



IN THE LABOUR COURT OF SOUTH AFRICA, PORT ELIZABETH

Not Reportable

Case no: PR 66/13

In the matter between:

EDWARD LEMLEY

Applicant

and

THE COMMISSION FOR CONCILIATION,

MEDIATION AND ARBITRATION

First Respondent

COMMISSIONER COKILE N.O.

Second Respondent

T-SYSTEMS SA (PTY) LTD

Third Respondent

Heard: 1 December 2016

Delivered: 19 January 2018

Summary: In an application to review and set aside an arbitration award in which the commissioner found the applicant not entitled to severance pay, the applicant has to prove that the award is unreasonable. It is not permissible for the applicant to augment the reasons for refusing alternative employment as the review court does not determine the reasonableness of the applicant's refusal of alternative employment.

JUDGMENT

LALLIE J

- [1] The applicant was employed by the third respondent until his dismissal for the third respondent's operational requirements. He approached the first respondent (the CCMA) in terms of section 41 of the Basic Conditions of Employment Act 75 of 1997 (the BCEA) for relief as the third respondent had refused to pay him severance pay on dismissal. His dispute was arbitrated by the second respondent (the commissioner) who issued an arbitration award dismissing his claim on the basis that he was not entitled to severance pay. In this application, the applicant seeks an order reviewing and setting aside the arbitration award. The application is opposed by the third respondent.
- [2] The applicant submitted that the award is reviewable because it is not one a reasonable decision-maker could reach. The grounds the applicant sought to rely on are that the commissioner disregarded his evidence to the effect that the offer of alternative employment the third respondent made was not reasonable. He made errors which resulted in him reaching an unreasonable decision. He failed to take into account relevant evidence including his evidence that the offer was made before the commencement of the retrenchment process and that it is his refusal of the offer that triggered his retrenchment. It was the applicant's case that the commissioner erred in his analysis of relevant case law. The applicant attacked the reasonableness of the award also on the basis that the award is not rationally connected to or substantiated by evidence. The third respondent's basis for opposing this application is that the grounds for review are devoid of substance.
- [3] For an arbitration award to pass muster, it must be one which a reasonable decision-maker could make based on the evidence tendered at arbitration. The award must, therefore, fall within bounds of reasonableness. It is trite that different commissioners acting reasonably may reach different conclusions on

the same facts. The reasonableness of an award is determined on the totality of the evidence tendered at arbitration. The applicant's submission that the award is unreasonable because the offer of alternative employment was made before the commencement of the retrenchment exercise and never repeated is not valid. Part of the evidence that the commissioner took into account was that in a meeting held on 11 June 2009, an official of the applicant's trade union intimated that the applicant had declined alternative employment due to his age and family circumstances.

- [4] The applicant's argument that the award is not rationally connected to the evidence tendered at arbitration is unsustainable as the arbitrator dealt with the issue before him, considered evidence and made findings and a final decision based on evidence. Similarly, the argument that the commissioner erred in his analysis of relevant case law is untenable. The commissioner considered case law on entitlement to severance pay and applied it to the facts before him. He considered objective facts as well as the applicant's personal circumstances. His conclusion, based on relevant authority that the applicant was not entitled to severance pay cannot be faulted. It is not the duty of the review court to determine the applicant's entitlement to severance pay. It is therefore impermissible for the applicant to augment the reasons for refusing alternative employment on review. The review court has to determine the reasonableness of the commissioner's arbitration award. The applicant has not established valid grounds to have the award reviewed and set aside. His application can, in the circumstances, not succeed.

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

Order

1. The application is dismissed.

Z Lallie

Judge of the Labour Court of South Africa

LABOUR COURT

APPEARANCES:

FOR THE APPLICANT: Mr Van Der Walt of Van Der Walt Attorneys

FOR THE THIRD RESPONDENT: Mr Moshwana of Moshwana & Moshwana Inc

LABOUR COURT