

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT PORT ELIZABETH

CASE NO. P586/2000

In the matter between:

JOSEPH HENRY PIERRE TURRO

First applicant

KAREN McGRATH

Second applicant

CHRISTOPHER JAMES VIVIERS

Third applicant

and

TAXAID (PTY) LTD

Respondent

J U D G M E N T DELIVERED ON 16 AUGUST 2000

REVELAS, J:

[1] The three applicants seek the following urgent relief:

"Declaring the failure by the respondent to pay the salaries of the applicants for the month beginning June 2000 to be an unfair labour practice and. Directing the respondent to comply with its obligations in terms of its contracts of employment with the applicants and to pay the salaries of the applicants insofar as the applicants remain in the employ of the respondent, the payment of which salaries will include the month of June 2000 and July 2000."

[2] It is common cause that the respondent did not pay the applicants their salaries for June and July and, in its answering papers in response to this application, it has tendered payment of the applicants salaries for June. It is the respondent's contention that it is only obliged to pay the three applicants their salaries for June in terms of an agreement between the parties.

[3] The factual background, insofar as can be gleaned from the founding and answering affidavits, is that the applicants were informed on 25 May 2000 by way of a letter that, owing to prevailing economic forces which had a negative impact on the respondent's business it contemplated retrenchment.

[4] The letter was followed by a meeting on 26 May 2000 in the Bella Napoli Restaurant in Port Elizabeth where the question of laying off employees was discussed. According to the applicants, the proposal made by Mr Gilliland of the respondent on this day, was that the applicants should continue their employment with their salaries being reduced by half or they should be laid off for some months. On 2 June 2000 the respondent wrote a letter to the applicants conveying that it had considered the representations made by the employees and that the respondent has elected to implement the proposal whereby employees will initially have their total earnings reduced by 50%. The respondents expressed their reservations about this proposal on 5 June 2000 in another letter, stating:

"It was never agreed that total earnings would be reduced by half. Furthermore agreement was never finally reached as the revised commission structure that would be implemented for 30 days was never forthcoming. This, despite our request to Mr Ferrando during a subsequent meeting on 26 May 2000. Thus we had no opportunity to discuss the proposed commission structure and since the meeting no further information regarding this aspect of the proposal has been

supplied to the employees. We therefore believe that as we have no information regarding the details of the commission proposal, unilateral implementation of the terms would be unfair.

[5] You specifically stated that if anyone did not accept a reduction in basic pay we would be 'laid off' immediately and that it had been your intention to 'fire' everybody, with immediate effect, upon arrival at the offices on Friday, 26 May 2000. You stated to all employees gathered that you would request an answer before you left, which you never did.

[6] We wish to assure you of our continued loyalty to Taxaid but we are sure you will understand the concerns we have due to the enormous impact your proposal will have on each and everyone of our livelihoods. We look forward on resolving all the issues raised herein at your earliest convenience."

[7] According to the applicants, Mr Gilliland elected to "purport to terminate the services of the applicants without notice or explanation". Thereafter the applicants in letters to the respondent referred to the termination of their services by the respondent. The respondent then categorically stated that the services of the employees had not been terminated as alleged. More correspondence followed. It was clear that the parties were in dispute about the question of the applicants' salaries not being paid. In a subsequent letter the respondent stated:

"That implementation of the lay-off was considered as a shortterm alternative to address the decline in the demand for professional services currently experienced by the employer. That in an attempt to avoid the introduction of lay-off, it was proposed by Mr Turro, that the employee earnings should be sacrificed and reduced by 50%. However, commission structures should remain unchanged but would accrue proportionate to the reduction in

basic salary. That the employer elected to implement the alternate salary sacrifice proposal whereby employees would accept that their basic earnings would be reduced by 50% and that the commission structure would remain unchanged but would accrue proportionate to the reduction in basic salary."

[8] The respondent contends that there was an agreement about lay-off. Its case is that an agreement was reached with the applicants on 26 May 2000 in terms whereof the applicants would continue employment with the respondent for the period 1 June 2000 to 30 June 2000 subject to a 50% reduction in salary, and before 30 June 2000 the respondent would further review its financial standing. If there was no improvement of the financial standing of the respondent, the applicants would be laid off until 9 October 2000 without pay. This agreement, according to the respondent, was reached during the course of consultations with the applicants on alternatives to retrenchment as provided for in Sec 189 of the Labour Relations Act 66 of 1995 ("the Act").

[9] In their letter dated 31 May 2000 to the respondent, the first applicant in his letter makes specific reference to an agreement. This letter is an annexure to the respondent's answering papers which was not disclosed to Court. It appears that the applicants have failed to explain what their version of the agreement was. In any event, there is a dispute of fact as to the nature of the agreement reached. The applicants wish me to determine that dispute on the papers before me and on an urgent basis.

[10] Firstly, it is necessary to determine urgency. Matters came to a head in June 2000 when the applicants indicated through their attorneys to the respondent that their dispute with the respondent was not capable of resolution. The urgent application was heard on 7 August 2000.

There was a long period during which the applicants took no steps to bring matters to Court to deal with them urgently. The applicants failed to launch an application on 29 June 2000 or earlier, when they indicated to the respondent that the dispute was not capable of resolution. Even in so much as there may have been some urgency in this matter, it is my view that the applicants are not entitled to the relief they claim. What the applicants are in effect seeking, is a *status quo* order and on many occasions this Court has declined to grant urgent relief of that nature. Financial hardship and loss of income are not per se grounds for urgency and the applicants are required to show extremely cogent grounds for urgency. (See: *Hultzer v Standard Bank of South Africa (Pty) Ltd* [1999] 20 ILJ 1806 (LC), and *University of the Western Cape Academic Staff Union and Others v University of the Western Cape* [1999] 20 ILJ 1300 (LC)). In the aforesaid cases it was held that only where the detrimental consequences of unilateral conduct cannot be addressed by an award after the arbitration or adjudication has taken place, urgent relief may be granted. The applicants have not shown why their case is exceptional. It must be borne in mind that in all cases of lay-off and dismissal, financial hardship follows and if the applicants' argument is to be accepted, then all cases of dismissal would be dealt with by way of urgent application and on affidavit which is clearly not what was intended by the drafters of the Labour Relations Act.

[11] In view of the fact that the respondent had tendered salary for payment of the applicants' salary for June, it is only fair that the applicants should be paid for that month and I will include this in my order, even though the applicants are not entitled to the relief as set out in their notice of motion.

[12] Insofar as the question of costs is concerned the parties are in the process of negotiating with each in a retrenchment exercise. I believe that it would be detrimental to that process if I were to make a costs order against any of the parties.

[13] Consequently I make the following order:

1. The application is DISMISSED.
2. The respondent is directed to pay the applicants their salaries for June 2000.

E REVELAS