

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not reportable

Case No: J2976/2016

In the matter between:

SACWU obo MTHETHWA SFISO AND 16 OTHERS

Applicants

and

MLP DISTRIBUTORS CC AND 1 OTHER

First Respondent

THE WORKFORCE GROUP (PTY) LTD

Second Respondent

Enrolled: 14 May 2020

Decided on the papers

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on the Labour Court's website and released to SAFLII. The date and time for hand-down is deemed to be 15h00 on 1 June 2020

JUDGMENT

TLHOTLHALEMAJE, J

Introduction:

[1] With this application, the applicants seek an order to have the arbitration award dated 7 November 2016 issued under the auspices of the Commission for Conciliation Mediation and Arbitration (CCMA) be made an order of Court in accordance with the provisions of section 158(1)(c) of the Labour Relations Act (LRA).¹

[2] This application was launched on 10 January 2017. A Notice to Oppose was filed by the respondents on 24 January 2017. Thereafter, no further steps were taken by the respondents in opposing the matter. The matter was subsequently enrolled for a hearing. As a result of the current declaration of

¹ Act 66 of 1995, as amended

the state of national disaster, the court issued a directive to the parties on 8 May 2020 in line with the Urgent Directive issued by the Judge President of this Court on 28 April 2020.

- [3] In response to the Court's directive, the parties had responded, and agreed to have the matter disposed of on the papers. The Respondents' attorneys of record had responded on 11 May 2020, whilst the applicant's attorneys of record had responded on 13 May 20120. Only written heads of argument were previously filed on behalf of the applicants. Both parties had waived their right to file supplementary heads of argument.

The section 158 (1)(c) application:

- [4] Following the referral of a dispute to the CCMA by the applicants, a settlement agreement was concluded on 8 September 2016 in terms of which the individual applicants were to be reinstated into the respondents' employ with retrospective effect on 13 June 2016 without any form of backpay. That settlement agreement was made an arbitration award in accordance with the provisions of section 142A of the Labour Relations Act on 7 November 2016.
- [5] In the founding affidavit, the applicants averred that the respondents have failed or refused to comply with the arbitration award. In the absence of any substantial opposition to the application, I am satisfied that in accordance with *South African Post Office Ltd v CWU obo Permanent Part-Time Employees*², the Court is in a position to exercise its discretion in favour of the applicants in that the arbitration award satisfies the criterion set out section 142A of the LRA, is sufficiently clear to have enabled the respondents to know exactly what they were required to do in order to comply with that award, and further that there has not been compliance with the terms of the award.
- [6] I have further had regard to the requirements of law and fairness insofar as the applicants sought an order of costs. To the extent that the applicants were compelled to bring this application in circumstances where the dispute between the parties was resolved through an agreement at the CCMA, I see

² [2013] ZALAC 20; (2014) 35 ILJ 455 (LAC); [2013] 12 BLLR 1203 (LAC) at para [21]

no reason in law and fairness why they should be burdened with the costs of this application.

[7] Accordingly, the following order is made;

Order:

1. The settlement agreement entered into between the parties, which was made an arbitration award in terms of the provisions of section 142A of the Labour Relations Act, is made an order of Court in terms of section 158(1)(c) of the Labour Relations Act.
2. The first respondent is ordered to pay the costs of this application

Edwin Tlhotlhemaje

Judge of the Labour Court of South Africa

REPRESENTATION:

For the Applicant: Matlatle Attorneys

For the Respondent: Hunts Attorneys