
SOUTH AFRICA / JUDGMENT

G4S Security Solutions (Pty) Ltd v Mahlaule NO and Others (JR894/2011) [2014] ZALCJHB 376 (3 October 2014) [2014] ZALCJHB 376

COURT

Labour Court Johannesburg

BEFORE

O Mooki

CASE / FILE NUMBER

JR894/2011

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REPUBLIC OF SOUTH AFRICA

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not reportable

Case No: JR 894/2011

In the matter between:

G4S SECURITY SOLUTIONS (PTY) LTD

Applicant

and

MUHLURI MAHLAULE N.O.

First Respondent

COMMISSION FOR CONCILILATION MEDIATION

Second Respondent

AND ARBITRATION

MALESELA RASBECK LEDWABA

Third Respondent

Heard: 7 August 2014

Delivered: 3 October 2014

Summary: review application – no basis to disturb the award

MOOKI, AJ

- [1] The applicant seeks to review and set aside an award in which the first respondent obliged the applicant to pay the third respondent severance pay in the amount of R23 519.63.
- [2] The applicant seeks to review the award on two primary grounds. First, that the first respondent was wrong in not finding that the third respondent had resigned. Secondly, that the third respondent refused alternative employment. The applicant contends that both considerations disentitle the third respondent from any severance pay.
- [3] The applicant lost its contract with South African Breweries, which awarded the contract to Protea Coin Security. South African Breweries advised the applicant that the contract would terminate on 31 August 2010. The applicant and the union then embarked on a section 189 exercise following the announcement. Employees, including the third respondent were, informed that their employment with the applicant would terminate on 17 September 2010.
- [4] The third respondent, together with a number of employees, signed resignation letters on 19 August
- 2010. He signed the letter following a meeting attended by officials from the applicant, other employees, and officials from Protea Coin Security.
- [5] The resignation letters were prepared beforehand, and bore the letterhead of the applicant. The letter recorded that the third respondent's last working day (and the last working day of other employees who signed a similar letter) would be 31st of August
- 2010. This differed from the applicant's termination notice that recorded that the last working day was 17 September 2010.
- [6] The third respondent referred a dispute concerning severance pay to the CCMA. The applicant had refused to pay the third respondent severance pay. The third respondent admitted signing the letter. He gave evidence during the arbitration that it was explained to him and to other employees that Protea Coin Security would employ them only on the signing of the letter.
- [7] The applicant gave evidence that it was not obliged to pay the third respondent severance pay because the third respondent had resigned. It was contended on behalf of the applicant that the third respondent was, in any event, offered an alternative position in Witbank and Mpumalanga and that he refused the offer.
- [8] The first respondent made a number of findings on the evidence. This included that the applicant gave employees, including the third respondent, no choice but to resign with the intention to deprive employees of their severance benefits. He found this to be grossly unfair. The first respondent also found that the third respondent could not be blamed for

signing the resignation letter because he was a breadwinner and that the third respondent had been assured that he would not forgo his benefits. The third respondent worked for the applicant for 19 years.

- [9] The applicant challenged the findings by the first respondent on a number of bases. This included that the resignation was a "new act" which changed the termination of employment from a retrenchment process to a resignation. It was submitted that the applicant's signing of the resignation letter was a novus actus intervenius. It was also submitted that the applicant had, in any event, provided the third respondent with a reasonable alternative which the third respondent refused.
- [10] It was further submitted on behalf of the applicant that the third respondent was unreasonable in rejecting alternative employment and that he forfeited severance pay on that account. The third respondent denies that he was offered alternative employment. He agreed, as stated above, signing the resignation letter to take up employment with Protea Coin Security and that this was on the bases as set out above.
- [11] I do not consider the award to be unreasonable. It cannot be said that the award is so unreasonable that no other decision-maker could not have come to the same

conclusion.

- [12] The first respondent was not persuaded that the resignation letter signed by the third respondent was genuine. The resignation letter bears the letterhead of the applicant. The applicant produced the letter which the third respondent and other employees then signed at a mass meeting. The third respondent merely signed the letter. First respondent found that the resignation letter was meant to deprive employees such as the third respondent their severance benefits. He highlighted that the applicant had been employed for 19 years. He found it grossly unfair on the third respondent given the third respondent's long period of service with the applicant.
- [13] The third respondent sought condonation for the late filing of his answering affidavit. I consider that it is in the interests of justice that the delay be condoned.
- [14] I make the following order:
- 14.1 The review application is dismissed.
- 14.2 The applicant is ordered to pay costs.

O Mooki

Judge of the Labour Court (Acting)

Appearances:

Applicant: W Hutchinson

Instructed by: Moodie & Robertson Inc.

Third Respondent: D Wittington

Instructed by: Ismal & Dahya Attorneys

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Prepared on 10 October 2026 · Esheria