

**IN THE LABOUR COURT OF SOUTH AFRICA
(Held at Johannesburg)**

Case No: J 4636/01

In the matter between:

BARGAINING COUNCIL FOR HAIRDRESSING

Applicant

and

Respondent

JUDGMENT

Landman J:

1. The Bargaining Council for Hairdressing and Cosmetology Trade (Pretoria) seeks an order against Mrs H Smit t/a Hair Mistique declaring the compliance order made by Mr. J Mbatha be made an order of court in terms of s 158(1)(c) (LRA) and declaring that the costs be paid by the respondent.
2. Similar orders are sought in the application against the other respondents in matters J4644 Bargaining Council for Hairdressing and Cosmetology Trade (Pretoria) v Mrs A D Oosthuizen t/a Anel=s Beauty Clinic; J 4640 Bargaining Council for Hairdressing and Cosmetology Trade (Pretoria) v Mr D C Simpson t/a Complete Styling; J 4641/01 Bargaining Council for Hairdressing and Cosmetology Trade (Pretoria) v Mrs S Mertens t/a Coiffure Perle; J4645/01

Bargaining Council for Hairdressing and Cosmetology Trade (Pretoria) v Mr G Cassim t/a A.G.S. Hairdressing which also served before me on 22 January 2002.

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The Bargaining Council is entitled in terms of s 28 of the LRA to conclude collective agreements pertaining to its industry.

3. It concluded such an agreement on 25 April 2001. This agreement has been extended to non-parties to the council by the Minister of Labour in terms of s 32 of the LRA with effect from 6 August 2001. See R 680 in Government Gazette 22495 of 27 July 2001.

The collective agreement provides for a mechanism to ensure compliance with the obligations imposed on employers. It provides for the appointment of a designated agent. See clause 25. A designated agent who has reasonable grounds to believe that an employer has not complied with any provisions of the collective agreement will endeavour to secure a written undertaking from the employer to comply with the provisions. See clause 26(1). An agent who has reasonable grounds to believe that an employer has not complied with any provisions of the agreement may issue a compliance order. See clause 27(1).

5. An employer must comply with the compliance order within the time period stated in the order unless the employer objects in terms of clause 29. See clause 27(5). An employer objects to a compliance order by making representation in writing to the Secretary of the Council within 21 days of receipt of that order. See clause 29(1). If the Secretary confirms or modifies the order or any part of the order, the employer must comply with that order within the time period specified in that order. See clause 29(6). An employer may appeal to the Labour Court against an order of the Secretary within 21 days of receipt of that order. The order is suspended pending the final determination by the Labour Court of appeal or any other appeal. See clause 30(1) and (2).
6. The Secretary may apply to the Labour Court for a compliance order to be made an order of the Labour Court in terms of s 158(1)(c) of the LRA, if the employer has not complied with the order and has not yet appealed against the order in terms of clause 30(1). The Secretary may apply to the Labour Court for an order of the Secretary in terms of clause 29(3) to be made an order of the Labour Court in terms of the

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same section, if the employer has not complied with the order and has not yet appealed against the order in terms of clause 30(1). See clauses 31(1) and (2). Sub-clause 31(3) provides:

of the Labour Relations Act 66 of 1995, a compliance order or an order in terms of clause 29(3) shall be deemed an arbitration award.@

7. A court of law derives its jurisdiction from the common law supplemented by statutes enacted by a competent legislator. The Labour Court is established in terms of s 151 of the LRA. The LRA confers jurisdiction on the court to adjudicate on certain matters. The Labour Court has also been given jurisdiction by other Acts of Parliament.
8. The Labour Court has jurisdiction to make awards of the CCMA and Bargaining Councils orders of the Court. See Section 158(1)(c) of the LRA. An arbitration award is not defined in the LRA. It must therefore bear its ordinary meaning. Arbitrators are chosen to decide a dispute between at least two parties. Claassen **Dictionary of Words and Phrases** says: The decision of the arbitrators or umpire, as the case may be, is called an `award=@.
9. The Bargaining Council purports to confer jurisdiction on the Labour Court to hear appeals against a decision of the Secretary of the Bargaining Council confirming or modifying a compliance order. In addition the collective agreement seeks to deem a compliance order to be an award for the purposes of s 158(1)(c) of the LRA.
10. It is not competent for persons to confer jurisdiction or powers on a court of law by agreement. Nor is it competent for a delegated legislator, in this case it may be the Minister of Labour, to confer jurisdiction on a court of law without authorisation by Parliament. See **Johannesburg City Council v Makaya** 1945 AD 252 at 256. It is doubtful whether

under our present constitutional dispensation such powers can validly be conferred by Parliament on some other body. See the observations in **Executive Council, Western Cape Legislature v President of the Republic of South Africa and others** 1995 (4) SA 877 (CC) at 904F- 905D.

11. The provisions in the collective agreement which have been extended to the respondent and the other employer=s (I assume that they are not parties to the council), interfere with the jurisdiction of the Labour Court by purporting to confer jurisdiction on the court to hear appeals from decisions of the Secretary of the Bargaining Council. Secondly clause 31(3) of the collective agreement purports to amend the LRA by attaching a meaning to a concept, Award, found in s 158(1)(c) in an attempt to utilise the existing jurisdiction of the Labour Court by deeming a compliance order which is not an award, to be something else, namely an award.
12. I find clauses 30 and 31 to be ultra vires the capacity of the Bargaining Council and the Minister of Labour. These clauses are invalid and of no legal effect. This court has no jurisdiction to give effect to a compliance order.
13. In the premises the application is dismissed. The applications in case numbers J4640/01; J4641/01; J4644/01 and J4645/01 are also dismissed.

Signed and Dated at BRAAMFONTEIN on this 24th Day of January 2002.

AA Landman
Judge of the Labour Court of South Africa

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22 January 2002
24 January 2002
Bargaining Council Official Jacob Mbatha