

SOUTH AFRICA / JUDGMENT

Gomes v AMS Global South African (Pty) Ltd (C759/2018) [2020] ZALCCT 27 (21 October 2020)

[2020] ZALCCT 27

COURT

Labour Court Cape Town

BEFORE

Lagrange

CASE / FILE NUMBER

C759/2018

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Source record

THE
LABOUR COURT OF SOUTH AFRICA,
HELD
AT CAPE TOWN
Not
reportable
Case
no:C759/2018
In

the matter between:

FERNANDO
AVELILNO GOMES
Applicant
and
AMS
GLOBAL SOUTH AFRICAN (PTY) LTD
Respondent
Date
of Judgment: This judgment was
handed down electronically by circulation to the parties' legal
representatives by email, publication on the Labour
Court website and
release to SAFLII. The date and time for handing down judgment is
deemed to be 14h00 on 21 October 2020

Summary:

(Default judgment - contractual
claim)

JUDGMENT

LAGRANGE J

Introduction

- [1] This default judgment application was postponed sine die on 6 March 2020, owing to the applicant's illness. It was previously struck off the roll on 29 October 2019 for lack of proper service on the respondent. Various requirements were laid down for the applicant, Mr FA Gomes ('Gomes'), to meet before it could be re-enrolled. These requirements concerned his employment dates, remuneration and status as an employee or director of various entities in the AMS group, and proof of his remuneration and any relevant contracts of employment. A subsequent directive required the applicant to quantify his claim with reference to the prevailing exchange rate when he claimed various payments were not made.
- [2] Once the directives were complied with, the matter being unopposed, it was decided in chambers.

Claim

- [3] Gomes is claiming the shortfall in his salary payments by the respondent since February 2016 until he resigned. His services terminated at the end of July 2017. On the evidence provided, I am satisfied that he was short paid remuneration due and owing to him by the respondent from February 2016 until the end of July 2017 in the amounts set out in Annexure "A" to this judgment.
- [4] He also claims outstanding leave pay of 30 days and severance pay. As Gomes resigned there is no severance pay due to him and he has not provided any proof that he was entitled to a full month's leave pay. He also provided no proof of the last time he was paid leave or when his annual leave cycle began in terms of s 20 of the Basic Conditions of Employment Act 75 of 1997.
- [5] His remuneration was paid in US dollars and accordingly, what he should have received each month in rands would have been determined by the prevailing exchange rate at the end of each month.

Order

- [1] The Respondent is liable to the Applicant for his unpaid remuneration for the months and in the amounts set out in Schedule "A" attached hereto.
- [2] Within 14 days of receipt of this judgment, the respondent must pay the applicant:
- 2.1 his unpaid remuneration for the period February 2016 until July 2017 as detailed in Annexure "A" hereto, amounting in total to R1,197,268,00 (One million, one hundred and ninety-seven thousand and two- hundred and sixty-eight rands), and

2.2 Interest accrued on the unpaid remuneration due at the end of each month listed in Annexure "A", calculated at the prescribed rate of interest as determined from time to time under section 1(2)(b) of the Prescribed Rate of Interest Act, 55 of 1975.

[3] No order is made as to costs.

Lagrange J

Judge of the Labour Court of South Africa

For the Applicant:

In person

For the Third Respondent:

No appearance

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