



REPUBLIC OF SOUTH AFRICA
THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

Not of interest to other judges

Case No: JS 492/15

In the matter between:

KGABO MOABELO

Applicant

And

GOLD FIELDS GROUP SERVICES (PTY) LTD

Respondent

Heard: 09 June 2017

Delivered: 09 June 2017

Edited: 29 March 2018

EX TEMPORE JUDGMENT

SALOOJEE AJ

INTRODUCTION

[1] This is an application in which the applicant seeks to direct the respondent within 10 days of the order to produce certain documentation. The applicant

relies on rule 6(9)(b) of the Labour Court's rules, as well as rule 11. Rule 6(9)(b) states that:

"If parties cannot reach an agreement regarding the discovery of documents and tape recordings, either party may apply to the court for an appropriate order, including an order as to costs."

- [2] Now, discovery assists the parties and the court in discovering the truth and to lead to a determination of any litigation, and parties are entitled to discovery only once legal issues are settled, and the settling of issues allows the court in its discretion to determine the relevance of documents in an application of this kind. There is also a long list of cases that have held that a party may only obtain an inspection or obtain copies of relevant documentation based on the pleadings or the issues on the pleadings and on the pleadings alone.
- [3] Now, the applicant's case in the Statement of Claim is based on contract. The applicant seeks a performance bonus in its first claim, in its second claim it seeks a recalculation of this bonus for the year 2014, payment in terms of his letter of appointment, and a claim for negligent representation. On the first to third claims, the applicant relies on his Letter of Appointment, the Group Annual Incentive Scheme and the Retrenchment Agreement, and on the fourth claim for negligent misrepresentation, the applicant relies on an email that allegedly induced the applicant to act.
- [4] In as far as the respondent's argument is made that certain documents required by the applicant that refer to other employees would point to an unfair labour practice dispute. I agree with the respondent on that regard, however, I cannot agree with the respondent in not allowing or not disclosing certain documentation that was requested. For this reason I am inclined to look at the recordings or documents that relate only to the applicant because no unfair labour practice case has been made out. In as far as the applicant

would like to rely on the reasonableness or the fairness of the Remco decision that case is not made out in its pleadings.

ORDER

1. For this reason I am inclined to grant an order in terms of prayer 1, with regard to prayer 1.5.1.
2. Each party to pay their own costs.

YF Saloojee

Acting Judge of the Labour Court of South Africa