

SOUTH AFRICA / JUDGMENT

Laubscher v GPSSBC and Others (J290/16) [2018] ZALCJHB 44 (5 February 2018)

[2018] ZALCJHB 44

COURT

Labour Court Johannesburg

BEFORE

F. Coetzee

CASE / FILE NUMBER

J290/16

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IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Not of interest to other judges

Case no: J2906/16

In the matter between:

LAUBSCHER AJ

Applicant

and

GPSSBC DEPARTMENT OF INTERNATIONAL RELATIONS AND CO-OPERATION (DIRCO) MJ
SIAYHE N.O. First Respondent Second Respondent Third respondent

Heard: 6 June 2017

Delivered: 6 June 2017

Date of Reasons: 5 February 2018

Summary: Application to declare disciplinary proceedings invalid

JUDGMENT-REASONS FOR ORDER

COETZEE. AJ

Introduction

- [1] The applicant applied to Court for certain relief and the matter serves before Court on the unopposed motion role.
- [2] The matter was heard on 6 June 2017 when an order was made. I record on the court file that ex-tempore reasons were given. The audio recording however shows that an order was made but that no reasons were provided at the time.
- [3] The applicant has requested the reasons for the ex-tempore judgement. These are the reasons.

The

Facts

- [4] The applicant is employed by the second respondent.
- [5] The applicant was under about 6 September 2016 charged with seven charges relating to offences allegedly committed over the period October 2014 to July 2015. It was in the main alleged that the applicant approved and authorised medical expenses.
- [6] The parties agreed to a pre-dismissal enquiry under the auspices of the second respondent (the GPSSBC).
- [7] The first attempt to hold the enquiry was on 6 October 2016. The parties by agreement postponed the disciplinary hearing to prepare properly for such a hearing.
- [8] The GPSSBC informed the parties that the disciplinary proceedings would be enrolled for hearing on 27 February 2017.
- [9] A pre-arbitration meeting was held on 10 February 2017. The employer made promises to furnish documents and information. None of those promises were kept.
- [10] At the pre-arbitration hearing, the parties agreed to postpone the disciplinary hearing set down for 27 February 2017.
- [11] The GPSSBC informed the parties that the disciplinary proceedings were enrolled for 10 May 2017.
- [12] The proceedings culminated in a notice dated 28 March 2017 in which the employer withdrew all charges against the employee. A notice contained an incorrect case number and upon a request from the applicant a further notice was served on 30 March 2017 withdrawing

all the charges against the applicant. The state attorney acting for the employer on the same date withdrew as attorney of record.

- [13] The applicant submits that the employer took so long to commence with disciplinary proceedings that the employer has waived its right to do so.
- [14] The provisions of the Disciplinary Code and Procedure for the Public Service (Resolution 1 of 2003) find application to disciplinary proceedings instituted by DIRCO.
- [15] Clause 2.2 of Resolution 1 of 2003 provides that discipline must be applied in a prompt, fair, consistent and progressive manner

and in terms of Clause 7.3 (a) the disciplinary hearing must be held within 10 working days after the disciplinary notice is delivered to the employee.

- [16] It is undisputed that the employer took disciplinary action only during September 2016 in respect of offences allegedly committed

over the period October 2014 to July 2015. In addition, the disciplinary hearing was not conducted or commenced with within 10

working days of the notification.

- [17] The disciplinary proceedings contemplated by the employer were unbalanced for non-compliance with the Resolution.
- [18] The applicant has no undertaking from his employer that the disciplinary process would not be resurrected. The applicant fears that the employer may in fact resurrect the disciplinary proceedings.
- [19] The applicant has amended his notice of motion to declare the disciplinary proceedings invalid and to interdict the second respondent from proceeding with any disciplinary action during the period when the alleged misconduct occurred.
- [20] The applicant has made out a case for the relief sought. The applicant has an apprehension that the employer may again resurrect

the disciplinary charges. Those disciplinary proceedings would be in breach of the Resolution.

Costs

- [21] I have considered costs: The applicant commenced with an application to compel the second respondent to provide information and documents. The second respondent made promises which it did not keep and eventually withdrew all allegations of misconduct. The applicant then pursued an interdict to ensure that the charges would not be resurrected.
- [22] I have regard to the fact that the second respondent did not oppose the relief sought. The second respondent precipitated an application by the applicant. The parties are still in an employment relationship. Having regard to these factors I am not inclined to exercise my discretion in favour of a cost order in an unopposed application of this nature.
- [23] I make the following order:

Order

1. The disciplinary proceedings against the applicant by the second respondent under the auspices of the first respondent are declared invalid.
2. The second respondent is interdicted from proceeding with any disciplinary action against the applicant in respect of the premises that applicant was stationed at the Republic of South Africa's Permanent Mission at the United Nations in New York.
3. There is no order as to costs.

F. Coetzee

Acting Judge of the Labour Court of South Africa

Appearances

For the applicant:

Advocate Riaan Grundlingh

Instructed by:

Gildenhuis Malatji Inc.

For the Respondents: No appearance (unopposed)

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