

SOUTH AFRICA / JUDGMENT

Anderson and Others v Global Media Services (C250/18 & C267/18)

[2020] ZALCCT 22 (25 August 2020)

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COURT

Labour Court Cape Town

BEFORE

Rabkin-Naicker

CASE / FILE NUMBER

C250/18 & C267/18

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IN THE LABOUR COURT OF
SOUTH AFRICA, CAPE TOWN

Not

Reportable

Case

no: C250/18 & C267/18

In

the matter between:

LEIGH
ANDERSON
Applicant
SHUAN
CLINTON
ALLEN Second
Applicant
PATRICK
LANGEVELDT Third
Applicant and
GLOBAL
MEDIA
SERVICES Respondent
Date heard: 8 July 2020
on the papers

Delivered:

This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on the Labour Court's website and released to SAFLII. The date and time for hand- down is deemed to be 10h00 on 25 August 2020.

JUDGMENT

RABKIN-NAICKER, J

- [1] This is an opposed application to amend a Statement in Reply. The respondent seeks to make certain insertions and amendments to averments in the Statement, the effect of which would be to allege that section 189A of the LRA applies to the termination of employment for operational requirements of the applicants. More specifically, that section 189A(18) applies, and as a result that the Labour Court does not have jurisdiction to adjudicate on the procedural fairness of the dismissals.
- [2] The objection to the amendment is in essence that the notice provided to the applicants stated that the consultation process would be in terms of section 189 of the LRA. Further that the respondent failed to disclose the number of people to be affected.
- [3] The Statement in Reply contains the following paragraph:

“3.7 As a consequence and in the absence of any meaningful alternatives or submissions being presented the Respondent made the preliminary

decision to notify the Applicant and some 15 other employees (out of a workforce of approximately 70 employees) that unless any other reasons or submissions were tabled for consideration that that Applicant’ (sic) and their employment would conclude for operational reasons on 21 January 2018.”

- [4] The facts alleged in paragraph 3.7 give rise to the application of section 189(A) which applies inter alia to employers employing more than 50 employees if-

“(a) the employer contemplates dismissing by reason of the employer's operational requirements, at least-

- (i) 10 employees, if the employer employs up to 200 employees;....”

- [5] The respondent’s proposed amendment thus seeks to amplify the alleged factual position expressed in the above clause, with various legal conclusions. The Court has a wide discretion to grant amendments. In the leading case of Trans- Drakensberg Bank Ltd (under Judicial Management) v Combined Engineering (Pty) Ltd and Another 1967 (3) SA 632 (D) the principles were set out as follows: (I quote the headnote):

“The aim in allowing amendments to pleadings should be to do justice between the parties by deciding the real issues between them. The mistake or neglect of one of them in the process of placing the issues on record is not to stand in the way of this: his punishment

is in his being mulcted in the wasted costs. The amendment will be refused only if to allow it would cause prejudice to the other party not remediable by an order for costs and, where appropriate, a postponement. It is only in this relation that the applicant for an amendment is required to show it is bona fide and to explain any delay there may have been in making the application, for he must show that his opponent will not suffer prejudice.

If a litigant has delayed in bringing forward his amendment, this in itself, there being no prejudice to his opponent not remediable in the manner indicated above, is no ground for refusing the amendment.”[1]

[6] I see no prejudice to the applicants where, as in this case, the amendment is sought only so as to place the issues before the court in the correct legal context.[2] As I have stated above the factual issues have already been pleaded in the Statement of Reply.

[7] In the result, I make the following order: Order

1. The respondent’s application to amend its Statement of Reply as set out in its Notice of intention to amend dated 6 February 2019 is granted.
2. The amended Statement of Reply must be filed at Court within 10 days of this order.

H. Rabkin-Naicker Judge of the Labour Court of South Africa

Representation:

For the Applicants: Legal Aid South Africa For the Respondent: Grant Marinus Attorneys

[1] As referred to in Thekweni Properties (Pty) Ltd v Picardi Hotels Ltd (as Third Parties) 2008 (2) SA 156 (D) at paragraph 9

[2] Potters Mill Investments 14 (Pty) Ltd v Abe Swersky & Associates and Others 2016 (5) SA 202 (WCC) at para25

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