



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case no: J176/16

In the matter between:

IMATU OBO MEMBERS

Applicant

and

CITY OF TSHWANE METROPOLITAN MUNICIPALITY

Respondent

Heard: 31 October 2017

Delivered: 25 January 2018

JUDGMENT

MAMOSEBO, AJ

Introduction

[1] The applicant, IMATU, a registered trade union, seeks an order on behalf of its members, to make an arbitration award dated 19 January 2015 by the South

African Local Government Bargaining Council (SALGBC) under case number PMD 071413 an order of court in terms of s 158(1)(c) of the Labour Relations Act¹ (LRA) .

- [2] It is common cause that the applicant and the respondent, the City of Tshwane Metropolitan Municipality (the City), signed an Acting Policy Collective Agreement on 17 July 2014 to regulate acting by employees in senior positions within the Municipality. Disgruntlement by the employees in the implementation of the Collective Agreement resulted in a referral of the dispute by the applicant on behalf of its members to the SALGBC for its interpretation and application on 24 July 2014.
- [3] The arbitrator ordered that the City must comply with the provisions of the new collective agreement by ensuring that the employees who qualify are rotated in acting in higher positions. The City has not complied with the award to date hence this application.
- [4] Mr de Beer, appearing for the applicants, submitted that the qualification of the employees was not in dispute since Clause 11 deals with qualifications of the employees. The purpose of the collective agreement is to afford employees, who qualify, an opportunity to be rotated every three months to gain relevant experience.
- [5] The City opposed the application to have the award made an order of the court. The opposition, as submitted by the City's counsel Mr van Wyk, is purely on a legal basis as the facts are not in dispute and that the relief would not have any practical effect. Counsel submitted that litigation would still be instituted to determine whether the award had been complied with in specific instances and asked for the application to be dismissed.

¹ Act 66 of 1995 as amended.

- [6] The arbitrator considered the following Clauses: Clause 1.1 of the old collective agreement and Clause 4 of the new collective agreement:

“1.1 ...In cases where the incumbent in a higher graded position is on annual leave, for a period exceeding 20 working days, acting duties should preferably and if possible be rotated between personnel. This is not only to prevent the unnecessary payment of acting allowances, thus ensuring the cost effectiveness of the system, but also to ensure that employees gain higher-level experience through the rotation of duties.”

And

“4 Subject to existing operational requirements, acting appointments to vacant positions shall be reviewed and approved monthly. In the event that there is more than one employee that qualifies to act in a specific position the qualifying employees shall act on a rotational basis. Acting duties shall be rotated between qualifying employees. This will ensure that employees gain a higher level of experience.”

- [7] Based on the foregoing clauses, the arbitrator concluded that the provisions are self-explanatory and do not need any other interpretation as they are couched in simple (unequivocal) language. In addition to the quoted clauses the agreement also stipulates:

7.1 Acting is subject to the authorisation and approval of the SED of the Department and/or the Deputy City Manager or in terms of [City of Tshwane's] COT's delegation of authority as amended from time to time.

7.2 The acting period will be determined and agreed upon in writing before the acting period commences.

7.3 The COT shall furnish the acting employee with a letter indicating that he is acting in a higher position.

7.4 Although a specific qualification to act is not a requirement, (unless required by law), it remains imperative that an acting employee should comply with the required skills to execute and perform the duties of the position.

7.5 Acting duties shall be rotated between qualifying employees. This will ensure that employees gain a higher level of experience.

The submission by Mr De Beer was correct in that if the City is dissatisfied with the terms of the agreement it must renegotiate them and not resort to approaching court.

[8] Mr Van Wyk invoked *PSA obo Members v National Health Laboratory Service*² seeking to convince me not to make the award an order of court. In my view, facts of the case before me are distinguishable from the *PSA* case. In the *PSA* case Kennedy AJ made the following remarks at para 17:

“In this matter however, there is no sum quantified by the settlement agreement, nor does it determine whether and what amounts would be payable at the conclusion of the verification exercise. It is left to the NHLS, in its verification exercise, to determine which claims are payable. It is only in the event of such a positive determination that amounts must then be paid by the NHLS by the specified date. If those amounts are not paid, the next step is for the PSA or its members to institute civil action to enforce payment.”

The court in *PSA* was not in a position to make the settlement agreement an order of court because the amounts owed to the employees by the NHLS were not specified. It would serve no practical effect to make that settlement agreement an order of court as litigation would be inevitable. In the case before

² (2007) 6 BLLR 559 (LC)

me, however, the excerpts from the collective agreement were agreed upon after negotiations. I find the *PSA* case to be distinguishable.

[9] It is clear that the award addresses the issue of rotation and not the qualification of employees. It seems to me that the City is attempting to bolster its argument by challenging the enforceability of the award and questioning how the qualifications of those who will qualify for consideration to act in higher positions will be made. This was not the issue before the arbitrator. The dispute related to the interpretation and application of the collective agreement which the arbitrator found in favour of the employees and ordered the respondent to comply with the collective agreement. There is no basis to tamper with the finding of the arbitrator.

[10] In as far as costs are concerned the applicant did not ask for costs and I will therefore not make any order in relation to costs.

[11] I therefore make the following order:

Order

1. The arbitration award of the arbitrator, Mr Thabo Sekhabisa, under case number PMD071413, dated 19 January 2015 and issued under the auspices of the South African Local Government Bargaining Council is made an order of court in terms of section 158 (1)(c) of the LRA.

2. I make no order as to costs.

M C Mamosebo
Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Mr P de Beer

Instructed by: IMATU (Union Official)

For the First Respondent: Advocate WJ van Wyk

Instructed by: Bokwa Attorneys

LABOUR COURT