



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JS 682/22

In the matter between:

LINDA JOSEPH

Plaintiff

and

ALTRON MANAGED SOLUTIONS LIMITED

Defendant

Heard: 21 January 2025

Delivered: 22 January 2025

Summary: Plaintiff alleging that she was dismissed, and her dismissal was automatically unfair. Parties in dispute as to whether matter settled. Evidence indicating that dispute settled.

REASONS FOR ORDER

DANIELS J

Summary

1. As the facts will demonstrate, through no fault of her own, the plaintiff's circumstances are unfortunate. My judgment, in dismissing the dispute, is not a reflection of any lack of sympathy. The outcome was dictated solely

by the application of the law to the facts, while taking into consideration that fairness is a concept which extends to both employer and to employee alike. The dispute, having been enrolled for trial, came before me on 21 January 2025. The plaintiff alleged that she was dismissed, as a result of her disability, and her dismissal was automatically unfair in terms of section 187(1)(f) of the Labour Relations Act 66 of 1995 as amended. The defendant denied that the plaintiff was dismissed. The defendant also alleged that the dispute had become settled a few days before the trial, which was disputed by the plaintiff. Accordingly, on the first day of the trial, evidence and argument was heard in relation to the alleged settlement. I handed down an order later that same day based on my view that the dispute had been settled. These are the reasons for my order.

Material facts

2. The defendant made submissions, based largely on email correspondence, exchanged between the parties, which it presented to the court. The plaintiff elected to give evidence and was duly cross examined. During cross examination, the plaintiff was permitted to tender one additional email into evidence. During the plaintiff's testimony, and by reference to the documents, the following became evident:
 - 2.1. The plaintiff was employed by the defendant as a credit controller. Her duties required her to communicate, verbally, with both colleagues and customers.
 - 2.2. The plaintiff experienced medical issues related to her speech and vocal abilities during 2021. As a result, the defendant required her to present medical proof of illness. The plaintiff struggled to provide such proof due to restrictions arising from the COVID19 pandemic.

2.3. The defendant alleges that it repeatedly offered the plaintiff alternative positions to accommodate her illness. The plaintiff, on the other hand, denies that the defendant made any efforts to accommodate her.

2.4. As an employee of the defendant, the plaintiff was a member of a provident fund, Momentum, which provided her with insurance covering disablement.

2.5. Under pressure to provide proof of her medical condition, the plaintiff applied to Momentum for “rehabilitation”. Initially, her application was rejected. However, following an appeal, Momentum found that the plaintiff was permanently disabled albeit only partially incapacitated – referred to by Momentum as “permanent partial disablement”. What this meant was that the plaintiff was permanently incapable of performing her work as a credit controller but she was capable of performing some other kind of work. This entitled the plaintiff to 75% of her salary, payable by Momentum. As a result of her status as “permanently partially disabled”, the defendant informed the plaintiff that she would no longer be required to render services.

2.6. The plaintiff testified that she accepted the settlement offer made by the defendant because she had been placed under time pressure, and because she was fearful that the court could order her to pay costs if the matter went ahead. The plaintiff testified that she should not have accepted the settlement offer (which related, primarily, to an offer of “administrative reinstatement”) because her queries, concerning the offer, were not fully answered before she communicated her acceptance of the offer. Under cross examination the plaintiff conceded that by the time she accepted the offer most of her queries were resolved including her queries about: (1) the consequences of administrative reinstatement, (2) the effective date of reinstatement, (3) medical aid benefits, and (4) the impact of the settlement on disability

benefits. Challenged to clarify which of her queries remained outstanding (at the time she accepted the offer) the plaintiff could only state that she had human resources related queries, and the benefits from the defendant and Momentum are different. Clearly the plaintiff fails to comprehend that the disability benefit derives solely from Momentum and has nothing to do with the defendant.

3. The email correspondence, the authenticity of which was undisputed, reflected the following:

- 3.1. On 14 January 2025, the defendant emailed a settlement offer to the plaintiff. The offer was, in simple terms, an offer that the defendant would reinstate the plaintiff, for administrative purposes alone, but the plaintiff would remain on disability. The offer was to remain open until close of business the following day. Later that day, in a further email, the defendant clarified that the offer contemplated that the plaintiff would not receive any medical aid benefits. The plaintiff emailed the defendant and asked it to consider paying her compensation in an amount equal to 24 months remuneration.

- 3.2. On 15 January 2025, there was a flurry of emails. In defendant's emails, it clarified that the administrative reinstatement would take effect from 1 February 2025. The defendant also clarified that the administrative reinstatement would mean that: (i) the plaintiff would not be required to tender her services to it, (ii) the defendant would not actively engage her services, (iii) the plaintiff would not receive any remuneration from it, (iv) the plaintiff would be placed on the books or systems of the defendant and be considered an employee, and (v) the plaintiff would continue to receive the same disability benefits. Later that day, the defendant extended the deadline for acceptance of the offer.

3.3. On 16 January 2025, at 11:23, the plaintiff indicated that she was prepared to accept administrative reinstatement but again requested the defendant to consider paying her compensation (this time no longer specifying the amount of 24 months remuneration). The defendant replied that it would not consider paying the plaintiff any compensation. At 16:01 the plaintiff emailed the defendant informing it that she accepted the settlement offer of “being reinstated administratively, with all current benefits intact”. It is apparent from the email that the plaintiff dropped her earlier request for compensation. Importantly, in the email, the plaintiff did not reserve her rights or seek further clarification of the offer. In the circumstances, her acceptance of the settlement offer was unconditional. Later that day, the defendant advised the plaintiff that it would inform the Registrar of the Court that the parties had settled the dispute.

Analysis

4. Having considered all the evidence, both documentary and testimonial, there can be little doubt that this dispute has been finally settled. The defendant’s conduct was entirely consistent with this. This was also consistent with correspondence exchanged between the parties, and the testimony of the plaintiff. The plaintiff’s failure to ensure that she understood the full implications of the offer, before communicating her unconditional acceptance of it, cannot be laid at the door of the defendant. In the circumstances, the probabilities overwhelmingly indicate that the dispute has been settled. It is trite that the court exists to determine live disputes between the parties.
5. At court, defendant’s representative, Mr Soldatos, clarified that the offer of “administrative reinstatement” contemplated that, if the disability benefit becomes exhausted, the defendant is obliged to attempt to place the plaintiff into a vacant position (with no guarantee of the same level of remuneration applicable to credit controllers) taking into consideration her skills, abilities, and

the extent of her disability. If the plaintiff cannot be placed, this will result in an incapacity related process and potential dismissal. The plaintiff does not become entitled to remuneration until she has been successfully placed.

6. The defendant did not seek costs from the plaintiff. Despite the defendant's success, taking all the relevant criteria into consideration, including the fact that the plaintiff was unrepresented, fairness dictates that there be no award of costs.

Conclusion

7. In the circumstances, I find that the dispute has become settled on the basis of the offer made by the defendant on 14 January 2025, as clarified in subsequent emails¹ and further explained at court.² It follows that I must make the following order: (1) The matter is dismissed, (2) There is no order as to costs.

Reynaud Daniels
Judge of the Labour Court

Appearances

For the Plaintiff:

Self-represented

For the Defendant:

Mr Soldatos

Soldatos Cooper Inc

¹ As clarified in defendant's emails addressed to the plaintiff dated 15 January 2025 (sent at 07:50) and 16 January 2025 (sent at 09:32).

² See para 5 of this judgment.