

SOUTH AFRICA / JUDGMENT

Polifin Ltd v Sibeko N.O and Another (J1569/98) [1998]

ZALC 93 (29 October 1998)

[1998] ZALC 93

COURT

Labour Court

BEFORE

A A Landman

CASE / FILE NUMBER

J1569/98

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IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT JOHANNESBURG

Case Number: J1569/98

In the matter between

Polifin Ltd Applicant

and

Z Sibeko NO 1st Respondent

A M Yacoob 2nd Respondent

JUDGMENT

LANDMAN J

Polifin Ltd employed Mr Ahmed Yacoob, the second respondent, as a chemist and, for reasons that are not presently material but which relate to his health, decided to terminate his services. Mr Yacoob was dissatisfied with this and referred a dispute to the CCMA.

Mr Sibeko, a Commissioner, arbitrated the dispute and made an award which reads as follows:

- (a) Polifin did not act unfairly both procedurally and substantively, when terminating the services of Mr Yacoob - it did what it reasonably could under the circumstances; (b) Should any vacancy arise in the company Mr Yacoob should be re-employed and be given preference, this is because I took account of the report by Dr Renderee dated 30/05/97. Thereafter, Mr Yacoob approached the High Court to review the award. This application was

withdrawn and a further application was brought in this court, under Case Number J444/98. An order was apparently granted to the effect that Mr Yacoob should be heard before the award was amended by the Commissioner. I presume that he was in fact heard and that some amendment was made. The matter is now back in this court.

- (a) Polifin did not act unfairly both procedurally and substantively, when terminating the services of Mr Yacoob - it did what it reasonably could under the circumstances;
- (b) Should any vacancy arise in the company Mr Yacoob should be re-employed and be given preference, this is because I took account of the report by Dr Renderee dated 30/05/97.

Thereafter, Mr Yacoob approached the High Court to review the award. This application was withdrawn and a further application was brought in this court, under Case Number J444/98. An order was apparently granted to the effect that Mr Yacoob should be heard before the award was amended by the Commissioner. I presume that he was in fact heard and that some amendment was made. The matter is now back in this court.

Polifin have filed an application asking that paragraph (b) of the award dated 8 September 1997 be set aside. Miss Naidoo, who appeared on behalf of Mr Yacoob, has submitted that the present application is out of time. The present application is brought in terms of section 145 of the Labour Relations Act 66 of 1995 ("the Act") and it must therefore be brought within six weeks of the date of the award unless condonation has been granted. In this particular case, having regard to the particular circumstances, I am satisfied that the application is brought within time. If it is not within time, I condone the late application. This brings me to the merits. This dispute was about an alleged unfair dismissal. It was found by the Commissioner, and this is common cause, that the dismissal was fair. Notwithstanding this finding, the Commissioner went on to order that re-employment take place if a position were to become available. In my opinion that was not a course of action available to the Commissioner. Section 193 of the Act, which deals with remedies for unfair dismissal, permits an order for re-employment on a finding that the dismissal is unfair. Where a Commissioner comes to the conclusion that the dismissal is fair, that is the end of the matter. The Commissioner has no power to order re-employment.

Polifin have filed an application asking that paragraph (b) of the award dated 8 September 1997 be set aside. Miss Naidoo, who appeared on behalf of Mr Yacoob, has submitted that the present application is out of time. The present application is brought in terms of section 145 of the Labour Relations Act 66 of 1995 ("the Act") and it must therefore be brought within six weeks of the date of the award unless condonation has been granted. In this particular case, having regard to the particular circumstances, I am satisfied that the application is brought within time. If it is not within time, I condone the late application.

This brings me to the merits.

This dispute was about an alleged unfair dismissal. It was found by the Commissioner, and this is common cause, that the dismissal was fair. Notwithstanding this finding, the Commissioner went on to order that re-employment take place if a position were to become available. In my opinion

that was not a course of action available to the Commissioner. Section 193 of the Act, which deals with remedies for unfair dismissal, permits an order for re-employment on a finding that the dismissal is unfair. Where a Commissioner comes to the conclusion that the dismissal is fair, that is the end of the matter. The Commissioner has no power to order re-employment.

In the premises, I am satisfied that the award made by the first respondent was in excess of his powers and consequently I grant an order setting aside paragraph (b) of the first respondent's award of 8 September 1997, and order that the costs of this application be paid by the second respondent. A A LANDMAN Judge of the Labour Court DATE OF HEARING: 29 October 1998 DATE OF JUDGMENT: 29 October 1998 For the applicant: Ms Naidoo of Fourie, Stockenström & Fisser Inc For the respondent: Zehir Omar Attorney

In the premises, I am satisfied that the award made by the first respondent was in excess of his powers and consequently I grant an order setting aside paragraph (b) of the first respondent's award of 8 September 1997, and order that the costs of this application be paid by the second respondent.

A A LANDMAN

Judge of the Labour Court

DATE OF HEARING: 29 October 1998

DATE OF JUDGMENT: 29 October 1998

For the applicant: Ms Naidoo of Fourie, Stockenström & Fisser Inc

For the respondent: Zehir Omar Attorney

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