



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JS 544/16

In the matter between

BUSISIWE DHLAMINI & 19 OTHERS

Applicants

and

MOSEGO HOME T/A NEW TAKALANI

Respondent

Heard: 06 November 2018

Delivered: 09 November 2018

JUDGMENT

LALLIE. J

Introduction

[1] The applicants were employed by the respondent, an organization which is a home safety for mentally ill and infirm patients. The respondent's interim

administrator was Elizabeth Avril who paid the applicants bonuses, leave pay, overtime pay, and annual wage increments and contributed to their Unemployment Insurance Fund (UIF). In 2012 the government joined the interim administrator position to another home known as Mosego Home which took over the running of the Home.

- [2] The new administrator changed the terms and conditions of the applicants' employment by stopping paying them bonuses, leave and overtime pay and contributing towards their UIF. Aggrieved by the change the applicants referred a dispute to the Commission for Conciliation, Mediation and Arbitration (CCMA). Attempts to resolve it through conciliation were unsuccessful and the certificate of outcome was issued. The applicants thereafter issued the respondent with 48 hour strike notice and embarked on a protected strike from 3 March 2016. The respondent responded by dismissing them. Those who were off duty on the day were dismissed for the same reason on 9 March 2016. The applicants alleged that their dismissal was automatically unfair and sought reinstatement. They each earned a monthly wage of R2000.00.
- [3] The respondent filed a notice of its intention to oppose the applicants' matter but failed to file a response to the applicants' statement of claim. Long after the expiry of the date on which the respondent was required to file its response to the statement of claim the applicant applied for default judgment.
- [4] Having considered the contents of the papers filed of record and the evidence led by Ms Mabunzi on behalf of all the applicants, I am satisfied that the applicants' dismissal was automatically unfair. Section 187(1)(a) of the Labour Relations Act¹ (LRA) unequivocally provides that dismissal for participating in a protected strike is automatically unfair. In the absence evidence against their reinstatement, the relief of reinstatement the applicants sought should be granted.

¹ 66 of 1995

[5] In the premises, the following order is made:

Order

1. The applicants' dismissal on 3 and 9 March 2016 was automatically unfair.
2. The respondent is ordered to reinstate the applicants with retrospective effect to the date of their dismissal within 5 days of the applicants tendering their services to the respondent.
3. The applicants are ordered to tender their services within 10 days of receipt of this order.

Z. Lallie

Judge of the Labour Court of South
Africa

Appearances

For the applicant

Ms Mabunzi (on behalf of all the applicants')

For the respondent

No appearance