

SOUTH AFRICA / JUDGMENT

Shimange v Bonital Medical Fund and Others (J2987/99) [2000] ZALC 53 (26 June 2000) [2000] ZALC 53

COURT
Labour Court

BEFORE
Landman

CASE / FILE NUMBER
J2987/99

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IN THE LABOUR
COURT OF SOUTH AFRICA
HELD AT
JOHANNESBURG
CASE NO: J
2987/99
In the matter

between:

EDWIN
SHIMANGE Applicant
and
BONITAS MEDICAL
FUND 1st Respondent
COUNCIL OF
BONITAS MEDICAL FUND 2nd Respondent
PROVINCIAL
COMMITTEE OF THE
NORTHERN
PROVINCE 3rd Respondent

JUDGMENT

LANDMAN J

Mr Edwin Shimange has filed an application to review and set aside a decision of the Bonitas medical Fund. He has also cited the Council and the Provincial Committee of the Northern Province of the Fund. I will refer to the respondents as the Fund.

The Fund has not filed an answering affidavit. Instead it has, with leave of this court, filed a notice of exception. The first ground of the exception may be disposed of on a simple basis. The exception taken was that there was no employment relationship between Mr Shimange and the Fund. Mr Van Jaarsveld sought to convince me that the allegations made in the application were incorrect. This he may not do. This is appropriate where a special plea is lodged. For purposes of an exception I must accept the pleader's version of the facts. The affidavit alleges and provides facts stating that there was an employment relationship. The first leg of the exception must be dismissed.

Although the application does not state in terms of which law the review is brought, Mr Moshwana's head of argument, filed for the applicant, relies on s 158(1)(g) of the LRA. The second leg of the exception is that the act in question is the dismissal of the applicant is not susceptible to review in terms of s 158(1)(g) of the Labour Relations Act 66 of 1995. This section provides: The Labour Court may - ... despite s 145, review the performance or purported performance of any function provided for in this Act or any act or omission of any person or body in terms of this Act on any grounds that are permissible in law. In my opinion the reference to a function or an act or omission is a reference to any person or body exercising an "official activity". An exercise of administrative power such as where the CCMA decides on the condonation of a late referral to it. A dismissal although it may correctly be described as an act is not an official act. It is a private law act which is governed by the LRA. It follows that an employer who dismisses an employee is not performing a function, act or omission which is susceptible to review under s 158(1)(g). In the premises the exception is dismissed with costs. SIGNED AND DATED AT JOHANNESBURG ON THIS 26TH DAY OF JUNE 2000. Landman J Date of hearing: 22 June 2000. Date of judgment: 26 June 2000. For the applicant: Mr Moshwana of Mohlaba & Moshwana Inc. For the respondent: Mr B van Jaarsveld of Matlala Inc.

Although the application does not state in terms of which law the review is brought, Mr Moshwana's head of argument, filed for the applicant, relies on s 158(1)(g) of the LRA.

The second leg of the exception is that the act in question is the dismissal of the applicant is not susceptible to review in terms of s 158(1)(g) of the Labour Relations Act 66 of 1995. This section provides:

The Labour Court may -

...

despite s 145, review the performance or purported performance of any function provided for in this Act or any act or omission of any person or body in terms of this Act on any grounds that are permissible in law.

In my opinion the reference to a function or an act or omission is a reference to any person or body exercising an “official activity”. An exercise of administrative power such as where the CCMA decides on the condonation of a late referral to it. A dismissal although it may correctly be described as an act is not an official act. It is a private law act which is governed by the LRA. It follows that an employer who dismisses an employee is not performing a function, act or omission which is susceptible to review under s 158(1)(g).

In the premises the exception is dismissed with costs.

SIGNED AND DATED AT JOHANNESBURG ON THIS 26TH DAY OF JUNE 2000.

Landman J

Date of hearing: 22 June 2000.

Date of judgment: 26 June 2000.

For the applicant: Mr Moshwana of Mohlaba & Moshwana Inc.

For the respondent: Mr B van Jaarsveld of Matlala Inc.

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Prepared on 13 October 2026 · Esheria