole of the judgment and order handed down by the Honourable Court on 12 April 2016. In terms of the judgment, the Applicant's review application was dismissed and it was ordered to pay the costs of the Third Respondent.
- [2] The Applicant's application for leave to appeal has been served and filed outside of the prescribed time periods. The Applicant has filed a condonation application together with its application for leave to appeal. The delay is minor, and I intend granting condonation and determining the matter on its merits.
- [3] The application for leave to appeal is not opposed by the Third Respondent.

Applicant's submissions – grounds of appeal

- [4] The Applicant's submissions supporting its application for leave to appeal are dealt with in two broad categories, namely:
- 4.1 the unsigned award; and
- 4.2 the merits of the review.
- [5] I will briefly address the application for leave to appeal in accordance with the two broad categories reflected above.

The unsigned award

- [6] The Applicant submits that I *inter alia* failed to accurately interpret and apply section 138(7) of the Labour Relations Act¹(LRA) .
- [7] While the Applicant is correct in recording that at the date of the review application hearing, there was no signed arbitration award before me, as

¹ Act 66 of 1995

previously recorded, it was submitted from the bar by the Third Respondent's attorney, Mr Cartwright, that he was in possession of the signed arbitration award. This submission was not disputed by the Applicant's representative, Mr Posthuma. By oversight, Mr Cartwright failed to hand up the signed copy of the award.

- [8] In any event, recent authority of the Labour Appeal Court makes it clear that an unsigned arbitration award is not defective merely because the arbitrator has not signed it, as this requirement is directory, and not peremptory. See *Solidarity obo Smook v Department of Transport, Roads and Public Works*², where at paragraph 17, Murphy AJA stated:

"[17] To hold an award, which is valid in all other respects, to be invalid and a nullity on grounds of non-signature favours form above substance and would defeat the LRA's aim of effective dispute resolution. The purpose of the signature requirement is primarily to identify the arbitrator and secondarily to signify the completion of the award by him or her. The latter objective is achieved also by the issue of the award. Once an award, indisputably authored by the relevant arbitrator, is conveyed to the affected parties and has passed into the public domain, that act signifies completion and supersedes the necessity for signature. The seemingly contrary decision of the Labour Court in *Meyer v Commission for Conciliation, Mediation and Arbitration and Others* to the effect that an unsigned award would normally be a nullity was qualified by the judge in that case by his explicit recognition that such would not be the case if 'there is proof that it is in the form decided by the arbitrator'."

- [9] There was never any dispute between the parties that the contents of the unsigned award are identical to those of the signed award, aside from the arbitrator's signature.

² [2016] 12 BLLR 1201 (LAC)

[10] It follows that there is no merit to this ground of appeal.

The merits of the review application

[11] The grounds of appeal are in effect a repetition of the grounds of review as pleaded. I am not persuaded that there are prospects that another court may reach a different conclusion. The law on incapacity dismissals is settled, and on the facts before the arbitrator, the Applicant clearly failed to comply with its obligations prior to dismissing the Third Respondent.

[12] The reasons for dismissing the grounds of review are dealt with fully in my judgment, and nothing in the application for leave to appeal persuades me that the Applicant enjoys any prospects of success on appeal.

Order:

1. The application for leave to appeal is dismissed.
2. There is no order as to costs.

Howes, AJ

Acting Judge of the Labour Court of South Africa