

Sneller Verbatim/HVDM

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: J5978/00

2001-02-02

In the matter between

Z S SIBEKO

Applicant

and

COMMISSION OF CONCILIATION

MEDIATION AND ARBITRATION

1ST Respondent

2nd Respondent

3rd Respondent

HEAD OF HUMAN RESOURCES DEPARTMENT

4th Respondent

5th Respondent

J U D G M E N T

REVELAS J:

1.The applicant had been in the employ of the first respondent as a fulltime commissioner on a fixed term contract which had expired. Under that contract he earned R231 000 per annum. As his contract was about to expire the respondent on 20 July 2000 made an offer for a further fixed term contract with effect from 1 July 2000. The salary package in terms of that contract was R200 000. The applicant would earn less than he

had previously earned because he was now employed as a level A, on a lower scale, since there had been a restructure of the levels of commissioners. Previously there were five levels and thereafter the Board of the respondent amended the structure after consultation with the commissioners employed by the respondent.

2.The respondent signed the contract but made submissions to the Board to the effect that he should be remunerated at a higher salary. The board notified him that this was not possible. This was according to the affidavit of the managing director of the respondent, which was not disputed by the applicant.

3.Notwithstanding the fact that the Board had stated that the applicant was not entitled to a higher salary, he was then for a period of five months paid the sum of R245 710,33. It is noteworthy that level A higher scale commissioners do not even earn this amount.

4.Clearly, on the papers, and that was also contended by the respondent, the applicant was paid this higher salary in error.

5.The respondent then notified the applicant in writing that he had been paid this amount in error. It was pointed out to him that the respondent was disappointed that he had not himself brought this error to the attention of the respondent. The applicant was also informed that the amount paid in error would be deducted from his salary. He was also requested to furnish reasons at a later stage as to why he felt that he was entitled to the higher amount. This he declined to do and demanded an explanation from the respondent instead to advance reasons why he should not be paid the higher amount.

6.It is indeed so, that in terms of the Basic Conditions of Employment Act, an employer may not deduct amounts from the salary or remuneration of an employee without the employee's consent. Where an employee was however overpaid in error, the employer is entitled to adjust the income so as

to reflect what was agreed upon between the parties in the contract of employment, without the employee's consent.

7.The applicant seeks relief to the effect "that the respondent be interdicted from interfering" with his salary. This is a very wide form of relief and would also mean that the respondent would never be entitled to adjust the applicant's salary.

8.The applicant has made out no case which entitles him to the relief he seeks on an urgent basis.

9.Consequently the application is dismissed with costs.

EKO: In person

..: Bowman, Gilfillan Att.

E. Revelas