

IN THE LABOUR COURT OF SOUTH AFRICA

(HELD AT CAPE TOWN)

CASE NO: C937/00

DATE: 29-10-2001

In the matter between:

C F MEYER Applicant

and

COMMISSION FOR CONCILIATION, First Respondent

MEDIATION AND ARBITRATION

ALEX TWIGG Second Respondent

J U D G M E N T

PILLERMER, AJ:

1. The applicant launched an application to review and set aside an unsigned document purporting to be the arbitration award of the second respondent, Alex Twigg, a Commissioner who heard the arbitration between the applicant and the third respondent under the auspices of the Commission for Conciliation, Mediation and Arbitration (the "CCMA"). The dispute related to the applicant's dismissal which he alleged was unfair.

2. The review papers raise crisply as the first irregularity giving rise to the review the fact that the copy of the award given to the applicant was unsigned and was delivered beyond the 14 day limit set by section 138(7) of the Labour Relations Act of 1995. Section 138(7) reads as follows:

"Within 14 days of the conclusion of the arbitration

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proceedings:

- (a) the commissioner must issue an arbitration award, with brief reasons, signed by that commissioner;*
- (b) the commissioner must serve a copy of that award on each party to the dispute or the person who represented the party in the arbitration proceedings, and*
- (c) the Commission must file the original of that award with the Registrar of the Labour Court."*

Section 138(8) provides:

"That on good cause shown the director may extend the period within which the arbitration award and reasons are to be served and filed."

3. When the matter was argued I was informed from the Bar by Mr George, who represented the third respondent, that he too had made enquiries and only had an unsigned copy of what was otherwise an award and that it did not appear ever to have been signed. The Commissioner, I was told, had apparently emigrated and could not be contacted. In the light of section 138(7)(c), namely that the original of the award has to be filed with the Registrar of the Labour Court, I made enquiries from the Registrar after the matter was argued, and he ascertained that the section had not been complied with and no award, signed or unsigned, had been filed as required by the section. Further enquiries were made of the CCMA and following upon that a communication was addressed to me by the first respondent (that is the

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CCMA) under the hand of a person by the name of Shahieda Mohamed. In that communication the following was said:

"This is to confirm that Mr Meyer, the applicant in the above matter, was here to check the contents of the file and it was confirmed that there was only one copy of an unsigned and undated arbitration award. I have been in touch with Vikele Shabangu(?) at the Director's office who has confirmed that the commissioner did not apply for an extension."

That letter is signed.

4. In the circumstances it is plain that section 138(7) has not been complied with and that no extension was sought or granted under section 138(8) and that there is no reasonable prospect, it seems, that the section will ever be complied with.

5. It has been held that it is possible in a given case for there to be substantial compliance with section 138(7) which will not vitiate the award. I refer in this regard to the judgment of Landman, J in Free State Mining Association Ltd t/a Alpha Farm v SACCAWU & Another 1999(3) BLLR 223 (LC). In that case, an award signed within the 14 days was served on the parties outside the 14 day limit and it was contended that it was therefore invalid. The Court found that it was not a nullity and, in particular, said the following at page 226E-G:

"It is quite clear that having regard to human nature, a commissioner may not always be able to sign and issue an award within the 14 day period. If a commissioner were to

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sign /...

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sign or to issue the award after that period, it would not be in accordance with the aims of this Act to visit such an omission with invalidity. If that were to be done it would simply mean that the dispute had not reached finality and the arbitration proceedings would have to take place de novo. This could not have been intended. There may, of course, be circumstances where an award is issued so late that different consequences may follow."

The judge in that case found that the delay was not such as would have the effect in the case before him.

5. In this case, there is no signed award and there is never likely to be one. The requirement in the Act that a commissioner take responsibility for his or her award by signing it and doing so within the stipulated time is, in my view, not so onerous a task that the failure should simply be excused. While a short delay does not render the award invalid, an extended delay, in my view, may well have that effect, but a total

failure to comply must have that effect. Indeed, until it is signed or there is proof that it is in the form decided by the arbitrator, if there is some good reason why the arbitrator was unable to sign, there is, in my view, no award at all.

6. In the circumstances I am of the opinion that what has been produced in this matter is a nullity and unless and until it is signed, can have no legal effect. There seems little likelihood that it can or will be rectified and, in my view, it is in any event, too late to attempt to do so now. I therefore consider that the matter should be heard by the CCMA

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de novo.

7. In all those circumstances I believe that it is not appropriate to deal with the other matters raised in the review in this judgment and I do not propose to do so. The parties, it seems to me, have been let down by the first respondent and the second respondent. I am of the opinion that the second respondent should be more vigilant and do the best it can do to ensure that section 138(7) is complied with by its commissioners and that the awards issued by it are signed and that they are lodged with the Registrar of the Labour Court, as required by the Statute.

8. Although it is extremely unusual for an award of costs to be made against the CCMA, in my view, this is an unusual case and as a mark of displeasure in relation to the manner in which it was handled I believe that an extraordinary award in relation to costs is appropriate.

9. In all the circumstances I make the following order:

1. The unsigned document purporting to be an award of the second respondent is declared to be a nullity.
2. The matter is referred back to the first respondent to be heard de novo.
3. The first respondent is ordered to pay the costs of the application.

PILLERMER, AJ