

SOUTH AFRICA / JUDGMENT

IMATU obo Members v City of Tshwane Metropolitan Municipality (J2769/2016) [2018] ZALCJHB 254 (3 May 2018) [2018] ZALCJHB 254

COURT

Labour Court Johannesburg

BEFORE

Steenkamp

CASE / FILE NUMBER

J2769/2016

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IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT JOHANNESBURG

CASE NO: J2769/2016

DATE: 2018-05-03

In the matter between

IMATU obo MEMBERS

Applicant

and

CITY OF TSHHWANE METROPOLITAN MUNICIPALITY Respondent

J U D G M E N T

STEENKAMP, J: This is an application to make a variation ruling of the South African Local Government Bargaining Council an order of court. It is brought in terms of Section 158(1)(c) of the Labour Relations Act.

The brief history to the matter is that the applicant, IMATU, referred a dispute to the South African Local Government Bargaining Council asking that the employer's unfair conduct relating to benefits by unilaterally terminating a longstanding practice or right of granting employees special leave for the closure of the municipal offices during the festive season be declared an unfair labour practice.

Conciliation failed. The union referred the dispute to arbitration and the union was successful at arbitration. The relief that the union sought at arbitration was “reinstatement of special leave during festive season.”

The arbitrator, TM Graham, found in favour of the union and declared that the City had committed an unfair labour practice. He or she then ordered the City “not to interrupt the applicant’s members’ existing leave rights and credits”. The union felt that this ancillary leave did not specify in detail what the City was required to do and it brought an application to vary the award. That application was unopposed.

Mr Graham granted the variation ruling on 26 September 2016 and made the following ruling,

“1. That the respondent (City of Tshwane Metropolitan Municipality) be directed to reinstate the applicant’s members’ special leave days during the festive period.

2. That the employees be credited with the leave days that were deducted during the festive season during 2014 and 2015 respectively.
3. The respondent is directed to communicate its implementation of this ruling to the applicant’s members within 14 days of receipt of this ruling and no later than 15th of October 2016.”

The third part of the order is not relevant to this application and is not disputed. It also appears from the City’s answering papers in this application and conceded by IMATU that the City has complied with the order in 6.2 i.e. that it has credited the employees with the leave days that were deducted in 2014 and 2015. However, the union says that the City has not complied with the ruling in 6.1, namely that the City was directed to reinstate the special leave days during the festive period.

The City says in its answering affidavit that the reason for that is that the City’s offices now remain open during the festive season and are not closed. That however does not detract from the plain wording of the ruling. The ruling is quite simply that the City must reinstate the applicant’s members’ special leave days during the festive period. That ruling stands and the City has not taken it on review.

Mr Seshoka, who appeared for the City this morning, had nothing to add as he conceded that he had not prepared argument as he simply assumed that the matter would be postponed because the City’s initial counsel of choice inexplicably was not available this morning, even though the matter had been set down for hearing 10 months ago with both the City’s counsel in attendance.

Only after Mr De Beer had started arguing did Mr Seshoka hand up a set of heads of argument, unsigned but apparently prepared by the City’s junior

counsel, M Gwala.

It appears that the City intended to argue that the leave days have been credited to the employees and special leave was restored for 2014 and

2015. Therefore, Mr Gwala says -- and I take his heads into account even though he is not appearing and he did not file the heads in time -- he argues that the arbitration award has been complied with. But that is clearly not so. Only the second part of the arbitration award has been complied with and not the first part compelling the City to reinstate the IMATU members' special leave. In those circumstances the union has made out a case for the relief it seeks.

With regard to costs I take into account that IMATU represents itself and has not incurred any legal costs. A costs order is not appropriate in those circumstances.

I order that the variation ruling dated 26 September 2016 by South African Local Government Bargaining Council under case number

PMD111415 is made an order of court.

STEENKAMP J

APPEARANCES

APPLICANT: S T Seshoka

Instructed by Malebye Motaung Mthembu Inc.

RESPONDENT: P de Beer of IMATU.

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