



Of interest to other judges

THE LABOUR COURT OF SOUTH AFRICA
HELD AT JOHANNESBURG

Case no: J 2581/16

In the matter between:

**GENERAL INDUSTRIES WORKERS
UNION OF SOUTH AFRICA**

First Applicant

LINDANI MOSONDO & 2 OTHERS

Second Applicant

And

TRANSMAN PTY LTD

First Respondent

L'OREAL SA (PTY) LTD

Second Respondent

Heard: 9 November 2016

Delivered: 10 November 2016

Summary: (Urgent – alleged unlawful lay-off – substance of dispute before an arbitrator under s 198D – adequate alternative remedy – costs – artificially accelerated urgent proceedings to be discouraged)

JUDGMENT

LAGRANGE J

- [1] This is an urgent application for final relief to interdict the respondents for ostensibly unlawfully laying off the individual applicants. The basis of the claim is that having been employed for a number of years by the first respondent, a labour broker, and having been engaged in the services of the second respondent, the applicants are now deemed to be employed indefinitely, or on a permanent basis, by the second respondent. As such, the applicants contend that they are entitled to be employed on a full-time basis rather than an intermittent or casual basis. Consequently, they are entitled to tender their services as regular full-time employees and not just when they are scheduled to work.
- [2] In the sense that the claim is essentially a claim for specific performance of the applicants' contracts of employment, I will accept that the application is urgent though the application might well have been dismissed on the basis that the applicants brought the application on unnecessarily short notice.
- [3] The effect of granting the order sought would entail the court having to address the terms of the individual applicants' employment by the respondents, which is currently the subject matter of a dispute under section 198D of the Labour Relations Act 66 of 1995 ('the LRA'). That dispute has already been referred to arbitration and proceedings had already been convened, though they appear to have been held up while the parties explored settlement options.
- [4] The applicants have not sought interim relief pending the outcome of those proceedings, but asked the court to make a final order. That order would effectively entail the court usurping the function of the arbitrator dealing with the dispute under s198D who has the power to determine disputes arising as to the employment status of the applicants and their terms and conditions of employment.
- [5] In the circumstances, I am satisfied that not only do the applicants have a satisfactory alternative remedy which they have already invoked but have not prosecuted to completion, but that their remedy under s198D is their primary remedy for final relief.

- [6] On the issue of costs, there was no reason to bring this application on such short notice, even though a degree of urgency might have been warranted. There is an increasing tendency of applicants in the urgent court to launch proceedings shortly before the weekend preceding the week which the matter be heard but insisting that the respondents filed answering affidavits by the close of business on the preceding Friday, or even earlier, thereby securing the leisure of the entire weekend and possibly the following Monday to consider their response. As happened in this case, when the respondents are unable to comply with the stringent deadlines set by the applicants, the applicants then complain that they need more time to file a reply and ask for the matter to be postponed to later in the week. This practice of using urgent proceedings to get 'a foot in the door' and then to pursue the litigation at a more leisurely pace having secured a place on the urgent roll is to be deprecated.
- [7] I note that the respondents have effectively made common cause in defending the application on the same grounds. In the circumstances, I believe it is just and equitable that the applicants must pay half the respondents' costs of opposing the application.

Order

- [8] The application is heard on an urgent basis.
- [9] The application is dismissed.
- [10] The applicants are jointly and severally liable to pay half the respondents' costs of opposing the application, the ones paying the others to be absolved.



Lagrange J
Judge of the Labour Court of South Africa

APPEARANCES

APPLICANT:

D Cartwright of David
Cartwright Attorneys

FIRST RESPONDENT:

L Erasmus instructed by
Kirschmanns Inc

SECOND RESPONDENT

N Preston of CDH Legal

LABOUR COURT