

SOUTH AFRICA / JUDGMENT

Dayeni v Container Link (J814/01)

[2001] ZALC 207 (14 November 2001)

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COURT

Labour Court

BEFORE

E Revelas

CASE / FILE NUMBER

J814/01

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IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN CASE NO: J814/01

2001-11-14

In the matter between

THOSAMILE DAYENI Applicant

and

CONTAINER LINK Respondent

J U D G M E N T

REVELAS, J:

This is an application in terms of section 158(1)(c) of the Act, in terms of which the applicant seeks to have an award made by a CCMA commissioner, made in his favour, an order of court.

On 26 June this year the matter came before me for the aforesaid application to be heard. On that day there was an appearance for the respondent, who indicated that it wanted to review the arbitration award.

The matter was then postponed sine die and time limits were set for the application to proceed by default in the absence of the respondent filing its papers timeously.

The respondent complied with the court order and filed its papers timeously. However, it appears that the arbitration award was obtained in the absence of the respondent. The respondent was not party thereto, in other words.

No party can review proceedings where it was not present due to the nature of a review, and the nature of the allegations that should be made in respect thereof.

The only remedy available to the respondent is to approach the Commission for Conciliation Mediation and Arbitration to have the award set aside, or have the award rescinded in terms of section 144 of the Labour Relations Act, 66 of 1995 ("the Act").

I am faced with two dilemmas in this matter: On the one hand this matter has been postponed on numerous occasion, yet there is no indication of any mala fides on the part of the respondent. There may be a proper explanation why it was not present at the arbitration hearing. To deprive the respondent from applying for a rescission would be highly prejudicial to the respondent, as would be the position of anyone who obtained an order or an award against him or her, when they were not present due to factors, not their fault.

It may very well be that the application for rescission is refused, but only then the applicant would be in a position to proceed with his application to make the award an order of court.

It is also so that employers in this court often abuse processes in terms of which there is no appearance sometimes at conciliation meetings. Very often, if not frequently, this court is faced with cases where there was no appearance for the employer at the arbitration hearing, and only when the employer faces execution on the award which has been made an order of court, does it wish to oppose.

In this matter there has been no case made out that this was the attitude of the respondent. If it was, that should be dealt with at the CCMA when an application for rescission is brought. The only way I can come to the applicant's assistance in the circumstances is to place time limits on events to follow.

I make the following order:

The matter is postponed sine die.

2. The respondent is to file an application for rescission within 7 days hereof with the CCMA and provide the applicant with proof thereof.
3. Should the outcome of the rescission application not be available by 31 January 2002, the application in terms of section 158(1)(c) will be set down for hearing by default.

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