

Sneller Verbatim/mc

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: J1499/98

2001-10-30

In the matter between

PAGISO CROSS DANIEL AND OTHERS

Applicant

and

DURBAN DEEP WHOLESALE MEAT

Respondent

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J U D G M E N T

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REVELAS J:

- 1.The National Entitled Worker's Union who represented the applicant herein, filed an application in terms of which it seeks an order that the second, third and fourth respondents be committed for contempt of court. The facts which gave rise to them seeking this relief is as follows.
- 2.In terms of an arbitration award issued on 11 May 1998, by Commissioner P van der Merwe of the CCMA under arbitration case number GA22217, the applicant was reinstated with retrospective effect from 1 January 1998. The arbitrator also ordered the first respondent, (and that is Durban Deep Wholesale Meat), to pay the applicant compensation in the amount of R5 768. I might just point out here that compensation in addition to reinstatement is not competent. It could however be that the sum in question represented some form of backpay, although it is not clearly the case on the papers before me.
- 3.In any event the award was not challenged in a review application and it was made an order of court on 25 August 1998 by MLAMBO J.

4. The respondent did not comply with the court order and the applicant now seeks to have the second, third and fourth respondents committed for contempt of court on the basis that they are the sole proprietors of the first respondent and the first respondent did not comply with the order.
5. A writ of execution had been issued and on 4 December 1998 the deputy sheriff advised "that upon executing the writ of execution, the amount of R9 836,82 was received from the garnishee."
6. The reason for not complying with the remainder of the award, i.e. the reinstatement, is according to the first respondent because the first respondent had closed down on 23 January 1998. This reason is advanced in a letter dated 14 May 1998, sent to the applicant's Union by the first respondent's human resources manager.
7. The respondents have not filed an opposing affidavit in response to the current application, but in prior proceedings it had filed an affidavit wherein the first respondent's human resources manager states on oath that the applicant was retrenched.
8. On page 70 of the record is a letter dated 8 January 1999 wherein the applicant is invited to consult about retrenchment. It is therefore in conflict with the first respondent's own version as to the question of whether the applicant was retrenched or not. It appears to be untrue.
9. NEWU contends that the first respondent never closed down and in an affidavit deposed to by Mr Lunga of NEWU, certain allegations are made in support of this contention, *inter alia* that as late as 19 June 1998 the reception of the first respondent answered the telephone call with the phrase "thanks for calling Durban Deep Wholesale Meat, can I help you?"
10. According to Mr Lunga a certificate of service was also issued by the first respondent on 5 May 1998 by the first respondent's human resources manager. This was in an envelop endorsed by the first respondent.

11. In my view the first respondent has not advanced any proper reason why it could not comply with the court order. The allegations made in the applicant's founding affidavit is also not disputed by the respondents.

12. Counsel on behalf of the respondents who appeared on the day the application was brought, argued that the respondents need not have replied because their case was apparent from previous papers filed. In this regard I was referred to the affidavit of the human resources manager.

13. To make a finding of contempt of court, I have to find that there was some form of wilfulness on the part of the second, third and fourth respondents in this matter. They never attended court and it seems that all matters relating to Mr Cross, the applicant, was dealt with by Mr Coetzee, a labour consultant who is not an employee of the first respondent.

14. To commit the second, third and fourth respondents at this stage would be somewhat excessive. I also do not wish to dismiss the applicant's application at this stage, since there appears to be merit on it.

15. I thus decided to grant the following relief to the applicant:

1. The second, third and fourth respondents are to appear in person before the Labour Court to show cause why they should not be committed for a prison sentence of five days. The date on which they are ordered to appear in court is 14 November 2001.

2. The respondents are ordered to pay all the applicant's expenses, up to date, one paying the other to be absolved.

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E. Revelas