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IN THE LABOUR COURT OF SOUTH AFRICA
BRAAMFONTEIN

2005-03-09

CASE NO: JR510/02

REPORTABLE

In the matter between

**SOUTH AFRICAN NATIONAL TUBERCULOSIS
ASSOCIATION**

1st Applicant

EAST LONDON TUBERCULOSIS ASSOCIATION

2nd Applicant

and

CCMA

1st Respondent

RAVUKU, M. N.O.

2nd Respondent

**NATIONAL EDUCATION AND ALLIED
WORKERS UNION**

3rd Respondent

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EX TEMPORE JUDGMENT

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REVELAS, J.:

[1] This is an application for the review of an award made by the second respondent, Mr Ravuku, (“the arbitrator”) wherein he ordered the parties to conclude an agency shop agreement and went further to direct that the agreement should be concluded within 14 days and that deductions from salaries must be made no later than 1 April 2002.

[2] In the joinder application brought by the first applicant to join the second applicant, I have already ruled this morning, that the second respondent should be removed as a party. The significance of its presence in the hearing will be discussed later in this judgment.

[3] The facts which gave rise to the dispute which ended in

arbitration and the review application currently are before me. On 15 February 2000 the first applicant (SANTA) and the third respondent (NEHAWU) entered into a memorandum of agreement which provided that the parties would negotiate an agency shop agreement. No date was set for the agreement to be concluded, but the agreement provided for a suspensive clause. The agreement itself would terminate on 1 April 2000.

[4] By 1 April 2000 no agency shop agreement had been concluded and a second memorandum of agreement was entered into on 19 January 2001. This latter agreement was to terminate on 31 March 2001 and it provided *inter alia* that "all other items and conditions of employment (my emphasis) not altered by this agreement shall remain the same". Clearly the "conditions" referred to, do not refer to the conclusion of an agency shop agreement, "conditions", as it means "conditions" as in "terms of conditions of employment".

[5] It was argued on behalf of NEHAWU that, what was meant by the parties, was that the agreement (the agency shop agreement) was to be read into the new items.

[6] It was probably due to an error, if not a typing error, that it reads as it does and should be read as terms and conditions of employment. The agreement of 15 February 2000 has accordingly lapsed by operation of the suspensive clause it contains. No obligations could arise therefrom, which would bind the first applicant or the second applicant (ELTA). The arbitrator therefore had misdirected himself to find that the parties were still bound by an agreement that had lapsed.

[7] Even if I am wrong in this regard, the arbitrator exceeded his powers by going further, without being requested to, or any evidence having been furnished thereon, or even hearing argument, by imposing on the parties dates by when they should conclude the agreement and when deductions should be made.

[8] Both the first and second applicants argued that even if an obligation arose from the agreement, SANTA (the first applicant) was not a single workplace for the purposes of section 25 of the Labour Relations Act 66 of 1995 ("the LRA") and the agency shop agreement could accordingly not be concluded.

[9] Section 25(2) provides that:

"For the purposes of this section 'a representative trade union' means a registered trade union or two or more registered trade unions acting jointly whose members are the majority of the employees employed by an employer in a workplace (my underlining)."

Section 230 defines the workplace as the "place or places where the employees of the employer work".

[10] Cogent evidence in the form of an affidavit (since no oral

evidence was led) was presented to the arbitrator, that ELTA was a separate legal entity and did not form part of SANTA and accordingly would not be bound by such an agreement which would be concluded. It is apparent from the award that the arbitrator did not actually consider the arguments at all. As far as the arbitrator was concerned, there were motivations for both positions and he makes no reference to any documentation that was placed before him.

[11] There was thus no rational basis on which the arbitrator could have come to the conclusion that SANTA was a single employer with a single workplace because evidence to the contrary was led before him. The conclusions which the arbitrator came to, in finding that the parties fell within the ambit of section 25, is not in accordance with his own reasoning. It appears that he simply considered the question whether the union complied with section 25, namely whether it was sufficiently representative. He did not give any thought to the question of whether they were single employers.

[12] It is apparent to me that the arbitrator did not apply his mind seriously to the issues at hand nor did he reason his way to his conclusion. This award falls to be set aside.

[13] In so far as the question of costs is concerned, I do not believe that NEHAWU should pay the costs of the first applicant in this matter. But in so far as the application for joinder is concerned, it was pointed out to me that the union never before, conceded that the award would have no effect on the second applicant. In fact, it was previously argued that the second applicant should rather seek a declarator, once NEHAWU seeks to enforce the award on the second applicant. Therefore, in those circumstances it was incumbent upon the second applicant to come to court and such a concession does not assist with the making of the costs order. Therefore, the second part of the order is that the union should pay the second applicant's costs.

E. REVELAS

DATE OF HEARING: 9 MARCH 2005

DATE OF JUDGMENT: 9 MARCH 2005

ON BEHALF OF THE APPLICANT: Webber Wentzel Bowens

ON BEHALF OF THE RESPONDENT: Cheadle Thompson & Haysom Inc.