

SOUTH AFRICA / JUDGMENT

Bekko and Others v South African Post Office SOC Ltd (C46/2020) [2021] ZALCCT 35 (4 June 2021)

[2021] ZALCCT 35

COURT

Labour Court Cape Town

BEFORE

H Rabkin-Naicker

CASE / FILE NUMBER

C46/2020

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IN

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Not Reportable

Case no: C46/2020

In the matter between: FAIZEL
BEKKO & 219 OTHERS
Applicants
and
SOUTH
AFRICAN POST OFFICE SOC LTD
Respondent
Date heard: 4 March 2021 by virtual
hearing

Delivered: 4 June 2021 to Court by means of email

JUDGMENT

RABKIN-NAICKER J

[1] The applicants seek an order in the following terms:

“1. Declaring that the Respondent is obliged to, in terms of the written settlement agreement dated 11 June 2019 and made into an arbitration award on 13 December 2019, remunerate and employ the Applicants on the same terms and conditions applicable to the employees who were employed by the Respondent prior to the Transfer in terms of section 197A of the Labour Relations Act (“the Respondent’s existing employees”) and that the Respondent is accordingly specifically obliged to:

- 1.1 Remunerate the Applicants on the same scale as the Respondent’s existing employees performing the same work as the Applicants; and
- 1.2 Contribute the same percentage to the Applicants’ Provident Fund which it contributes in respect of the Respondent’s existing employees.
2. That leave is granted to the Applicants to re-enroll the matter on the same papers, duly supplemented, for an order for specific performance and/or an order declaring the Respondent to be in contempt of the Arbitration Award in terms of Section 142(A) of the Labour Relations Act dated 13 December 2019.”

[2] The terms of the settlement agreement relied on are as follows:

“WHEREAS the Applicants have referred an unfair labour practice dispute to the CCMA arising from their terms and conditions of employment following their transfer of employment from Courier and Freight Group (Pty) Ltd (“CFG”) to the Respondent.

AND WHEREAS the parties are desirous of settling this dispute,

The parties hereby agree to settle the dispute under the above case number on the following terms:

1. The Respondent undertakes to offer each of the Applicants written terms and conditions of employment, including benefits, by no later than 13 September 2019 (“the Offers”).
2. The terms and conditions of the Offers shall be the same as those applicable to employees of the Respondent who are in the same or similar positions to the Applicants, subject to paragraph 4 below.
3. The Offers shall recognize the Applicant’s length of service, including their prior service with CFG.
4. The terms and conditions of the Offers shall be on the whole no less favourable than the Applicants’ current terms and conditions of employment.
5. In the event that any Applicant is dissatisfied for any reason with the terms and conditions of employment contained in his or her Offer, he or she will have the right to pursue whatever remedies are available in law.

6. Nothing in this agreement shall affect the rights and obligations of the parties arising from, or in relation to, the CFG Provident Fund. In particular, nothing in this agreement shall preclude any individual Applicant from withdrawing his or her funds from the CFG Provident Fund, in the event that this is legally permissible.”
- [3] The above agreement only in fact contains two obligations i.e. that the Offers will be made to the employees on a stated date and that they will withdraw the unfair labour practice dispute. It is apparent from the papers that the Offers were not made on that date, but on the 8 October 2019.
- [4] The attorney of record for the applicant avers that the Offers were not “drafted in accordance with the terms of the agreement” in that in terms of Clause 6.1 of the Contract of Employment, CFG employees are still to be remunerated on a total cost to company basis; and that in terms of Clause 7.1, CFG employees will remain on the CFG Provident Fund. He submits that this does not comply with the agreement. The SAPO employees contribute 7.5% of their monthly remuneration towards a Provident Fund while the CFG employees contribute 10%.
- [5] However, there is no ambiguity on a reading of the settlement agreement, in particular, Clauses 5 and 6 thereof, that the agreement did not settle, and clearly could not settle, disputes arising out of the content of the various Offers still to be made. It explicitly provided for the employees to pursue whatever remedies are available to them in law regarding these Offers, should they not be satisfied with them. It also contained a proviso in respect of the legal permissibility of withdrawing funds from the CFG Provident Fund.
- [6] In view of the above, and as far as the agreement having been made a binding Arbitration Award, it can only be understood to bind the parties as to the obligations on each in terms of the agreement. These were the withdrawal of the unfair labour practice dispute and the undertaking to make the offers to the employees on a specified date. Although there was a breach of the employer’s obligation regarding the date, this has since been remedied. There is no ongoing contempt.
- [7] The clauses in the agreement which use phrases that echo the provisions of section 197A of the LRA, and which the employees may believe are not reflected in the Offers made to them, are of relevance only in as far as these support any rights or interest disputes they may wish to pursue.
- [8] In these circumstances, the application stands to be dismissed. I make no costs order in view of the ongoing relationship between the parties.

Order

The application is dismissed.

H. Rabkin-Naicker

Judge of the Labour Court of South Africa

Representation

Applicants: Malcom Lyons & Brivik

Respondent: Luyanda Nyangiwe instructed by Madhlopa & Thanga INC

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