

SOUTH AFRICA / JUDGMENT

POPCRU obo Thebe v Department of Transport, Safety and Liason (C510/17)

[2019] ZALCCT 29 (11 October 2019)

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COURT
Labour Court Cape Town

BEFORE
Rabkin-Naicker

CASE / FILE NUMBER
C510/17

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IN THE LABOUR COURT OF SOUTH
AFRICA, CAPE TOWN
Not Reportable
Case no: C510/17

In the matter between: POPCRU obo TSHEPO MAXWELL
THEBE Applicant
and
DEPARTMENT OF TRANSPORT,
SAFETY
AND LIASON
Respondent
Date
heard: 31 July 2019

Delivered: 11 October 2019

JUDGMENT

RABKIN-NAICKER, J

[1] This is an opposed application to make an arbitration award an order of court. The award made on the 23 August 2015 under case number GPBC 2706/2014 reads as follows:

“AWARD

- [27] The respondent is ordered to reinstate the applicant to his former position he held prior to this dismissal by no later than 01st October 2015.
- [28] The respondent is also ordered to pay the applicant back pay amounting to R94, 503.97 (ninety four thousand, five hundred and three rand, ninety seven cents only) calculated at R8 591. 27 per month multiplied by eleven months.
- [29] The above amount must be paid into the applicant's bank account known to the respondent by no later than 30 September 2015.
- [30] There is no order as to costs."
- [2] It is common cause that the monetary compensation has not been paid by the respondent. The deponent to the answering affidavit, a Mr. L.E.L. Wolfe who was acting Head of Department at the material time avers, inter alia, as follows:

"During my tenure as Acting Head of Department, there was a directive by the then Honourable MEC Bartlett to look into all disputes and cases involving the Department with a view to amicably resolving them. I identified the Applicant's matter to be amongst those referred to by the then Honourable MEC Bartlett and I tabled it for discussions and deliberations.

I instigated discussions with the Applicant. I invited the Applicant to settlement negotiations in an attempt to resolve the matter. I cautioned him of the fact that his reinstatement is on contract basis and will terminate due to effluxion of time. As a result, I proposed to the Applicant that instead of paying him the amount as stipulated in the Arbitration award, in the alternative the Department shall absorb him permanently as Administrative Officer Level (7) on lieu of paying R94 503. 97 (ninety four thousand, five hundred and three rand, ninety seven cents) calculated at R8 591.27 (eight thousand five hundred and ninety one rand, twenty seven cents) per month multiplied by 11 months, in terms of the arbitration award.)"

- [3] The basis for opposing the application to make the award an order of court is that the applicant employee (Thebe), accepted the 'offer' and was then "elevated/ promoted" from Administrative

Clerk on Level 5, a contract position to Administrative Officer on level 7 on a permanent basis as from the 1 September 2015. What is telling in the answering affidavit is the following averment:

"The basis for elevating the Applicant from level five (5) to level (7) is that all Administration Officers who are field workers at Regional Office are appointed on level (7)."

- [4] The answering papers further aver that Thebe was appointed at level 7 as part of a policy to appoint affected contract employees in permanent positions in accordance with the provisions as set out in the Labour Relations Amendment Act 2014. There is also a Progress Report annexed to the answering affidavit dated September 15 2015 prepared by Mr Wolfe for the MEC: Transport and Liason which records inter alia that:

“Mr Thebe was reinstated and permanently appointed as per agreement between him and the Department.”

- [5] In his replying affidavit, Thebe denies any meeting with Wolfe to discuss a settlement of his dispute. He further avers that he was on level 2 not level 5 before he was permanently appointed and annexes a salary advice indicating same. The advice reflects that his gross salary at level 2 was R8991.27. This would amount to annual remuneration in the region of R107 895,24. His gross salary reflected in his letter of appointment dated the 1 September 2015 is R196 278 per annum. In other words, the salary increase that Thebe received was in the region of R88 384.00 on appointment to a level 7 position as a permanent employee.
- [6] A further averment by Thebe in reply is that it is highly improbable he would have entered into a settlement agreement: “having been made aware that I was going to be employed permanently”. He refers to his knowledge of same by attaching a document dated August 11 2015. A table contained in the document, (which seeks approval for this policy) reflects that Thebe had been employed for more than 5 years. He was one of ten employees listed in the document. His permanent appointment was effected as from the 1 September 2015.
- [7] The arbitration award ordered reinstatement of Thebe to his former position. This on Thebe’s own version was a level 2 position. What happened in fact was that he was appointed to a level 7 position on an explicitly permanent basis with a substantially higher salary and was not paid the back pay owing to him. That back pay amounted to some six thousand more than his gross salary increase on his appointment to level 7.
- [8] In my view, the factual position reflected in the paragraph above is consonant with an agreement of settlement having been made as averred in the answering papers. The agreement, given Thebe’s own version regarding his previous grade 2 level, was clearly beneficial to him. I cannot adjudge whether Wolfe was aware that Thebe was on a Grade 2 and was mistaken in averring that he was on a Grade 5, thus incorrectly setting out the terms of the settlement agreement.

However, applying the principles of Plascon Evans to this application for final relief, I accept on the respondent’s version that there was a settlement agreement in the wake of the arbitration award. I further take note that de facto its terms benefited Thebe.

- [9] In all the above circumstances, I decline to make the said award an order of Court on the basis that it has been superseded by a settlement agreement. I order as follows, noting that neither party has been covered in glory given the manner in which this matter was pleaded.

Order

The application is dismissed with no order as to costs

H. Rabkin-Naicker

Judge of the Labour Court

Appearances:

Applicant: CM de Bruyn and Partners

Respondent: State Attorney Kimberley

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