THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No.: JR 267/20

In the matter between:

STATE INFORMATION TECHNOLOGY AGENCY SOC LTD **Applicant**

and

COMMISSION FOR CONCILIATION

MEDIATION AND ARBITRATION (CCMA) **First Respondent**

DIALE NTSOANE N.O **Second Respondent**

ALEXANDER MACASKILL **Third Respondent**

Heard: **20 May 2025**

Delivered: **23 June 2025**

(This judgment was handed down electronically by emailing a copy to the parties. The 23rd of June 2025 is deemed to be the date of delivery of this judgment).

J U D G M E N T

MATYOLO, AJ

Introduction

[1] The applicant seeks an order reviewing and setting aside the arbitration award that was issued by the second respondent under case number GATW: 14368-2018 on 22 November 2019. The applicant seeks that the arbitration award be substituted with an order that the non-renewal of the third respondent's contract of employment did not constitute an unfair labour practice and other ancillary relief.

[2] The matter which is opposed by the third Respondent, has a long and protracted history none of which matters before this Court as all the issues were resolved in the decisions of Moshoana J and Mokoena AJ.

[3] A brief overview of this matter reveals that the third respondent was employed on a fixed term contract from 30 June 2009 in the capacity of Senior Specialist: Architecture Professional. The applicant worked on IT projects at Government departments. His fixed term contract of employment was renewed several times until 31 March 2017 when the contract was not renewed.

[4] The renewals were ordinarily preceded by a process wherein the third respondent's line manager would identify the need for further employment and would write a motivation for the extension of the contract. That motivation would be sent to the finance department for approval and once it was approved by finance, it would be sent to the human resources department for their approval. Ultimately, the motivation would be presented to the staffing panel who had the final say of whether the contract would be renewed or not.

[5] The case of the third respondent was that he expected his contract to be extended as he had been brought into big projects two months before his contract was not renewed. The project he was brought into was a three-year project.

[6] In his evidence during the arbitration proceedings, the third respondent stated that during the period he waited for the renewal of the contract (which is

subject of this dispute), he checked with his line manager, Ms Jenny Naidoo, on a weekly basis and Ms Naidoo was confident that the third respondent's contract would be renewed because she submitted a business case indicating that there was a lot of work to be done in terms of IFAS.

[7] It is not disputed between the parties that the recommendation for renewal was signed by Ms Naidoo who was the third respondent's line manager as well as Ms Mariette Van Wyk, the Head of Department. The recommendation was submitted to Mashudu Ramabao, from finance and Rambao also recommended that the fixed term contract be extended or renewed.

[8] However, Ms Agnes Mamaregane from Human Capital Management indicated that she was not recommending the extension stating that the third respondent was misplaced in IFAS in view of the macrostructure and that, the third respondent in fact needed to be transferred to another department.

[9] The applicant took a decision to the effect that if the costs of employing the applicant were not recoverable, the contract should not be extended. Ultimately the third respondent's fixed-term contract was not extended.

<u>The arbitration proceedings</u>

[10] The parties indicated to the commissioner that most issues including the fixed term contracts and the antecedent renewals were common cause. They indicated that the only issue for the commissioner to decide was whether there was in fact a reasonable expectation of the extension of the contract.

[11] The evidence of the applicant was that he expected his contract to be renewed and had been assured, by her line manager Ms Jenny Naidoo that it would be renewed. The recommendation for renewal of the contract was also signed by Ms Mariette Van Wyk, the Head of Department and Mr Mashudu Ramabao, from the finance department.

[12] The of the respondent was that the previous extensions were based on incorrect information being given to the panel. The motivations reflected that

the costs of employing the third respondent were recoverable when in fact, what was recovered was about seventeen percent of the costs of third respondent's employment.

[13] Furthermore, the evidence was that the line managers submitted false representations when they motivated for the extension of the third respondent's fixed term contracts. In fact, the motivation for the extension that was rejected indicated that the third respondent worked on projects he never really worked on and under cross-examination the third respondent confirmed that he was allocated to some project, but the project never picked up. **[W**

[14] In the end the applicant (respondent in the arbitration) stated that the line function submitted a business case and misled the staffing panel to believe that the third respondent was being placed in external projects and that the applicant would be able to recover the costs of employing him. This, so it as stated, is what led to the extension of the third respondent's contract until the end of March 2013.

[15] In another instance when a business case that was submitted for the extension of the third respondent's contract was rejected, the third respondent's line manager submitted a second business case indicating that the costs of employing the third respondent would be recovered.

[16] The third respondent confirmed that the project from which it was said his costs were to be recovered from, (SLIMS project), did not even get off the blocks and that he never worked on Military Ombudsman which is one of the projects his line management had indicated he was to recover from when motivating for the extension.

[17] It was the evidence of the applicant that the finance department supported the motivation for the extension on the basis that the costs of employing the third respondent would be recovered. The line manager's motivation was that the third respondent was so brilliant that he was going to generate about 74 percent and that is the reason the finance people supported the extension.

<u>The arbitration award</u>

[18] The commissioner found that there was no doubt that the applicant expected his contract to be to be renewed and stated that the expectation was of course, reasonable. The commissioner also found that the respondent (applicant herein) did not deny the fact that the line Manager created the expectation of renewal when she had consulted with the applicant about his renewal and when she submitted the motivation for renewal.

[19] The Commissioner found further that the question of whether the money will be recovered or not was not raised in the previous contract and it cannot be entertained when the contract was up for renewal. In this regard, the commissioner concluded that the argument that the position was not generating income or the money spent was not recoverable cannot be a fair reason for not renewing the contract because there is no evidence that the applicant was engaged to generate money.

[20] Lastly, the commissioner found that the non-renewal of the applicant's contract on the basis of the reasons advanced by the respondent, that the money spent on the applicant was not recoverable, constituted an unfair labour practice as defined in section 186(1)(b) of the Labour Relations Act[1] (LRA). On that basis, the commissioner ordered that the applicant should pay the third respondent compensation equal to four months' salary.

<u>Evaluation</u>

[21] As a point of departure, section 186(1)(b) of the LRA defines dismissal as meaning that:

> "An employee employed in terms of a fixed term contract of employment reasonably expected the employer (i) to renew a fixed term contract of employment on the same or similar terms … or did not renew it."

[1] Act 66 of 1995, as amended.

[22] The commissioner referring to the decision in *University of Cape Town v Auf der Heyde*[2] stated that the test for reasonable expectation is two-fold; firstly, the question is whether the employee actually expected the contract to be renewed and secondly, whether the expectation was reasonable.

[23] Despite finding that the enquiry ought to be two-fold, the commissioner without providing any basis, stated that, *"In casu there is no doubt that the applicant (third respondent herein) expected his contract to be renewed, and the expectation was of cause, reasonable*".

[24] The commissioner stated further that, the respondent did not deny that the line Manager, Jenny Naidoo, created an expectation of renewal when she had the consultation with the applicant about his renewal and when she submitted motivation for renewal. This finding by the commissioner ignores the fact that, the third respondent knew that his line manager could only motivate for the extension and the extension could only be approved by the staffing panel.

[25] The third respondent confirmed that before any extension, his line manager would identify a need for extending the fixed term contract for a certain period. On this basis alone, the extension was depended on an identification of a need. Secondly, the third respondent confirmed his knowledge that his line manager could not be the repository of a legitimate promise and could only motivate for an extension. This was made clear by the third respondent himself when he testified that during the period in which he waited for the outcome of the motivation he contacted the line manager on a weekly basis.

[26] The commissioner found further that the recoverability of money was not raised in previous contracts, and it could not be entertained when the contract was up for renewal. This finding is not in line with the evidence that was led during the arbitration proceedings. The evidence was that the recoverability of the money spent on the third respondent was always an issue. The applicant confirmed that when one motivation failed, her line manager put another motivation which indicated that his costs would be recovered. It was precisely

[2] [2001] 12 BLLR 1316 (LAC).

because of this recoverability that the line manager had to make a second motivation in which she indicated that the employment costs of the third respondent would be recoverable. In fact, on this very point, the commissioner acknowledged that the applicant was leading evidence to show that that the earlier extensions ought not to have been granted because of the non-recovery.

[27] Under cross-examination, the third respondent confirmed that the applicant was supposed to recover his placement at IFMS. The third respondent also confirmed that he was allocated to the project SLIMS, but the project never picked up.

[28] I find that the findings of the commissioner are not supported by the evidence and are unreasonable. It is not clear why the applicant ought to have continued to renew the third respondent's contract in circumstances where the costs of the third respondent's employment could not be recovered. The evidence was that the earlier renewals on which the third respondent sought to rely were in fact improperly obtained because of misrepresentation on the motivations and on the basis that the costs were recoverable.

[29] In *SA Rugby (Pty) Ltd v CCMA and others*[3] this Court held *inter alia* that for the employee's expectation to be reasonable there must be an objective basis for the creation of his expectation, apart from the subjective say so or perception. In this matter, without any evidence and without providing any analysis to justify such a finding the commissioner found that, "*<u>of cause the expectation was reasonable</u>"*.

[30] The renewed contracts that the third respondent seeks to rely on contained terms that were emphatic in discouraging the third respondent from believing that the contract would be renewed. *In Jones v Commission for Conciliation Mediation and Arbitration and Others*[4] this Court held *inter alia* that:

[3] [2006] 1 BLLR 27 (LC).
[4] (C709/2018) [2021] ZALCCT 10 (6 January 2021) at para 20.

> 'Where the terms of the contract are so emphatic in discouraging an employee to hope for a renewal, the employee must adduce cogent evidence to show that, notwithstanding such bleak terminology, the expectation of a renewal when the contract ended was both subjectively held and objectively justifiable".

[31] Before this Court, not only were the terms of the contract determinative but the previous extensions/ renewals were based on misrepresentation.

[32] In considering all the above, I find that the evidence of the third respondent does not establish a proper basis on a balance of probabilities that his expectation of the renewal of his contract was reasonable, even if it be correct that subjectively he had such an expectation.

[33] In this regard, on the evidence before the commissioner, the third respondent, failed to discharge the onus that he was dismissed within the meaning of section 186(1)(b) of the LRA.

Costs

[34] Whilst, the third respondent must have known that the renewals were based on the motivations, there was no evidence of his involvement in the preparations of the motivations that misrepresented the true facts about the true value of his employment to the applicant. On that basis, I am of the view that the interest of justice will be better served if no costs order is made.

[35] Accordingly, the following order is made:

Order

1. The application is granted.

2. The arbitration award is substituted with an order that the third respondent was not dismissed.

3. The non-renewal of the third respondent's contract did not constitute an Unfair Labour Practice

4. There is no order as to costs

X. Matyolo AJ

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicants	:	Adv Lebogang Sifudi
Instructed by	:	Mampeule Attorneys
For the Respondents	:	Adv Dirk Groenewald
Instructed by	:	Serfontein, Viljoen& Swart Attorneys