



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JR 857/2017

In the matter between:

MEC: PUBLIC WORKS AND INFRASTRUCTURE

FREE STATE PROVINCIAL GOVERNMENT

Applicant

and

GPSSBC

First Respondent

LUFUNO RAMABULANA N. O

Second Respondent

SANGO MENYE

Third Respondent

Heard: In Chambers

Delivered: 8 May 2018

Summary: An arbitrator determining an alleged unfair dismissal dispute without hearing any evidence commits a reviewable irregularity. Held (1) the award is reviewed and set aside. Held (2) the dispute is remitted back to the first respondent to be heard by another commissioner other than the second respondents. Held (3) there is no order as to costs.

JUDGMENT

MOSHOANA, J

Introduction

- [1] This is an unopposed application to review and set aside an arbitration award issued by the second respondent on 26 January 2017. The third respondent has consented to the relief sought by the applicant.¹ As a result this matter was considered by me in chambers.²

Background facts

- [2] Briefly the relevant facts of this matter are: the third respondent was charged with acts of misconduct, found guilty and dismissed on 22 December 2015. Aggrieved by his dismissal, he referred a dispute alleging unfair dismissal to the first respondent. The second respondent was appointed to resolve the dispute through arbitration. On 26 January 2017, the second respondent issued an award in favour of the third respondent. The applicant was aggrieved thereby and launched the present proceedings. As pointed out earlier, the third respondent consented to the relief sought in accordance with the Rules of this court.

Grounds of Review

- [3] Although the applicant raised a number of grounds, the principal ground is that the second respondent acted irregularly by resolving an unfair dismissal dispute without hearing any evidence.

Evaluation

- [4] Although Rule 17 allows parties to consent to the relief sought by the one party, when it comes to reviews, an award can only be reviewed and set aside if there are recognizable grounds in law to do so. Put differently, if recognizable grounds do not exist, even if the other party consents to the relief sought, an award is not reviewable in law. I have had an occasion to say that the fact that a review application is not opposed, does not

¹ Rule 17 of the Labour Court Rules.

² Rule 17(3).

mean that the impugned award should be reviewed as a matter of course.

- [5] In *casu*, the second respondent in his award identified the dispute to be decided as one of the dismissal of the third respondent. It is common cause that the third respondent alleged that his dismissal was unfair. Section 138 of the Labour Relations Act³ sets out how a commissioner may conduct an arbitration. Subsection 1 enjoins a commissioner to consider a dispute in a fair manner. By considering the dispute without hearing any evidence, a commissioner cannot be held to have considered the dispute fairly. Subsection 5⁴ empowers a commissioner to continue with arbitration in the absence of a party. Such does not mean that the arbitrator is absolved from receiving evidence.
- [6] Many, if not all, of the default awards issued by the CCMA and Bargaining Council are issued after hearing evidence, particularly from the referring party. The second respondent did not obtain evidence from the third respondent. In his award lays a reference that he analysed evidence. One wonders which evidence was analysed, when there is no recordal of such evidence. On the contrary, what the second respondent received was submissions in the form of bundle of documents, contents of which remains a mystery. All of this is not in line with section 138 of the Act.
- [7] In fact, the second respondent failed to arbitrate the dispute. One wonders if the second respondent claimed any fee for that day. If he did, the first respondent should consider claiming it back from the second respondent as he did not arbitrate the dispute as required.
- [8] In summary, the second respondent did commit a reviewable irregularity. His award ought to be reviewed and set aside. Accordingly, the review application is bound to succeed.

- [9] In the results, I make the following order:

³ Act 66 of 1995 as amended.

⁴ Subsection 5 (b) (i).

Order

1. The award issued by the second respondent is hereby reviewed and set aside.
2. The matter is remitted to the first respondent to be heard by another arbitrator other than the second respondent.
3. A copy of this judgment must be forwarded to the Secretary of the first respondent in order to consider what the court said in paragraph 7 of the judgment.
4. There is no order as to costs.

GN Moshwana

Judge of the Labour Court of South Africa

Appearances (In Chambers)

No appearances.