REPUBLIC OF SOUTH AFRICA

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THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Case no: JR 672/15

In the matter between:

WOOD GROUP (SOUTH AFRICA) (PTY) LTD	Applicant
and	
NGOBENI, Joseph N.O.	First Respondent
CCMA	Second Respondent
MOES, Roelof	Third Respondent

Heard: 27 July 2016

Delivered: 23 August 2016

Summary: Review – dismissal – labour broker. Employee informed by client of labour broker that his contract was terminated. Labour broker party to dismissal. Dismissed by labour broker as employer. Arbitrator found that employee was dismissed by labour broker. Finding not reviewable.

JUDGMENT

STEENKAMP J

Introduction

[1] An employee of a labour broker is told by the labour broker's client that his contract has been terminated. An arbitrator finds that he has been unfairly dismissed – by the labour broker. The labour broker disputes any role in the dismissal and wants to have the arbitration award set aside. Is the award reviewable?

Background facts

[2] The Wood Group is a labour broker. It employed the third respondent, Mr Roelof Moes, a Dutch national.[1] Moes, a highly qualified chemical engineer, was employed as a "Portfolio Project Manager – Gas Circuit" at the handsome salary of R283 766, 87 per month. He was placed at a client of the Wood Group, namely Jacobs Matasis (Pty) Ltd. His fixed term contract was due to expire on 19 January 2015.

[3] On 25 August 2014 Jacobs's operational manager, Kevin Jones, told Moes that his services were terminated. On the same day, Jacobs's human resources manager, Coceka Nthshata, sent Woods's business development manager, Jeff Bendall, an email in the following terms:

> "I hope you're well. We are demobilising Roelof Moes as per the client's request with immediate effect. Please process from your end with Roelof.
>
> Let me know what financial obligations are there for JM." [Jacobs Matasis].

[4] On the same day, 25 August 2014, Bendall forwarded the email to Woods's human resources manager, Mogie Mahabeer , and commented:

> "This gentleman works for us in Secunda and I think he is on a month's notice. Contact lady at Jacobs is Coceka.Ntshata@jacobs.com."

[1] The initial contract was entered into between Moes and Woods's predecessor in title, LBJ Global Recruitment (Pty) Ltd.

[5] Still on the same day, 25 August 2014, Mahabeer wrote to Ntshata, including the previous emails, and said:

> "We would like to pay Roelof one month's notice pay.
>
> Kindly advise if this is in order".

[6] Nthata replied: "Yes, that is in order. We will honour the payment."

[7] On 8 September 2014 Jacobs's HR manager, Nthata, wrote to Woods's Mahabeer and Bendall. She included a letter dated 25 August 2014 to Bendall. It read:

> "Notice of Termination of Contract of Employment
>
> Re: Roelof Moes
>
> We write to you in reference to the above employee, Roelof Moes.
>
> This letter is to notify [Woods's predecessor in title] that Jacobs Matasis wish [*sic*] to terminate the contract of employment of Roelof Moes with effect from the 25th of August 2014.
>
> Jacobs Matasis will honour the payment of four week's [*sic*] salary as required under the current contract of employment, and Roelof's final working day will be the 25th August 2014. However, should Jacobs Matasis have similar projects in the near future we would be interested in utilising his services."

[8] On 9 September 2014 Woods confirmed that Moes had been dismissed with effect from 25 August 2014. Bendall wrote to Moes:

> "Re : Termination of Contract
>
> This is to inform you that we have received notification from our client, Jacobs Matasis (Pty) Ltd, that they will be terminating our contract with them in respect of your provision of services on 25 August 2014. They have advised us that you will be paid up to the 25 September 2014, being the one months' [*sic*] notice pay.
>
> In line with the Temporary Employment Contract entered into, we are accordingly terminating your services with LBJ Global Recruitment (Pty) Ltd[2] on the same date, to be viewed as completion of contract. In the

[2] Woods's predecessor in title.

> interim, we will endeavour to secure an alternative assignment for you and will communicate with you should we be successful in this regard."

[9] Moes referred an unfair dismissal dispute to the CCMA. Conciliation was unsuccessful.

The award

[10] The arbitrator found that, in terms of s 186(1)(a) of the Labour Relations Act[3], Woods had terminated the contract of employment with notice, i.e. Woods had dismissed the employee. It did not provide any fair reason for the dismissal. Instead, it sought to argue that Jacobs had dismissed him.

[11] The arbitrator found that Woods had unfairly dismissed the employee. He did not wish to be reinstated. The arbitrator awarded him compensation equivalent to four months' remuneration.

Review grounds

[12] Mr *Morgan*, for Woods, persisted with the argument that not his client, but Jacobs, had dismissed the employee. He argued that his client, the employer, did not dismiss the employee. He went so far as to argue that Woods "had no involvement in the events of 25th August 2014." Therefore Woods had not dismissed the employee; s 186(1)(a) of the LRA was not applicable; and the award fell to be reviewed and set aside.

Evaluation / Analysis

[13] This argument is simply not borne out by the facts. It is clear from the string of emails quoted above that Woods and its respective business development and human resources managers, Bendall and Mahabeer, were fully aware of the events of 25 August 2014 from the start and acquiesced in the dismissal. Bendall simply confirmed the employee's dismissal on 25th August 2014 when he wrote to the employee on 9 September 2014; and in that letter, he acknowledged that "we [i.e. Woods] are terminating your services on the same date", i.e. 25th August 2014.

[3] Act 66 of 1995 (the LRA).

[14] Insofar as there could be any doubt, Bendall confirmed under oath at the arbitration that "Roelof Moes was dismissed by you", i.e. Woods. The employee's counsel went on to ask him: "Can there be any confusion about the date on which [Moes} was dismissed? What do you say was the date?" to which Bendall responded, "25 August 2014".

[15] Mahabeer also stated under oath in her affidavit:

> "The [employee's] employment with [Woods] terminated on 25 August 2014 and the [employee] was therefore required to refer his alleged unfair dismissal dispute to the CCMA within thirty days from 25 August 2014."

Conclusion

[16] In the light of the evidence under oath of Woods's own managers, coupled with the contemporaneous correspondence, it is hard to fathom on what basis it now disputes the arbitrator's finding that it dismissed Moes; much less that it is a reviewable award.

[17] Insofar as it may be necessary to refer to case law, Mr *McClarty* usefully pointed to the finding of the SCA in *NUMSA v Abancedisi Labour Services*.[4] In that case, a labour broker's client refused the workers entry to the workplace. The labour broker argued that it had not dismissed them. The SCA held that they were dismissed when they were barred from the workplace by the client and that the labour broker had dismissed them as contemplated in s 186(1)(a) of the LRA.

[18] The arbitration award cannot be faulted. Both parties asked for costs to follow the result. I see no reason to disagree.

Order

The application for review is dismissed with costs.

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Anton Steenkamp

Judge of the Labour Court of South Africa

[4] [2014] 2 All SA 43 (SCA); [2013] 12 BLLR 1185 (SCA).

APPEARANCES

APPLICANT:	David Morgan (attorney).
THIRD RESPONDENT:	R D McClarty SC
Instructed by:	Heyns & partners (Goodwood);
	Schreuder attorneys (Johannesburg).