

SOUTH AFRICA / JUDGMENT

Fidelity Security Services (Pty) Ltd v Bargaining Council for the Road Freight and Logistics Industry and Others (D1002/16) [2021] ZALCD 7; [2021] 9 BLLR 950 (LC) (30 June 2021)

[2021] ZALCD 7

COURT

Labour Court Durban

BEFORE

Cele

CASE / FILE NUMBER

D1002/16

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

Source record

IN

THE LABOUR COURT OF SOUTH AFRICA, DURBAN

Case

No: D1002/16

Not Reportable

In

the matter between:

FIDELITY
SECURITY SERVICES (PTY) LTD
Applicant
and
THE
BARGAINING COUNCIL FOR THE
ROAD
FREIGHT AND LOGISTICS INDUSTRY
First Respondent
SOUTH
AFRICAN TRANSPORT AND ALLIED
WORKERS
UNION
Second Respondent
THE
COMMISSION FOR CONCILIATION,
MEDIATION
AND ARBITRATION
Third Respondent
COMMISSIONER

A DEYZEL
Fourth Respondent

Heard: 24 February 2021

Delivered: 30 June 2021

Summary: Review of a determination award - SASSA contracted with CPS for an efficient cash payment system to pay social assistant grants at pay-points - Section 62 of the Labour Relations Act, 1995 applicability considered - demarcation involved with determination whether any employee, employer, class of employees or class of employers, is or was employed or engaged in a sector or area – factors to consider – whether cash transported is goods as defined – award both reasonable and correct.

JUDGMENT

CELE, J

Introduction

- [1] This is an application in terms of section 145 of the Labour Relations Act^[1] (LRA) to review and set aside an arbitration award made by the fourth respondent on 17 June 2016 against the Applicant. The application was opposed by the First and Second Respondents.
- [2] At arbitration and by agreement of the parties, including the first respondent, the material facts were placed before the fourth respondent by way of a stated case, save for some limited evidence which the second respondent adduced through two witnesses. Essentially therefore, most of the facts were common cause.

Factual

Background

- [3] I will allow myself to be guided by the summary of facts as outlined by Mr van der Westhuizen for the Applicant to whom I am therefore indebted. Various entities, such as Protea Coin Group (Asset in Transit and Armed Reaction) (Pty) Ltd, G4S Cash Solutions SA (Pty) Ltd, SBV Services (Pty) Ltd and Fidelity Asset Management are involved in transporting cash on behalf of clients from the premises of the clients, to commercial banks and/or to counting houses operated by these entities. This is generally referred to as “cash in transit” (CIT) and/or “asset in transit” (AIT) operations.
- [4] According to the Applicant it is not directly involved in the CIT and/or AIT business. It said that was because it provided security services, employing at the time of the demarcation approximately 45 000 employees. Although the entities referred to above for many years disputed that the CIT business resorted under the transportation of goods falling within the

jurisdiction of the first respondent. After negotiations, the entities and the first respondent entered into a range of agreements which culminated in it being accepted that CIT operations are part of the transportation of goods.

- [5] Although the applicant was party to both the agreement, bringing the CIT industry under the auspices of the first respondent, as well as the terms of reference which was determined for the CIT Chamber within the first respondent, the uniqueness of the services provided by the applicant to CPS (being referred to as pension services) was acknowledged during June 2012, and was reserved for further consultation between the applicant and the trade unions involved. The Applicant regards itself as existing for the sole purpose of providing a guarding service.
- [6] The payment of social grants (also known as pension services) was previously dealt with on a provincial basis, however since the implementation of the Social Assistance Act[2], it is being done on a national basis through the South African Social Security Agency (SASSA). SASSA entered into an agreement with CPS to set up and maintain an efficient cash payment system for the payment of social assistant grants at pay-points nationally, inter alia in KwaZulu-Natal. This also involves the registration of new beneficiaries and the maintenance of records in respect of existing

beneficiaries and pay-outs. The obligations of CPS are fairly broad. The Applicant said that CPS entered into a service level agreement

with the applicant to provide a protection service during the pay-out process. It is also known as a security service.

- [7] Although the service level agreement between CPS and the applicant provided for a cash processing service, the applicant in reality never provided this service. It was provided by a separate entity within the Fidelity Security Group, being Fidelity Cash Solutions (Pty) Ltd, (the FCS). It was outsourced to FCS, which is registered with the first respondent in connection with its CIT business. As part of its legislative obligations, being a private security industry service provider, and an employer, the applicant complies with the Private Security Industry Regulations Act[3], the Regulations promulgated in terms of that Act, the Sectoral Determination issued by the Minister of Labour for the private

security sector, as well as the provisions of the Basic Conditions of Employment Act[4] and the provisions of the LRA. The Applicant provides to CPS a security service comprising of the provision of security guards and security equipment used in the protection and transportation of cash on the applicant's specialised vehicles, the provision of protection services at the pay-points where social grants are paid, not only of the equipment and cash, but also of CPS staff involved in the pay-outs as well as members of the public attending at the pay-points where the payments are made.

[8] As part of providing the service to CPS the applicant at the time did transport cash used in the pay-out process from depots operated by CPS to the various pay-points and between the pay-points. During their closing submissions at arbitration, after the parties also filed written submissions, the following concessions were made by the first and second respondents:

8.1 applicant during the pay-out process provides a protection service;

8.2 apart from applicant no one else was providing a service to the pension functions of CPS; and

8.3 a determination was not required holding that all the employees of applicant involved in the pay-out process fall under the jurisdiction of the first respondent.

Issues

to be resolved

[9] The issues the fourth respondent was required to decide included the following:

9.1. whether the applicant carries cash only and whether such cash constitutes “goods” as defined in the first respondent’s Certificate of Registration;

9.2. whether the applicant provides a security service to CPS;

9.3. whether the applicant provides a transport service for hire or reward;

9.4. whether the applicant and its employees in providing the services to CPS are associated for purposes of transporting goods by road for reward; and

9.5. the sector or industry to which the applicant must be demarcated.

Commissioner’s findings

[10] The Commissioner considered submissions made and he addressed each of the issues as follows. Regarding the question whether the cash carried on the vehicles of the applicant are “goods”, the Commissioner, relying on the matter in this Court in *SBV Services (Pty) Ltd v NBCRFLI and Others*[5] concluded that the definition of “goods” as used in the first respondent’s Certificate of Registration, included cash.

[11] The Commissioner concluded that the applicant rendered a security service to CPS for which the applicant was paid.[6] That was after referring to the agreements between SASSA and CPS and CPS and the applicant and after his finding that CPS paid the applicant a fee for the provision of a protection service during the pay-out process and for the provision of security guards to CPS;

[12] The Commissioner found that the activities of the applicant also involved and included the transportation of cash for reward,[7] because transportation of cash was involved in the provision of the security service;

[13] After referring to the security function provided by the applicant and after mentioning the argument that the applicant's operations might fall within two sectors the Commissioner made the following findings:

"84. ... In the present case the transport function and the security function is so intertwined that the two functions should in my view not be regarded as separate." [8]

[14] Notwithstanding a finding that the operations of the Applicant in the context of the services it provided to CPS not being "a precise match" to the operations of other CIT companies, the Commissioner nevertheless came to the conclusion that what the applicant provided were CIT services.

[15] The Commissioner issued the determination essentially in the following terms:

"DETERMINATION

(a) Fidelity Security Services (Pty) Ltd and its employees engaged and employed in the service that it provided/provides to Cash Paymaster Services (Pty) Ltd in KwaZulu-Natal, were/are engaged and employed in

the road freight sector.

(b) The main collective agreement of the National Bargaining Council for the Road Freight and Logistics Industry was/is binding on Fidelity Security Services (Pty) Ltd and its employees engaged and employed in the service that it provided/provides to Cash Paymaster Service (Pty) Ltd in KwaZulu-Natal..."

[16] To the extent relevant here, the First Respondent's Certificate of Registration reads thus:

"For the purposes hereof, the 'transportation of goods' means the undertaking in which employers and their employees are associated for carrying out one or more of the following activities for hire or reward:

(i) The transportation of goods by means of motor transport;

(ii) the storage of goods, including the receiving, opening, unpacking,

packing, dispatching and clearing of, or accounting for of goods where these activities are ancillary or incidental to paragraph (i) hereof; and

(iii)"

Analysis

[17] Section 62 of the LRA is applicable here and it provides that demarcation is inter alia involved with a determination as to whether any employee, employer, class of employees or class of employers, is or was employed or engaged in a sector or area.[9] The following approach, as set out in *Greatex Knitwear v Viljoen*, [10] has generally been accepted to be followed in demarcation disputes:

“(a) The meaning of ‘industry’, as used in the agreement, is determined. This usually requires the interpretation of some definition appearing in the agreement. It seems that a restrictive interpretation is often applied, cutting down the scope of the general words used in the definition ...

- (b) The activities of the employer (personnel and by means of his employees) are determined.
- (c) The activities and the definition (as interpreted) are now compared. If none of the activities fall under the definition, *caedit quaestio*; if some of the activities fall under the definition, a further question arises: are they separate from or ancillary to his other activities? If they are separate he is engaged in the industry (unless these activities are a merely casual or insignificant ...); if they are ancillary to his other activities, he is not engaged in the industry (unless these ancillary activities are of such magnitude that it can fairly be said that he is engaged in the industry within the meaning of the definition).”

[18] The Commissioner correctly allowed himself to be guided by the decision in *SBV Services (Pty) Limited v NBCRFLI and Others* [11] in resolving the pertinent issues in this matter, whether “cash” constituted “goods” as defined. Applicable legal principles extracted from this case may be summarised as follows:

18.1 an incorrect interpretation of the law (where it concerns the interpretation of words or phrases in a Certificate of Registration)

will result in both an incorrect and unreasonable award and that such an award can be attacked on the basis of correctness and/or being unreasonable; [12]

18.2 money is a means of exchange and is not a commodity, and in the context of the CIT industry, when it is transported by one of the companies providing services in that industry, it retains its character as a means of exchange and is not a commodity; [13]

18.3 to determine whether money, for purposes of the definition in the first respondent’s Registration Certificate, constitute goods is dependent on the context of the matter. [14] The Labour Appeal Court after considering that *SBV Services* for many years was registered with the first respondent and considering inter alia that more than 50% of its staff was involved in the cash in transit operation concluded that in that context cash constitutes goods as defined in the first respondent’s Registration Certificate.

[19] The Commissioner concluded that “cash” transported by the applicant constituted “goods” and he found that the First Respondent had jurisdiction over the services the applicant provided to CPS. The applicant made various submissions to challenge the award including

that “cash” did not constitute goods and that the Commissioner was incorrect by making such a conclusion. Alternatively, his finding that the cash carried by the applicant’s vehicles constituted goods was unreasonable. This, it was submitted, was so for a number of reasons, including that it was common cause that the applicant was a security company and that the Applicant was providing a security solution to CPS and not a transport solution.

- [20] The Applicant assumes that the numerical superiority of activities it provided to CPS is dispositive of the enquiry. It says that the security component of the services rendered, considering that the protection services were also provided at the depot of CPS and at the pay-points (including protecting the grant beneficiaries, staff of CPS and the public), overwhelmingly exceeds any transport activity. The Commissioner did not shy away from this enquiry. He reasoned very logically when, amongst others, he said that the main service rendered by the Applicant to CPS was to facilitate the pay out of social grants. That could only be achieved by transporting cash to and from the CPS depots to pay points and back. The Applicant provided an armoured vehicle with a vault in which the cash was transported. The canisters containing the cash to be inserted in the payment machines were also transported. The Applicant also provided a driver to drive the armoured vehicle transporting the cash. The service for which CPS paid the Applicant undoubtedly included the transportation service[15]. Clearly, the Applicant had to undertake an expensive exercise in order to accommodate the transportation of cash for CPS.
- [21] The award is a clear indication of a commissioner who determined the activities of the employer (personnel and by means of his employees). He compared the activities and the definition, as interpreted and correctly found that the activities fell under the definition. He enquired whether the activities were separate from or ancillary to its other activities, namely security. He found the activities to be separate and concluded that the Applicant was engaged in the industry. The demarcation dispute concerned about 400 employees of the Applicant in providing service to its single client, CPS in KwaZulu-Natal alone. For this service, the Applicant made available 39 armoured vehicles and other vehicles to transport and safeguard the cash. No doubt this service by the Applicant to CPS was separate from its other operations.
- [22] The Commissioner correctly dealt with the issue of a company with activities that fall into two or more industries. He correctly observed that the character of an industry is determined not by the kind of occupation of the employees engaged in the employer’s business but by the nature of the enterprise in which the employees and their employer are associated for a common purpose. He concluded, correctly in my view, that, once the character of the industry is determined all the employees are engaged in that industry. In this case, because the service is rendered to CPS the Applicant and its employees are associated to provide a safe transportation service to CPS. The guarding service is clearly incidental to the transportation

service. Put differently, if you remove the transportation service, the guarding service falls away in all points or stations covered in the pension pay out.

[23] I find that the Commissioner conducted a proper enquiry in the matter. He applied his mind properly to all evidence the parties submitted to him and the decision he reached is one that a reasonable commissioner could reach. He reasoned very correctly and reached a correct decision in all essential considerations. This award should be allowed to stand.

[24] Accordingly, the following order shall issue:

Order

1. This application is dismissed.
2. There is no order as to costs.

H. Cele

Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Adv. G L van der Westhuizen

Instructed by: Crafford Attorneys.

For the First and Second Respondents: Mr Prior of Prior and Prior Attorneys.

[1] No. 66 of 1995.

[2] No. 13 of 2004.

[3] No. 56 of 2001.

[4] No. 75 of 1997.

[5]

(2016) 37 ILJ 708 (LC).

[6] Award, paras 76-80, Pleadings Bundle: pp 38-40.

[7] Award, par 80.

[8] Award, par 84.

[9] Section 62(1)(a).

[10] 1960 (3) SA 338 (T); Coin Security v CCMA

(2005) 26 ILJ 849 (LC) at 862-3. The Commissioner was very much alive to these authoritative decisions see paragraph 69 of the

award.

[11] (2018) 39 ILJ 1290 (LAC).

[12] Ibid at para 26.

[13] Id fn 11 at paras 7 and 18.

[14] Id fn 11 at para 10.

[15] See paragraph 80 of the award.

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/ZALCD/2021/7.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/fidelity-security-services-pty-ltd-v-bargaining-council-for-the-road-freight-and-logistics-industry-and-others-unknown-topic-alcd-2021--6a3ea51b3b1caa912981170e>

Prepared on 12 October 2026 · Esheria