



**THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN**

**JUDGMENT**

NOT REPORTABLE

Case no: C445/2016

In the matter between:

**NUM OBO AYANDA RANELO**

Applicant

and

**WHBO CONSTRUCTION (PTY) LTD**

First

Respondent

**COMMISSION FOR CONCILIATION,**

**MEDIATION AND ARBITRATION**

Second Respondent

**COMMISSIONER JAQUES PIENAAR NO**

Third

Respondent

**Heard:** 10 May 2017

**Delivered:** 11 October 2017

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## JUDGMENT

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### RABKIN-NAICKER J

[1] This is an opposed application to review an Arbitration Award under case number WECT 2954-16. The third respondent found that Mr Ranelo (Ranelo) was not subject to an unfair labour practice relating to demotion when the first respondent placed him in his former post of Senior Safety Officer.

[2] Ranelo began employment with the first respondent in 2001 at first as a trainee safety officer, later as senior safety officer (SSO). He was promoted on a provisional basis to the position of Western Cape Divisional Safety Coordinator in September 2003. In January 2004 he was appointed permanently in that position. In November 2015, Ranelo was verbally informed that he had been removed from the DSC position and would now be returned to the post of SSO with immediate effect. He was advised that another SSO (De Wit) would replace him. He was now to report to De Wit. In his analysis of the evidence before him, the Commissioner found inter alia as follows:

“[19] As Safety Co-Ordinator Mr Ranelo was responsible for various sites. As Senior Safety Officer his work is presently confined to one site, with less work and less workers falling under him. He regards this as a demotion that has adversely affected his status and dignity, to the extent that he feels like leaving the company...

[21] The onus rests on Mr Ranelo to prove on a balance of probabilities the facts upon which a finding that he was demoted, can be based. He failed to do so. The evidence of Mr Moller came across as truthful, despite cross-examination. Mr Ranelo is most emotional about the matter, and came across as a witness who was inclined to exaggerate. The evidence of Mr Moller is accepted where it came in conflict with the evidence of Mr Ranelo.

[22] The evidence of Mr Moller makes it clear that there was no demotion. Mr Ranelo's remuneration is unchanged. He is employed at the same level as before,

and reports to a Contract's Manager as before. Mr Ranelo's main complaint is that his work is not confined to a single site with not many workers on site, in contrast to the position when he had some 12 sites to visit as Safety Coordinator. But as Mr Moller explained, this is a temporary situation that could change when the company manages to be successful in more substantial tenders, and that Mr Ranelo's responsibilities on site are then to increase. Mr Ranelo's technical authority is acknowledged, and he is released from the more administrative duties, a role in which he was not delivering. If he continued in this role it may have led to an incapacity hearing raised against him."

[3] The grounds of review are set out in paragraph 25 of the founding affidavit:

"25.1 The arbitrator misapplied the law applicable to unfair labour practices relating to demotion by equating a demotion solely with a reduction in remuneration or employment level. The award thus constitutes a gross error of law.....

25.2 The arbitrator misconstrued the evidence before him such that he failed to appreciate the reduction in Ranelo's work responsibilities was not due to an economic downturn, but because he no longer had to supervise a number of SSOs and to coordinate their respective workplaces.

25.3 The arbitrator failed to assess, even on the version presented by the company, that Ranelo had factually been demoted from a more senior position where SSOs reported to him, to the situation where he was required to report to the new DSC.

25.4 Moreover, Ranelo had been demoted from a post reportable only to the Group Safety Manager and Safety Champion, to a post where he was required to report to the contracts manager.

25.5 The arbitrator failed to appreciate that by removing key senior responsibilities of a managerial nature, the company was subjecting Ranelo to an occupational detriment to which he had not agreed, and had effectively blocked his path towards future career advancement."

- [4] It is submitted on behalf of applicant that the Commissioner should have found factually that a demotion had taken place and then considered whether it was fair or not. He failed to make this enquiry and the applicant argues that the award is not one a reasonable decision make should have made.
- [5] It was first respondent's case at arbitration and before me, that Ranelo had not been demoted because his terms and conditions of employment and reporting structure had not changed. In addition, his salary and grading structure was not effected or changed. However, it is evident even on the face of the Award itself that Ranelo's responsibilities had been diminished. The company considered his capabilities as an administrator to be lacking and clothed his move back to a SSO as an operational issue. It would seem to the Court that even on the company's evidence before the Commissioner, a demotion in status had taken place. It is noteworthy that Ranelo had been in the position of Western Cape DSC since 2004 i.e. some 11 years. The Commissioner appears to have drawn a negative inference about Ranelo's emotion during the arbitration, determining that his evidence was as a result exaggerated and the Company's should be preferred. He made this determination without proper reference to the law on demotion in status<sup>1</sup> and evaluated the evidence without applying the law to it.
- [6] The Award stands to be reviewed and set aside. I have decided to remit the dispute to the CCMA for hearing on a limited basis, this Court having determined that a demotion in status has taken place. I make the following order:

Order

1. The applicant has been demoted in status;
2. The Award under case number WECT 2954-16 is reviewed and set aside;
3. The dispute is referred back to the second respondent for re-hearing before a Commissioner other than third respondent who is to decide the following issues:
  - 3.1. Whether the demotion involved unfair conduct by the employer and if so;

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<sup>1</sup> Nxele v Chief Deputy Commissioner, Corporate Services, Department of Correctional Services & others (2008) 29 ILJ 2708 (LAC)

3.2 The appropriate remedy for such unfair conduct.

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H. Rabkin-Naicker  
Judge of the Labour Court

Appearances:

**Applicant:** Cheadle Thompson & Haysom INC

**First Respondent:** M. Aggenbach instructed by Fluxmans Attorneys