

IN THE LABOUR COURT OF SOUTH AFRICA

Case no: J4709B/00

In the matter between

Applicant

and

Respondent

REASONS FOR JUDGMENT

MOERANE A.J

- [1] In this matter the Respondent has raised two points *in limine* in the following terms:
- (1) No case number was reflected on the Applicant=s application served on the Respondent as required in terms of the Labour Relations Act and accordingly the Application is defective.
- (2) The Applicant relies upon a dismissal which took place on A 14 August 2000≡ at ACape Town≡ which the Respondent avers is a cause of action different from the facts in this matter and accordingly this Honourable Court

does not have jurisdiction to hear this matter.

[2] The points *in limine* were set down for hearing on 10 August 2001 on the motion roll. The Respondent abandoned the first point *in limine* and argued the second. After hearing both parties I dismissed both points *in limine* with costs and indicated that I would furnish reasons later.

[3] These are my reasons:

[4] With regard to the first point *in limine* it clearly has no merit, was ill-considered and Mr Bleazard, who appeared for the Respondent wisely abandoned it. I need not say anything further about it.

[5] With regard to the second point *in limine*: it has been raised in the form of an exception in the sense in which the expression is understood in the civil procedure of South Africa. The Respondent is complaining of a defect inherent in the pleadings. It is trite that where an exception is taken, the court must look at the pleading excepted to as it stands: no facts outside those stated in the pleading can be brought into issue and no reference may be made to any other document. (See Erasmus: Superior Court Practice: B1- 151 Service 15 2001).

[6] The Applicant relies on a dismissal for operational requirements which took place on 14 August 2000, which was referred to the Commission for Conciliation, Mediation and Arbitration(CCMA) for conciliation on 18 August 2000 and in respect of which the CCMA issued a certificate of outcome dated 21 September 2000 stating that the matter remained unresolved.

[7] It is common cause that on 26 May 2000 the Applicant was advised by the

Respondent to stay at home as his current position had been redundant and pending the interviews for the sourcing position he was not required to render services for the Respondent.

[8] It is also common cause that on 24 July 2000 the Applicant received a letter from the Respondent informing him that due to the restructuring his current portfolio no longer existed, that he had been invited to re-apply for suitable vacancies within the structure but that he had been unsuccessful in his application for the sourcing position and that his last day of employ would be 22 September 2000.

[9] Section 190 of the Labour Relations Act is headed "Date of Dismissal" and provides as follows:

(1) The date of dismissal is the earlier of -

- (a) the date on which the contract of employment terminated; or
- (b) the date on which the employee left the service of the employer.

(2) Despite subsection (1)--

- (a) if an employer has offered to renew on less favourable terms, or has failed to renew, a fixed-term contract of employment, the date of dismissal is the date on which the employer offered the less favourable terms or the date the employer notified the employee of the intention not to renew the contract;
- (b) if the employer refused to allow an employee to resume work, the date of dismissal is the date on which the employer first refused to allow the employee to resume work;
- (c) if an employer refused to reinstate or re-employ the employee, the date of

dismissal is the date on which the employer first refused to reinstate or re-employ that employee.

[10] It is clear that if the above-mentioned provisions of the Act were to be applied to the facts of this case there would be at least three possible dates of dismissal namely, 22 September 2000, if one applied section 190 (1) (a); 24 July 2000, if one applied section 190 (2)(a); or 26 May 2000, if one were to apply section 190(2) (b). As was submitted by Mr Landman for the Applicant, correctly, in my view, the question of determining the date of dismissal is both a factual and legal one which entails leading and evaluating evidence led by the parties on the issue. (See *Northam v Unet Internet Africa (Pty) Ltd & Others* (1998) 19 ILJ 862 (LC) at 866 A-C). It matters not that the date relied upon by the Applicant may be a wrong date. That, of or by itself, does not render the Statement of Claim excipiable as disclosing no cause of action.

[11] In order to succeed in its second point *in limine* the Respondent had the duty to persuade me that upon every interpretation which the Statement of Claim can reasonably bear no cause of action is disclosed.

[12] This the Respondent failed to do and consequently I did not uphold the second point *in limine*.

MOERANE A.J

20 August 2001