

SOUTH AFRICA / JUDGMENT

Daza v National Economic Development and the Labour Council (NEDLAC) (JS 218/2020) [2020] ZALCJHB 165 (18 August 2020)

[2020] ZALCJHB 165

COURT

Labour Court Johannesburg

BEFORE

Van Niekerk

CASE / FILE NUMBER

JS 218/2020

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Source record

The Labour Court of
South Africa
(Held
at Johannesburg)
Not
Reportable
Case No: JS 218/2020
In

the matter between:

MFANUFIKILE
DAZA
Applicant
and
NATIONAL ECONOMIC
DEVELOPMENT
AND
LABOUR COUNCIL (NEDLAC)
Respondent
Hearing: 13 August
2020 (in Chambers)
Date
of judgment: 18 August 2020. Judgment delivered by email at 16:00

JUDGMENT

VAN NIEKERK J

- [1] The applicant describes himself as a qualified accountant and the former chief financial officer and head of risk management at the respondent. In this application, he applies for default judgment in respect of a number of discrete claims recorded in his statement of case and supplemented by an affidavit with lengthy annexures. I deal below with each of the applicant's claims, as I can discern them from the statement of claim read with the affidavit.
- [2] The first claim is one that relates to an unfair suspension. The applicant avers that the respondent gave him a notice of a proposed precautionary suspension on 13 September 2018, with list of allegations of misconduct. He states that he responded to those allegations and received no further communication from the respondent. He was then issued with a notice of suspension with effect from 17 October 2018. It would then appear that a disciplinary hearing was convened in December 2018 and then again in March 2019, with a new list of charges. The applicant makes averments in respect of each of these charges, and the merits. He also complains about the publication of his suspension, which he alleges to be a violation of this country's labour laws, the LRA in particular, and 'human rights as per the constitution of South Africa'.
- [3] It is not apparent from the statement of case or the affidavit what relief the applicant seeks in respect of what he contends to be an unfair suspension. That is of no concern for present purposes, since this court has no jurisdiction over any claim of unfair suspension. Section 186 (2)(b) of the LRA defines as an element of the definition of unfair labour practice the unfair suspension of an employee or any other unfair disciplinary action short of dismissal in respect of the employee. In terms of section 157 (5), this court has no jurisdiction to adjudicate and resolve disputes that the LRA requires to be resolved through arbitration. Section 191 (1) requires the dispute about an unfair labour practice to be referred to the CCMA and in the event that the dispute remains unresolved, the applicant may request that it be referred to arbitration. This court accordingly has no jurisdiction to entertain the claim of an alleged unfair suspension.
- [4] The applicant also claims payment of what he refers to as unpaid employment benefits. The first is in relation to the bonus. The applicant avers that he was not paid his bonus for the 2017/18 financial year. He estimates that the outstanding bonus payable to him is in the region of R 94 000 and R 115 000. The applicant has failed to establish any legal basis for his claim. If his claim is one based on unfair conduct by the respondent, and in so far that he contends that the bonus constitutes a benefit, the court has no jurisdiction for the reasons recorded above. Should the claim be one framed in contract, the applicant has failed to plead a claim in contract. Either way, this leg of the applicant's claim stands to be dismissed.

[5] The third claim filed by the applicant relates to payment of unpaid salary. He contends that the salary paid to him for the month of July 2019 'was short of about four days'. The applicant has not attached any value to his claim nor has he articulated any legal basis for it. He contends both that the respondent's conduct constituted an unfair labour practice and that it violated basic conditions of employment. Again, should the claim be one of an unfair labour practice the court has no jurisdiction. Insofar as the applicant contends that the respondent's conduct violates basic conditions of employment, it is not clear whether the claim is asserted in contract, or whether the applicant seeks directly to enforce the Basic Conditions of Employment Act (BCEA). The applicant does not have pleaded a claim in contract, and has simply annexed a copy of the BCEA to his affidavit. In the circumstances and in the absence of any properly pleaded claim for unpaid salary, the applicant's claim stands to be dismissed.

[6] Fourthly, the applicant claims payment for remaining outstanding leave days. He contends that when his contract was terminated, his leave days were not paid. By this, I assume the applicant refers to the value of leave accrued at the date of dismissal but not paid. Again, there is no legal basis for the claim that has been filed and the applicant contends that the failure to pay 'about 8 days' constitutes an unfair labour practice and violates basic conditions

of employment. As in the third claim referred to above, the reference is simply to an annexed copy of the BCEA. The court has no

jurisdiction in respect of any unfair labour practice claim, and it is not clear whether the applicant seeks relief in terms of a claim in contract or whether he seeks directly to enforce any provision of the BCEA. Either way, the claim is not properly articulated, nor is there any quantification of the claim. For this reason, the claim stands to be dismissed.

[7] The applicant contends that the respondent deducted an amount of 'about R 3500' when some of his leave days were paid in September 2019 and that when he enquired about this, he was advised that it was 'for an error in tax.' Again, the applicant asserts that this constituted an unfair labour practice in a violation of basic conditions of employment, and simply refers to the annexed copy of the whole of the BCEA. To the extent that the claim

is one of an unfair labour practice, this court has no jurisdiction. To the extent that the applicant asserts a breach of contract, this is not pleaded. To the extent that the claim is one in terms of the BCEA, an employer is obliged in law to make deductions for tax-related purposes. In these circumstances, the employee's consent to the deduction is not necessary. The applicant has thus failed to establish any unlawful deduction from his remuneration and this leg of his claim stands to be dismissed.

[8] The applicant contends that the respondent committed an unfair labour practice and violated basic conditions of employment by not providing him with monthly payslips throughout the suspension period. He states that he requested copies of the payslips which were email to him in or about September 2019 but that they were illegible. To the extent that

the applicant avers that the respondent has committed an unfair labour practice in this regard, for the reasons recorded above, the court has no jurisdiction to entertain the claim. To the extent that the applicant asserts a breach of the BCEA, while it is correct that an employer is required in terms of section 33 of that act to provide written information about remuneration, this is a matter that more properly falls within the jurisdiction of a labour inspector. In the absence of any claim of a breach of section 33 in the form of a breach of contract, this is not a claim enforceable in this court, at least not in the first instance.

- [9] Insofar as the applicant claims that the employer committed an unfair labour practice and violated basic conditions of employment by failing to provide them with the necessary UIF claim forms, on his own version, these were provided to him 'towards of August 2019 (sic)'. There is thus no claim. To the extent that the applicant asserts that any delay in providing him with the UIF claim forms constituted an unfair labour practice and violated the BCEA this court has no jurisdiction for reasons recorded above.
- [10] Finally, the applicant claims payment of interest on all the outstanding monies. First, the applicant has not established that he is entitled to payment of any sum at all. As I have indicated, and the jurisdictional and other difficulties aside, the applicant has failed to quantify any of his claims. In an application for default judgment, it is for the applicant to articulate clearly the basis of any claim, and the quantum claimed. Where interest is claimed, the capital amount on which that interest is claimed, and the rate of interest, must necessarily be pleaded. The applicant has failed to do either and his claim stands to be dismissed on this basis.
- [11] In summary, the applicant has failed to make out a case for any of his claims. In the premises, default judgment stands to be refused.

I make the following order:

1. The application for default judgment is refused.
2. The registrar is directed to forward a copy of this judgement to the director of the respondent.

André van Niekerk

Judge of the Labour Court of South Africa

For the applicant: self

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