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IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: JR1623/02

2005-02-10

REPORTABLE

In the matter between

GLOBAL TECHNOLOGY BUSINESS

INTELLIGENCE (PROPRIETARY) LIMITED

Applicant

and

COMMISSION FOR CONCILIATION,

MEDIATION AND ARBITRATION

1st Respondent

DESMOND LYNCH N.O. 2nd Respondent

LOUIS KLOPPERS

3rd Respondent

JUDGMENT

—
REVELAS J: This was an application brought in terms of section 158(1)(g) of the Labour Relations Act 66 of 1995 (“the Act”) in terms of which the applicant sought to set aside a jurisdictional ruling of the second respondent, Mr Lynch, a commissioner who acted under the auspices of the 1st Respondent. (‘the CCMA’)

The ruling of the second respondent was that the CCMA had the necessary jurisdiction to hear the matter which the applicant disputed. The applicant, who formerly employed the third respondent, had dismissed the third respondent who referred a dispute about an unfair dismissal to the Commission for Conciliation, Mediation and Arbitration.

The point *in limine* raised by the applicant at the onset of those proceedings was that, the dispute actually referred to the CCMA by the third respondent was a dispute which fell within the jurisdiction of the Labour Court in that it was an automatically unfair dismissal.

The employee, (or “the third respondent”) alleged *inter alia* that he was dismissed because he sought legal advice from his attorneys about his being consulted for poor performance.

The applicant raised the question of what a protected disclosure was in terms of the Protected Disclosure Act, Act 26 of 2000 (The Disclosure Act). This became a subject matter for discussion before the Commissioner and when the matter was argued before me.

I believe it is necessary to quote directly from the ruling of the commissioner. He stated the following:

"The applicant's version of being dismissed for poor work performance/ misconduct clearly falls within the ambit of section 191 of the Labour

Relations Act. The respondent used legal argument in an attempt to bring the dispute under the Protected Disclosures Act 2000 and thus challenged the CCMA jurisdiction (sic).

In examining the argument it is important to view the intention behind the promulgation of the Protected Disclosures Act, which basically was to protect (sic) the "whistle blower" on disclosure from retaliatory action by employer. In the act preamble this disclosure is generally mentioned as information regarding unlawful, irregular, criminal conduct or within organisations. An examination of definitions relied on in the respondent's argument "occupational detriment and protected disclosures" merely indicate the respondent's view of what constitutes this dispute. Plainly this matter is of an ordinary dismissal and should be dealt with by the CCMA. At the end of the arbitration hearing the commissioner can still decide the jurisdiction should the evidence indicate the need.

RULING: The CCMA has jurisdiction. The matter is to be set down for arbitration at our delay in terms of the CCMA rules."

The applicant submitted that the evidence under oath placed the applicant's claims squarely within the ambit of the Protected Disclosures Act since it contained all the elements required for the Act to apply as set out below, and this Act applies to employers and employees. Before I am able to interfere with the arbitrator's ruling, I will have to find that his ruling is disconnected to the facts. Before him was the jurisdictional fact of a dismissal. The employee determines - and this has always been the case in the Labour Court - what the nature of the dispute is, which is being referred to the CCMA.

The commissioner's appreciation of it was that the dismissal dispute was an ordinary dispute and not one set in the sophisticated and over-technical terms described by the applicant. He motivated his findings and properly established his own jurisdiction with reference to the facts before him.

The third respondent stated that he was dismissed as a result of a disciplinary hearing that was conducted in an unfair manner and the applicant had no fair reason to dismiss him. The fact that he felt threatened by a performance appraisal and the mere fact that he sought legal advice on this issue does not render it a "disclosure" within the meaning of the Disclosures Act. It was merely a factor and not presented as the only reason for dismissal. That was the case before the commissioner.

In the circumstances, I do not wish to interfere with the findings of the commissioner. Furthermore, he correctly pointed out that this issue could be resolved when evidence is lead at the arbitration hearing. The application is dismissed with costs.

REVELAS,J

ATTORNEY'S FIRM obo APPLICANT :
M Rawlinson of Webber Wentzel Bowens

ATTORNEY'S FIRM obo RESPONDENT:
R James of James Attorneys

DATE OF HEARING : 03/02/05
DATE OF JUDGMENT :10/02/05