

IN THE LABOUR COURT OF SOUTH AFRICA
SITTING IN DURBAN

CASE NO **D317/03**

DATE HEARD

& DELIVERED 2004/02/10

In the matter between

V REDDY

APPLICANT

and

SCANIA AND TWO OTHERS

RESPONDENTS

**JUDGMENT DELIVERED BY
THE HONOURABLE MADAM JUSTICE PILLAY
ON 10 FEBRUARY 2004**

ON BEHALF OF APPLICANT:

MR S K PARMANAND

ON BEHALF OF RESPONDENTS:

MR M T DE BRUIN

TRANSCRIBER
SNELLER RECORDINGS (PROPRIETARY) LTD - DURBAN

JUDGMENTPILLAY J

[1] In this review the second respondent arbitrator had to decide whether the third respondent had jurisdiction to determine the dispute pertaining to the applicant's alleged unfair dismissal.

[2] More specifically, the arbitrator had to determine whether there was an employment relationship between the parties after a settlement agreement had been concluded. If there was such a relationship then the date of his dismissal would have been 2 July 2001, in which case the third respondent would have had jurisdiction. If there was not an employment relationship, then the date of dismissal would have preceded and resulted in a settlement agreement.

[3] On that basis the first respondent submitted at the arbitration that the real dispute related to the enforcement of the settlement agreement, in which case the Labour Court and not the third respondent, had jurisdiction.

[4] The arbitrator decided as follows:

"Now it is common cause that the applicant was not at work after the settlement agreement was concluded. This means that he did not render any services to the respondent after the date of the settlement agreement. It is further common cause that the applicant was not paid any remuneration after the settlement agreement was concluded. These additional factors serve only to persuade me that the applicant was not employed after 12 April 2001. This in turn compels me to find that the applicant could not have been dismissed after 12 April 2001 despite the conduct and statements of the parties herein after that date. The dispute relating to the termination of employment arose on 23 March 2001, and that dispute

was the subject of the settlement agreement dated 12 April 2001. Should either party feel aggrieved by the other party's lack of compliance therewith, their remedy lies in the Labour Court."

[5] The "conduct and statements of the parties" referred to in the award is a reference to communications between the parties in which reference is repeatedly made, for example, that the applicant's services would be terminated if he did not present himself for work.

[6] The terms of the settlement were:

"(1) The employee agrees to a medical examination by a top doctor to be agreed to by both the union representative and management.

(2) Based on the outcome of the medical examiner's report, both parties will then explore all options, that is:

light duty work;

resume normal duties;

(iii) medical boarding; or

(iv) retrenchment based on ill-health.

(3) This will be done by the 2nd May 2001.

(4) The employee and union hereby withdraws their referral to CCMA, that is dismissal dispute."

[7] An aspect not manifest from the award but which is not in dispute is that the applicant failed to comply with paragraph 1 of the settlement agreement, in that he did not submit to a medical examination before 2 May 2001. The explanation was that he did not have funds to engage a private doctor. The report was pivotal to the first respondent complying with the second paragraph of the settlement.

[8]As the applicant had failed to establish by medical evidence that he was not fit for normal duties, the first respondent put the applicant on terms to tender his services, failing which his services would be terminated. That evidence, it was conceded, contradicted the first respondent's stance that the applicant was dismissed before the settlement agreement and not on 2 July 2001.

[9]The arbitrator took into account these contradictions. However, she was not persuaded that there was an employment relationship. What the relationship between the parties was to be after the settlement agreement was signed is not evident from the settlement agreement. Whether the dismissal on 23 March 2001 was accepted as fair or unfair is also not evident from the settlement agreement.

[10] The arbitrator elected, correctly in my view, to deal with the substance of the relationship. The substance was that the applicant was not rendering services and the first respondent was not paying any remuneration. The applicant had taken up casual work elsewhere and failed to tender his services for normal duties or prove by way of a medical report that he should be allocated light duties.

[11] As the compliance date of 2 May 2001 of the settlement agreement had long passed, there was no relationship to speak of. The award is therefore unassailable.

[12] The application is dismissed with costs.

Pillay D, J

28 June 2004
