



REPUBLIC OF SOUTH AFRICA
IN THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN
JUDGMENT

Reportable
C233/14

In the matter between:

THE SOUTH AFRICAN SOCIAL SECURITY AGENCY	Applicant
and	
NEHAWU OBO MALIZO PUNZI AND 13 OTHERS	First Respondent
BELLA GOLDMAN N.O.	Second Respondent
COMMISSION FOR CONCILIATION MEDIATION AND ARBITRATION	Third Respondent

Date heard: 18 February 2014

Delivered: 30 April 2015

Summary: Application to review an arbitration award; arbitrators should not condone an agreement to decide a dispute on written submissions and documentary evidence alone in the absence of a stated case.

JUDGMENT

RABKIN-NAICKER J

- [1] The applicant seeks to review and set aside an arbitration award under case number WECT 18416-13. The review concerns the compensation awarded by the arbitrator as a result of a finding of that suspensions of employees

amounted to an unfair labour practice. She awarded an amount of R600.00 to each of the applicants.

[2] The arbitration, in which the applicants claimed they had suffered an unfair labour practice (in respect of their precautionary suspension) was “argued on the papers”. The second respondent (the Commissioner) records that it was agreed that no evidence would be led and that the case would be decided on the papers in terms of arguments in writing, and the documents before her.

[3] In her award under the heading of ‘Documentary evidence’, the Commissioner records that:

“The parties submitted bundles of documents in evidence which were agreed as being what they purported to be.”

[4] Other than the above agreement, i.e. that no oral evidence was needed to prove the authenticity of the documents, there was no “stated case” drawn up and agreed between the parties.

[5] I fail to comprehend how a dispute which hinges on the fairness of the conduct of an employer can be decided (in the absence of a stated case) without parties giving oral evidence. A decision made in such a way means that the Labour court must answer all the following questions in the negative:

“(i) In terms of his or her duty to deal with the matter with the minimum of legal formalities, did the process that the arbitrator employ give the parties a full opportunity to have their say in respect of the dispute? (ii) Did the arbitrator identify the dispute he or she was required to arbitrate? (This may in certain cases only become clear after both parties have led their evidence.) (iii) Did the arbitrator understand the nature of the dispute he or she was required to arbitrate? (iv) Did he or she deal with the substantial merits of the dispute? (v) Is the arbitrator's decision one that another decision maker could reasonably have arrived at based on the evidence?”¹

[6] The process used in the arbitration proceedings simply does not allow for a due and proper arbitration of the dispute. The Commissioner based her findings on the written submissions of the parties. In particular she based her

¹ Gold Fields Mining SA (Pty) Ltd (Kloof Gold Mine) v Commission for Conciliation, Mediation & Arbitration & others (2014) 35 ILJ 943 (LAC) at paragraph 20

award on the fact that the employer did not respond (in reply) to the submission in the employees' written argument that the suspensions exceeded the 60 days provided for in its disciplinary code.

- [7] It is worth repeating the meaning of the term 'stated case' (sometimes known as a 'special case') as considered in **NUM & Others v Hartebeestfontein Gold Mining Co Ltd**² as follows:

"Provision is made in Rules of Court and in a number of statutes for the submission to a Court of questions of law "in the form of a special case". See, for example, Rule 49 (10) of the Uniform Rules of Court; proviso (i) to Appellate Division Rule 5 (4) (c); s 3 (3) of the Admission of Persons to the Union Regulation Act 22 of 1913; s 26 (1) of the Workmen's Compensation Act 30 of 1941; s 20 of the Arbitration Act 42 of 1965; and s 30 (1) (b) of the Stamp Duties Act 77 of 1968. In none of them is "special case" defined, presumably because the expression has an accepted meaning. Mozley and Whiteley's Law Dictionary 7th ed says sv "special case" that it is:

"1. A statement of facts agreed to on behalf of two or more litigant parties, and submitted for the opinion of a court of justice as to the law bearing upon the facts so stated."

Stroud's Judicial Dictionary 4th ed states that:

"A special case is a written statement of the facts in a litigation, agreed to by the parties, so that the court may decide these questions according to law... It is also known as a case stated."

This meaning is reflected in Rule 33 of the Uniform Rules of Court. It provides in subrule (1) that the parties to any dispute may, after institution of proceedings, agree upon a written statement of facts in the form of a special case for the adjudication of the Court, and in subrule (2) (a) that

"such statement shall set forth the facts agreed upon, the question of law in dispute between the parties and their contentions thereon".

² 1986 (3) SA 53 (A)

It is, therefore, implicit in the expression "in the form of a special case" that there should be a statement of the facts agreed by the parties."

[8] In the absence of such a stated case, oral evidence should be led on the material facts in dispute at arbitrations in terms of the LRA. Commissioners and arbitrators should not condone an agreement between parties that no oral evidence be led unless such a stated case has been agreed, and on which they may draw legal conclusions. Although parties may regard submitting documents and argument as a fast way of resolving a dispute on the day of arbitration, it in fact renders the award issued susceptible to review. In the result, the principle of speedy resolution of disputes is ultimately sacrificed.

[9] In the circumstances I make the following order:

1. The award under case number WECT18416-13 is reviewed and set aside.
2. The dispute is remitted to the third respondent for arbitration anew before a commissioner other than second respondent.

H. Rabkin-Naicker

Judge of the Labour Court

Appearances:

Applicant: R. Nyman instructed by the State Attorney

First Respondent: NEHAWU