

SOUTH AFRICA / JUDGMENT

Harrisawak v La Farge (South Africa)

(D353/2000) [2001] ZALC 35; [2001] 6 BLLR 614 (LC); (2001) 22 ILJ 1395 (LC) (1 March 2001)
[2001] ZALC 35

COURT
Labour Court

BEFORE
Pillay

CASE / FILE NUMBER
D353/2000

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- JUDGMENT

CASE NO : D353/2000 Revised/Reportable

DATE : 1 March 2001

RAMLALL HARRISAWAK versus LA FARGE (SOUTH AFRICA)

JUDGMENT

PILLAY J

- [1] This is an application in terms of section 158(1)(c) of the Labour Relations Act No 66 of 1995, (the "LRA") to have an oral settlement agreement made an order of court. There are substantial disputes of fact. However, the parties are agreed that the points raised in limine can be dealt with on the facts that are either common cause or on the basis of the applicant's case.
- [2] The first point in limine is that the settlement agreement was not entered into under the auspices of the Commission for Conciliation, Mediation and Arbitration (CCMA). Hence, it was submitted, the Court does not have jurisdiction.
- [3] It is common cause that the applicant had referred his dismissal dispute to the CCMA for conciliation which was unsuccessful.
- [4] Before arbitration, the parties entered into a settlement. The terms of the settlement on the applicant's version was that the applicant would be employed on a twelve-month fixed term contract. The settlement occurred without the direct intervention of the CCMA. In the circumstances, Mr Lawrence submitted for the respondent, it was a private agreement not

determined by the CCMA at conciliation or arbitration and should therefore be enforced in the civil courts as the cause of action arose from the agreement itself and not from the employer/ employee relationship. (Du Toit et al, 3rd edition, at page 582.) Support for this view cannot be found in section 158(1)(c) which reads:

"The Labour Court may make any arbitration award or any settlement agreement other than a collective agreement an order of court."

- [5] The interpretation that Mr Lawrence seeks to place on section 158(1)(c) is restrictive and not justified by the use of the words "any" before the word "settlement" in the section. Furthermore, the settlement agreement relates to the employment relationship. The stated purpose of the LRA is to provide effective dispute resolution in labour disputes. That includes the provision of services by personnel competent and qualified to resolve labour disputes. Moreover, the dispute at the time the settlement agreement was entered into was pending as an arbitration before the CCMA.
- [6] In the circumstances, the Court has jurisdiction to hear a dispute relating to the enforcement of the settlement agreement about an employment dispute concluded without the direct intervention of the CCMA.
- [7] As a result of the settlement agreement, the applicant tendered his services which were accepted. Thereafter, the contract of employment was terminated. The facts that led to the termination of the contract are in dispute. Mr McGregor conceded that it was immaterial who was responsible for the subsequent breach of the agreement for the purposes of determining the second point in limine.
- [8] The second point in limine was that the application falls to be dismissed as, on the applicant's version, he tendered his services which were accepted; what occurred thereafter was a new cause of action.
- [9] On this ground I find in favour of the respondent. In the circumstances the application is dismissed.
- [10] The Court has considered the submissions relating to costs. The points raised in limine are novel. The applicant was bona fide in bringing this application. In the circumstances, there is no order as to costs.

JUDGE PILLAY

IN THE LABOUR COURT OF SOUTH AFRICA Revised/Reportable HELD AT DURBAN Case No D353/2000 In the matter between: RAMLALL HARRISAWAK Applicant and LA FARGE (SOUTH AFRICA) Respondent PRESIDING OFFICER JUDGE PILLAY FOR APPLICANT MR MacGREGOR Deney's Reitz Inc FOR RESPONDENT MR LAWRENCE Garlicke & Bousfield Inc

JUDGMENT

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IN THE LABOUR COURT OF SOUTH AFRICA Revised/Reportable

HELD AT DURBAN Case No D353/2000

In the matter between:

RAMLALL HARRISAWAK Applicant

and

LA FARGE (SOUTH AFRICA) Respondent

PRESIDING OFFICER JUDGE PILLAY

FOR APPLICANT MR MacGREGOR

Deney's Reitz Inc

FOR RESPONDENT MR LAWRENCE

Garlicke & Bousfield Inc

JUDGMENT

1 MARCH 2001

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