

SOUTH AFRICA / JUDGMENT

Sasol South Africa (Pty) Ltd v Nkosi and Another (J1085/16) [2018] ZALCJHB 275 (24 August 2018) [2018] ZALCJHB 275

COURT

Labour Court Johannesburg

BEFORE

Sedile

CASE / FILE NUMBER

J1085/16

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IN

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not

Reportable

Case

no: J1085/16

In

the matter between:

SASOL
SOUTH AFRICA (PTY)
LTD Applicant
And
GODFREY
JABULANI
NKOSI First
Respondent
NATIONAL
BARGAINING COUNCIL
FOR
THE CHEMICAL
INDUSTRY Second
Respondent

Heard:

17 July 2018

Delivered:

24 August 2018

Summary: The applicant seeks to have this court to set aside a subpoena that was issued by the General Secretary of the second respondent at the request of the first respondent, without having first raised its objections regarding the subpoena before a Commissioner appointed to arbitrate the dispute between the parties.

JUDGMENT

SEDILE, AJ

Brief

background

[1] During the year 2015, the first respondent referred an unfair labour practice dispute to the second respondent. The first respondent's

dispute revolved around the procedure in which the applicant conducted his performance appraisal in connection with the 2015 financial year, and the resultant bonus that was issued to him by the applicant for that financial year.

[2] The parties failed to resolve the matter at conciliation and subsequently the dispute went for arbitration.

[3] During May 2016, in an effort to prove his case at the arbitration, the first respondent requested the second respondent to issue a subpoena for the production of certain documents relating to the performance appraisals of the three following employees, namely:

3.1 Mr F R Baloyi;

3.2 Mr Ashby Neshunzi; and

3.3 Mr R L Rametsi.

[4] The reasons for the requested subpoena were set out in the first respondent's written motivation, in which the first respondent

sought to prove that the matter in which he was assessed was unfair when compared to other employees of the applicant who perform the same or similar duties.

[5] The first respondent stated in his motivation that his intention was not to know the salaries of the three employees listed. He further stated that the commissioner hearing the matter could view the documents privately in order to enable him or her to compare the manner in which the first respondent was rated and the manner in which the other employees were rated, in the process of determining whether the first respondent was treated fairly.

- [6] The subpoena was issued on 24 May 2016 and served on the applicant thereafter. The applicant then launched this application during June
2016. The pleadings regarding that application were finalised during August 2016 when the applicant filed its replying affidavit. Thereafter, and for a period of 8 months, no action was taken by the applicant to ensure that its application was set down.
- [7] The arbitration was scheduled for 29 August 2016, but on that date the commissioner acceded to the applicant's request for postponement pending the outcome of this matter, despite the first respondent's opposition.

Submissions

by the parties

- [8] The first respondent contends that the applicant is not entitled to the relief sought and that this application should be dismissed
- because of the undue delay in prosecuting this matter.
- [9] The applicant submits that this court has the jurisdiction to set aside a subpoena issued by the second respondent in terms of section 142(11)[1] of the Labour Relations Act[2] (LRA) and that the applicant was correct in approaching this court to set aside the subpoena.

Analysis

of the review application

- [10] The arbitration proceedings between the parties remain incomplete and the disputes between the parties remain unresolved. The labour dispute resolution mechanism in terms of the LRA has to be finalised before parties can approach the Labour Court unless there is a justifiable reason to do so.
- [11] It is important for the parties in their labour disputes to expeditiously resolve the dispute in question as a whole within the speed it deserves and not on a piecemeal approach.
- [12] The commissioner in this case had powers to issue a subpoena in order to attempt to resolve this dispute in terms of section 142(1)(b) which reads as follows:
- “(b) to any person who is believed to have possession or control of any book, document or object relevant to the resolution of the dispute, to appeal before the commissioner to be questioned or to produce that book, document or object...”*
- [13] The first respondent's dispute has been delayed due to an incomplete arbitration proceeding and that the applicant could have approached the commissioner during the proceedings with its objections regarding the subpoena before approaching this court.

Conclusion

[14] The subpoena issued by the second respondent at the request of the first respondent is upheld.

[15] In the premises the following order is made:

Order

1. The application is dismissed with costs;
2. The matter is referred back for the arbitration proceedings to be completed.

P. Sedile

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: D.O Pretorius of Fluxmans Incorporated

For the first Respondent: V. Mkwibiso of VGN Attorneys

[1]

142. Powers of commissioner when attempting to resolve disputes –

(11) The Labour Court may confirm, vary or set aside the finding of a commissioner.

[2] 66 of 1995, as amended.

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