

SOUTH AFRICA / JUDGMENT

Colgate-Palmolive (Pty) Ltd v Rala-Rala and Others (JR79/19) [2021] ZALCJHB 35 (20 January 2021) [2021] ZALCJHB 35

COURT

Labour Court Johannesburg

BEFORE

P Nkutha-Nkontwana

CASE / FILE NUMBER

JR79/19

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

THE

LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JR79/19

In

the matter

between:

COLGATE-PALMOLIVE
(PTY)
LTD
Applicant
and
THAMSANQA
ANDILE RALA-RALA
First Respondent
NATIONAL BARGAINING
COUNCIL FOR
THE
CHEMICAL
INDUSTRY
Second Respondent
NOZIBUSISO FAITH
GUMEDE N.O.
Third Respondent

Enrolled:

12 November 2020
Decided on the papers

Delivered:	In view of the measures implemented as a result of the Covid-19 outbreak, this judgment was handed down electronically by circulation to the parties' representatives by email. The date for hand-down is deemed to be 20 January 2021.
Summary:	Review application of jurisdictional ruling – no just and equitable reason in terms of section 158(1B) of the LRA to entertain the review application.

JUDGMENT

NKUTHA – NKONTWANA, J

Introduction

- [1] This is one of the most unmeritorious review applications that are inundating this Court despite the clear dictates of the Labour

Relations Act[1] (LRA) to have labour disputes resolved expeditiously. It would be clear later in the judgment that the applicant, Colgate-Palmolive (Pty) Ltd (Colgate-Palmolive) a conglomerate, has instituted these proceedings solely to delay the final termination of the first respondent's, Mr Andile Thomas Rala-Rala (Mr Rala-Rala), unfair dismissal dispute and ultimately out-litigate him.

Pertinent facts

- [2] The facts in the matter are mostly common cause. Mr Rala-Rala was employed by the applicant in the position of CDT Finance Manager. During August 2017, Mr Rala-Rala suffered from a medical condition (a brain stem bleed) which temporarily incapacitated him. He was booked off work from 1 August 2017 and his anticipated return date was 2 January 2018.
- [3] On 6 November 2017, whilst Mr Rala-Rala was still off sick, Colgate-Palmolive communicated its unilateral decision to replace him due to his ill-health and the critical nature of the CDT Finance Manager role, which could not be left vacant for a prolonged period. During the same month of November 2017, Colgate-Palmolive received a special review audit report indicating under-accruals in its books of accounts for which Mr Rala-Rala was responsible.
- [4] Mr Rala-Rala formally returned to work on 8 January 2018. He was presented with three alternative positions and was advised to choose one. According to Mr Rala-Rala all the alternative positions were at a lower level and constituted a demotion. He accordingly refused to accept any of the downgraded positions.

[5] There were other discussions to reach an amicable settlement between the parties which failed, ultimately. Consequently, Colgate-Palmolive demoted Mr Rala-Rala to a position of Senior Credit Controller. He refused to accept the downgraded position. Colgate-Palmolive then instituted disciplinary proceedings against Mr Rala-Rala on allegations of misconduct. He was charged as follows:

‘1.2 gross negligence,

in that in performing your duties as CDT Finance Manager and for the period between 1 August 2016 to 1 August 2017 you, amongst other things:

1.2.1 neglected and/or otherwise failed to manage, as a reasonable person in your position would, the work performed by Mr Lendi Dick (CDT Finance Analyst: PnP / Spar) and Mr Johnson Wonga (CDT Finance Analyst: Shoprite / Botswana / Namibia) and in particular failing to ensure that they diligently performed their daily activities as members of your team, which resulted in gross dereliction of duty and/or gross negligence in performance of their duties not being noticed for some time and which ultimately resulted in misstatements in the Company financial statements, and/or

1.2.2 release and signed off on accruals and claims without adequate validation of the amounts, and/or

1.2.3 instructed Manuel Goncalves-Jardine, the customer Development Director, that his accruals in respect of Pick n Pay was too high, when your role was to record the accurate accrual.’[2]

[6] Mr Rala-Rala was only found guilty of 1.2.1 and 1.2.2 allegations and accordingly dismissed; hence the unfair dismissal dispute which is currently before the second respondent, the National Bargaining Council for the Chemical Industry (NBCCI). At the commencement of the arbitration proceedings, Colgate-Palmolive raised a point in limine to the effect that NBCCI lacks jurisdiction to deal with the matter solely because Mr Rala-Rala made an allegation in the unsigned

pre-arbitration minute that the true reason for his dismissal was his refusal to accept the downgraded position of Senior Credit

Controller.

[7] The third respondent, Ms Nozibusiso Faith Gumede (Arbitrator) issued a jurisdictional ruling under case number GP380-17/18 dated 4 December 2018, dismissing Colgate-Palmolive’s point in limine. Disgruntled with the jurisdictional ruling, the Colgate-Palmolive launched this review application. The main ground of review is that the Arbitrator incorrectly found that NBCCI has jurisdiction to arbitrate the matter. Colgate-Palmolive contends Mr Rala-Rala’s dispute pertains to a dismissal which is automatically unfair as contemplated in section 187(1)(c) LRA.

Legal principles and application

[8] Section 187(1)(c) defines a dismissal as automatically unfair if the reason for the dismissal is ‘a refusal by employees to accept a demand in respect of any matter of mutual interest between them and their employer’. In *Jacobson v Vitalab*,^[3] this Court, per Van Niekerk J, confronted, similarly, with the issue of whether section 187(1)(c) is applicable in a dismissal dispute that concerns an individual employee had the following to say:

‘[15] Under the 1956 LRA, a lock-out could legitimately assume forms other than an exclusion from the workplace, including a termination of employment. This gave rise to the phenomenon of the ‘lock-out dismissal’ (sometimes referred to as a ‘tactical dismissal’) as opposed to a common-law or ‘final’ termination of the employment contract. The present LRA amended the definition of a lock-out so as to exclude any reference to a termination of employment, and inserted s 187(1)(c) into the list of reasons that would be automatically unfair. The original wording of the section provided that it was automatically unfair for an employer to dismiss an employee if the reason for the dismissal was to compel the employee to accept a demand in respect of any matter of mutual interest between employer and employee. In other words, an employer could not legitimately resort to dismissal as part of the power play in a collective dispute.

[16] In *Fry’s Metals (Pty) Ltd v National Union of Metalworkers of SA & others* (2003) 24 ILJ 133 (LAC); [2003] 2 BLLR 140 (LAC), the Labour Appeal Court held that when a dismissal was final and irrevocable, by definition, the reason for dismissal could not be to compel the acceptance of a demand. The same principle was applied with a different outcome on the facts in *Chemical Workers Industrial Union & B others v Algorax (Pty) Ltd* (2003) 24 ILJ 1917 (LAC); [2003] 11 BLLR 1081 (LAC).

[17] Section 187(1)(c) was amended in 2014 to provide that a dismissal is automatically unfair if the reason is ‘a refusal by employees to accept a demand in respect of any matter of mutual interest between them and their employer’ (emphasis added). The purpose of the amendment (and the difficulty with the pre-2015 formulation of s 187(1)(c)) is made clear by the Explanatory Memorandum that accompanied the amendment Bill:

‘This section is amended to remove an anomaly arising from the interpretation of section 187(1)(c) in *[Fry’s Metals]* which

held that the clause had been intended to remedy the so-called “lock-out” dismissal which was a feature of pre-1995

labour relations practice. The effect of this decision when read with decisions such as *[Algorax]* is to discourage employers from offering re-employment to employees who have been retrenched after refusing to accept changes in working conditions. The amended provision seeks to give effect to the intention of the provision as enacted in 1995 which is to preclude the dismissal of employees where the reason for the dismissal is their refusal to accept the demand by the employer over a matter of mutual interest. This is intended to protect the integrity of the process

of collective bargaining under the LRA and is consistent with the purposes of the Act.’

- [18] Although the pre-amendment version of s 187(1)(c) was invoked in a number of dismissal disputes concerning individual employees, the question that arises consequent on the amendment and the clear statement of its purpose is whether an individual employee may claim the protection afforded by the section.
- [19] It would seem to me from the wording of the amended s 187(1)(c) and the explication of its purpose in the Explanatory Memorandum that the application of the section is limited to the collective sphere. The Explanatory Memorandum makes clear that the purpose of the amended s 187(1)(c) is to protect the integrity of the collective bargaining process. It precludes the use of dismissal as a legitimate instrument of coercion in the collective bargaining process. That process, by definition, contemplates concerted action and the participation of more than one employee. For the section to find application therefore, there must have been an employer demand made of two or more employees, they must have refused to accept that demand and they must have been dismissed in consequence of that refusal. The conclusion that s 187(1)(c) is not intended to apply in individual dismissal disputes is fortified by the wording of the provision

itself — the reference is to a ‘refusal by employees to accept a demand in respect of any matter of mutual interest between them and their employer’ (emphasis added). The use of the plural makes clear that the extent of the prohibition against

dismissal applies only where an employer seeks to extract a concession by employees to demands made in a collective context.’ (Emphasis added)

- [9] I concur with the dictum in Jacobson.[4] Colgate-Palmolive inopportunely referred to various dicta which were delivered before the amendment of section 187(1)(c) that referred to ‘employee’ as opposed to ‘employees’. Clearly, post-amendment, section 187(1)(c) is not concerned with individual rights but collective bargaining and the associated right to strike is not undermined.
- [10] In the present case, Rala-Rala disavows reliance on section 187(1)(c). Moreover, it is in fact common cause that he was dismissed following a disciplinary hearing and a verdict of guilty on allegations of misconduct as mentioned above. Both LRA forms requesting that the matter be conciliated and arbitrated reflect that the issue in dispute pertains to unfair dismissal for misconduct. In this regard, section 191(5) of the LRA provides that:

‘If a council or commissioner has certified that the dispute remains unresolved, or, if 30 days have expired since the council or the Commission received the referral and the dispute remains unresolved -

- (a) the council or the commission must arbitrate the dispute at the request of the employee if
- (i) the employee has alleged that the reason for dismissal is related to the employee's conduct or capacity unless para (b)(iii) applies;

(ii) the employee has alleged that the reason for dismissal is that the employer made continued employment intolerable; or

(iii) the employee does not know the reason for dismissal; or ...'

[11] As correctly contended by Mr Rala-Rala, the mere allegation that the reason he was charged for misconduct was prompted by his refusal to accept a demotion cannot render his dismissal automatically unfair as contemplated in terms of section 187(1)(c) and consequently disrobe the NBCCI the jurisdiction to arbitrate the matter.[5]

[12] It is obvious that Colgate-Palmolive's insistence that dispute is about automatically unfair dismissal despite having dismissed Mr Rala-Rala for misconduct is disingenuous stratagem to delay the resolution of the dispute before the NBCCI. In launching this application, Colgate-Palmolive had no regard to section 158(1B) LRA which provides that:

'the Labour Court may not review any decision or ruling made during conciliation or arbitration proceedings conducted under the auspices

of the Commission or any bargaining council in terms of the provisions of this Act before the issue in dispute has been finally

determined by the Commission or the bargaining council, as the case may be, except if the Labour Court is of the opinion that it is just and equitable to review the decision or ruling made before the issue in dispute has been finally determined'.

[13] As mentioned above, Mr Rala-Rala disavows reliance on section 187(1)(c). Even section 187(1)(c) is an alternative courses of action, Mr Rala-Rala, a dominus litis, has elected in this regard to go to the CCMA and challenge his dismissal as misconduct in terms of section 191(5)(a)(i). In *CUSA v Tao Ying Metal Industries and Others*,[6] the Constitutional Court succinctly outlined the approach to be followed by the commissioners in similar circumstances, stating

that:

'Consistent with the objectives of the LRA, commissioners are required to "deal with the substantial merits of the dispute with the minimum of legal formalities." This requires commissioners to deal with the substance of a dispute between the parties. They must cut through all the claims and counter-claims and reach for the real dispute between the parties. In order to perform this task effectively, commissioners must be allowed a significant measure of latitude in the performance of their functions. Thus the LRA permits commissioners to "conduct the arbitration in a manner that the commissioner considers appropriate". But in doing so, commissioners must be guided by at least three considerations. The first is that they must resolve the real dispute between the parties. Second, they must do so expeditiously. And, in resolving the labour dispute, they must act fairly to all the parties as the LRA enjoins them to do.

A commissioner must, as the LRA requires, “deal with the substantial merits of the dispute”. This can only be done by

ascertaining the real dispute between the parties. In deciding what the real dispute between the parties is, a commissioner is not necessarily bound by what the legal representatives say the dispute is. The labels that parties attach to a dispute cannot change its underlying nature. A commissioner is required to take all the facts into consideration including the description of the nature of the dispute, the outcome requested by the union and the evidence presented during the arbitration. What must be borne in mind is that there is no provision for pleadings in the arbitration process which helps to define disputes in civil litigation. Indeed, the material that a commissioner will have prior to a hearing will consist of standard forms which record the nature of the dispute and the desired outcome. The informal nature of the arbitration process permits a commissioner to determine what the real dispute between the parties is on a consideration of all the facts. The dispute between the parties may only emerge once all the evidence is in.’ (Footnotes omitted and emphasis added)

- [14] The responsibility to decide the true nature of a dispute obviously rests with the Arbitrator and not the parties, an enquiry that can only be undertaken on the basis of tried facts. In the present case, the Arbitrator’s approach is obviously beyond reproach.
- [15] Colgate-Palmolive has not been able to put up a case to justify interference with the impugned jurisdiction ruling. Accordingly, I am not convinced that it is just and equitable to review the impugned jurisdictional ruling in terms of section 158(1B) of the LRA.

Conclusion

- [16] In the circumstances, the impugned jurisdictional ruling is unassailable. As such, this application is ill-conceived and must fail.

Costs

- [17] It is trite that costs do not follow the result in this Court. Even so, in the present instance, Colgate-Palmolive was ill-advised on launching this application. Sadly, Mr Rala-Rala, an individual litigant, has spent time and energy and financial resources opposing an unmeritorious impugn against the jurisdictional ruling. Accordingly, I am satisfied that it would not offend the requirements of the law and fairness to award punitive costs against Colgate-Palmolive.

- [18] In the premises, I make the following order:

Order

1. The review application is dismissed.
2. The third respondent, NBCCI, is directed to urgently set down the pending arbitration proceedings.

3. The applicant, Colgate-Palmolive, is ordered to pay the first respondent's, Mr Rala-Rala, costs on an attorney and client scale.

P Nkutha-Nkontwana

Judge of the Labour Court of South Africa

- [1] Act 66 of 1995, as amended.
- [2] See: Notice of Institution of Disciplinary Proceedings, page 8 of the Record.
- [3] (2019) 40 ILJ 2363 (LC)
- [4] Ibid; see also: Hofmeyr v Saaïman t/a SA Endovascular Group Practice (2020) 41 ILJ 659 (LC) at paras 36 -45.
- [5] National Union of Metalworkers of South Africa and Others V Driveline 2000 (4) SA 645 (LAC) at paras 41 and 54.
- [6]
- [2008] ZACC 15; [2009]
- (2) SA 204 (CC) at paras 62 – 65.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZALCJHB/2021/35.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/colgate-palmolive-pty-ltd-v-rala-rala-and-others-unknown-topic-alcjhb-2021--6a3ea5173b1caa912980dfcd>

Prepared on 14 October 2026 · Esheria