
IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT JOHANNESBURG

Case No. J4379/99

In the matter between:

Mpumalanga Development Corporation

APPLICANT

and

Commission for Conciliation

Mediation and Arbitration

FIRST RESPONDENT

Mbileni CS

SECOND RESPONDENT

Cronje PS

THIRD RESPONDENT

JUDGEMENT

PIENAAR, A J

INTRODUCTION

1. This is an unopposed review in terms of section 144 of the Labour Relations Act No 66 of 1995, as amended.

2. The Applicant is Mpumalanga Development Corporation.
3. The First Respondent is the Commission for Conciliation, Mediation and Arbitration.
4. The Second Respondent is Mr Mbileni, the Commissioner who presided over the arbitration.
5. The Third Respondent is P S Cronje, an ex-employee of the Applicant.
6. The Applicant seeks to review the award by the Second Respondent in terms of which the Second Respondent ordered that the Applicant pay the First Respondent benefits in excess of R19 000,00 to which the Applicant is entitled.
7. The Applicant submitted that the First Respondent did not have the jurisdictional competence to make an award.

BACKGROUND

8. During November 1998 the Applicant issued letters to its employees inviting them to apply for voluntary severance packages.
9. The Applicant signed a letter applying for a voluntary severance package.
10. Due to an administrative error, the last working day of the Third Respondent was reflected as 31 March 1997 with the result that the notice period would be during April 1999. The Human Resources Department of the Applicant rectified the error in terms of which the notice period

would be effected as from beginning January 1999.

11.The Third Respondent then approached the First Respondent in terms of which he claimed the notice pay for February 1999.

12.The Third Respondent's claim was therefore for the notice period of February 1999.

REVIEW

13.It is clear that the Second Respondent did not have the necessary jurisdiction to adjudicate the dispute insofar as the notice pay for February 1999 fell outside "benefits" in terms of schedule 7(2)(b) of the Act.

14.The dispute before the Commissioner was furthermore not of an unfair dismissal nature and could as such also not be adjudicated within the framework thereof.

15.It is trite law that wages and salaries should be excluded from the term "benefits". Per Revelas J in Galyard vs Tekom SA Ltd (1998) 19 ILJ 1624 LC at pg. 1628 (see also Schoeman and Another vs Samsung Electronics SA (Pty) Ltd 1997 19 ILJ 1098 (LC) and also Du Toit et al in The Labour Relations Act of 1995 2nd Edition at pg 444.

16.The Third Respondent has in any event issued summons against the Applicant in the Magistrate's Court to recover the amount in respect of the notice pay.

FINDING

17. The First and Second Respondent did not have jurisdiction to adjudicate the dispute.

18. The award by the Second Respondent dated 2 September 1999 is hereby reviewed and set aside.

19. There is no order as to costs.

ACTING JUDGE PIENAAR

17 April 2001

PARTIES APPEARING BEFORE THE COURT:

APPLICANT REPRESENTED BY:

Maserumule & Partners

Mr M Sihlali / Mr H Vuso