

IN THE LABOUR COURT OF SOUTH AFRICA

Case Number: J553/97

Before A A Landman J

In the matter between:

NACTWUSA

Applicant

and

GLENCAROL INDUSTRIES

Respondent

On behalf of the Applicant:

MR C LEEPO of NACTWUSA

On behalf of the Respondent:

Mr R J TUCKER of RAYMOND TUCKER ATTORNEYS

Date and Place of Hearing:

29 October 1997 Johannesburg

JUDGMENT

This is an application brought by the National Clothing & Textile Workers Union of South Africa on behalf of Johannes Simelane in terms of section 158(1)(c) of the Labour Relations Act 66 of 1995 in order to make an arbitration award delivered on the 13th June 1997 by Commissioner Sipho Radebe of the Commission for Conciliation Mediation & Arbitration an order of this Court. The application was served on the

respondent, Glencarol Industries. Glencarol has opposed this application. In its papers it admits that it did not implement the award at the time specified in the arbitration award. It is perhaps appropriate at this stage that I refer to what is said in conclusion of that award. The actual terms of the award read as follows:

"7.1 The employer to reinstate Simelane to similar terms and conditions as those that governed him prior to his dismissal on 13/1/1997;

7.2 Simelane to lose two months of his nett salary for his behaviour calculated at his rate of remuneration at the time of his dismissal; and

7.3 The terms of this award to be effected within 14 days of the receipt of this award."

It is not clear to me precisely when this award was received but I presume it was sometime shortly after the 13th of June 1997 when it was made. In any event it is admitted that effect was not given to it as required by the award. It is also clear to me from a construction of this award that the reinstatement referred to must have been retrospective reinstatement. If it was retrospective reinstatement then presumably it was with effect from the date of dismissal. This means that in order to comply with this award it would have been incumbent upon the respondent to have reinstated Mr Simelane from the 13th of January 1997. However it would not have had to pay him his salary for that period up until the date that he was physically taken back into his employment because the award allows the respondent to deduct two months' salary.

It is common cause that it was only around-about the 18th or 19th August

that Simelane was asked to report for duty. Of course he was entitled to be paid up until that time less the amounts which I have just been referred to. Now it may be that when he was asked to report that he was then required to attend a disciplinary enquiry. Mr Tucker, who appeared on behalf of the respondent, has referred to authority for this. See **Empangeni Transport (Pty) Ltd vs Zulu** 1992 13 ILJ 352 LAC at 358 (H) to (I). If a disciplinary enquiry was held and it was found necessary to discharge Mr Simelane this would give rise to a further dispute.

Although the respondent's case is that it has complied, or at least partially and perhaps even late, it is clear to me that it has not complied with this order in regard to payment of monies due and I think that it is appropriate for this Court simply to enquire whether or not the award should be made an order of Court. If there is a dispute which arises as to the proper implementation and/or to whether there has subsequently been a fair dismissal, that is a matter to be dealt with at another stage. Consequently the order that I make is that the arbitration award dated the 17th June 1997 be made an order of Court and that the costs of this application, which are to be limited to disbursements, are to be paid by the respondent.

SIGNED AND DATED AT JOHANNESBURG ON THIS 3RD NOVEMBER 1997

JUDGE A A LANDMAN

