

SOUTH AFRICA / JUDGMENT

Bophela v Insam Mining & Financial Close Corporation (J36/98) [2000] ZALC 35 (25 May 2000)

[2000] ZALC 35

COURT
Labour Court

BEFORE
Lyster

CASE / FILE NUMBER
J36/98

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IN

THE LABOUR COURT OF SOUTH AFRICA

HELD

AT JOHANNESBURG

CASE

NO: J 36/98

In

the matter between:

GIVENSON

BOPHELA Applicant

and

INSAM

MINING & FINANCIAL CLOSE CORPORATION Respondent

JUDGMENT

LYSTER A J :

1.1 This is an application in terms of section 158(1)(c) in terms of which Applicant seeks to have a settlement agreement made an order of court.

1.2 Respondent filed papers opposing the matter and it was set down as an opposed application, but Respondent did not appear at the hearing of the application.

1.3 It is trite to say that when called on to exercise its powers in terms of section 158(1)(c) to make an arbitration award or a settlement agreement an order of Court, the Court must exercise its discretion judicially. (See Kgaditse v Pep Stores Ltd 1999

(20) ILJ at 618), and will not act as a rubber stamp.

2.1 The settlement agreement which Applicant seeks to make an order of Court in this matter comprises the following: 2.1.1 It appears as a handwritten note on the face of an LRA 7.12 form (certificate of outcome of dispute referred for conciliation) 2.1.2 The agreement such as it is, reads as follows: "The company acknowledges that errors were made i.r.o. (sic) Mr Bhopela's

salary during 1997. The company undertook to correct the matter and to pay him what is due to him by 6/1/98. 2.1.3 The document is signed by Applicant and one D. Maruso, although there is no clarification as to who this is. It is apparent from Respondents answering documents, that Respondent paid Applicant an amount of R 1 197-00 on the same day as the settlement agreement referred to above was entered into that is 19/12/97, and this is conceded by Applicant in his reply. Applicant however, in his reply claims that he is due a further amount, although there is no attempt to set out what this amount is. He merely states that he was to be paid R 45 per shift and not R35 per shift. Respondent's view, ex facie the answering documents, is that the amount of R 1197-00 paid to Applicant on 19/12/97, was in fact the disputed amount, and regards the matter as finalized.

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Respondent's view, ex facie the answering documents, is that the amount of R 1197-00 paid to Applicant on 19/12/97, was in fact the disputed amount, and regards the matter as finalized.

6.1 The "settlement agreement", in so far as it purports to be an agreement to facilitate the payment of monies, is not an agreement that this Court is able to make an order of Court. It is regrettable that the Commissioner who attended to the conciliation and the drafting of the agreement, saw fit to record such an agreement, and did not quantify the amount payable to Applicant. 6.2 The Applicant, who believes he is entitled to more money, clearly seeks to enforce this settlement agreement. Respondent's

view is that it has been settled. In these circumstances, Applicant's remedy would be to cause a writ to be issued, and

to attach a property to the value of his claim. 6.3 Clearly, a writ cannot be issued on the basis of this agreement, even if this court does make it an order of Court. It is merely an undertaking by one party to act in a certain manner. No amount is specified, and this Court can certainly not, on the basis of evidence from the bar from the Applicant's attorney, conclude that Applicant should have been paid more per shift, vary the agreement, and make an order to this effect. Such a course of action would be grossly untenable, although this is what Mr Mbatha, for Applicant, suggested I do. 6.4 I am of the view that the agreement is void on account of its vagueness, and is not capable of enforcement. In coming to his decision I have had regard to the decision of the AD in the matter of Nambian Minerals Corporation v Benguella Concession Ltd [1996] ZASCA 140; 1997 (2) SALR 548 AD, in which the Court held that an agreement could not be enforced where it was not capable of any effective meaning, and as such was void for vagueness. 6.5 The application is dismissed.

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6.5 The application is dismissed.

LYSTER A J Date of hearing : 19 May 2000 Date of Judgment: 25 May 2000

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