

**THE LABOUR COURT OF SOUTH AFRICA**

**HELD AT JOHANNESBURG**

**CASE NO. J 2512/98**

**In the matter between:**

**TRANSPORT AND GENERAL WORKERS UNION**

**FIRST APPLICANT**

**WISEMAN MKONJENI  
and**

**SECOND APPLICANT**

**BAYETE SECURITY HOLDING**

**RESPONDENT**

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**JUDGMENT**

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[1] This dispute has been referred to the Court in terms of item 2(1)(a) of Schedule 7 to the Labour Relations Act. As the respondent failed to respond to the statement of claim, it was set down on the unopposed roll. Although the matter has proceeded by default, the applicant is obliged to satisfy the Court that there is a factual and legal basis for his claim.

[2] The applicant filed an affidavit in which he deposed to the following facts. He was employed by the respondent as a security guard in December 1994. At the end of 1996 he was offered a "marketing job", together with two other former shop stewards. From the time of their appointment, the applicant and his colleagues were paid salaries of R1 500 per month, plus commission. About a month later, the respondent employed one Wynand Louw at a salary of R4 500 per month. Louw was introduced to the applicant and his colleagues as a "well experienced person for the job who will teach us to perform". Thereafter, the applicant claims that he observed that Louw had no experience in the security industry. He then queried the disparity

between his remuneration and that of Louw with management. Thereafter, the applicant's sales position was abolished and he was "demoted" to his former position as a security guard.

[3] The applicant referred a dispute to the CCMA. The document certifying that the dispute was not resolved designated the dispute as "alleged unfair demotion based on alleged discrimination/ harassment".

[4] The only form of unfair labour practice that can be adjudicated by this Court is unfair discrimination on the grounds specified in item 2(1)(a) of Schedule 7. The applicant is accordingly obliged to demonstrate that his claim falls within the terms of that provision. To do so, he must in the first instance prove that he has been the victim of discrimination: *Public Servants Association of SA & others v Minister of Justice & others* (1997) 18 ILJ 241 (T). Only once this is proved, does the onus shift to the respondent to prove the discrimination did not amount to unfair discrimination in the sense contemplated by items 2(2)(b) or (c). A bald averment that there has been discrimination is not sufficient to shift the onus in this sense: see *Swanepoel v Western Region District Council & another* [1998] 9 BLLR 987 (SE).

[5] In my view, the applicant has not succeeded in surmounting the first hurdle. The only facts from which he expects the Court to infer that he was discriminated against was that he, a black, was earning R1 500 and that Louw, a white, was earning R4 500. The applicant admitted in evidence that he did not know what work Louw performed, what his educational qualifications or experience were, for whom Louw had previously worked and for how long. The applicant also conceded that Louw was designated a manager, and that he was not.

[6] The applicant also claimed that in his view, Louw had no experience in the security industry. No evidence was led in support of this claim. But even if Louw did lack experience, it does not follow that by appointing him the respondent discriminated against the applicant and other employees, however experienced they may have been.

[7] It is so that to pay one employee more than another for doing the same work

may have amounted to an unfair labour practice under the 1956 Act (see *SA Chemical Workers Union v Sentachem Ltd* (1988) 9 ILJ 410(IC)), and would also be so under the new Act if it is done for an arbitrary reason. However, the mere fact that an employer pays one employee more than another does not in itself amount to discrimination: see Du Toit et al *The Labour Relations Act of 1995* 2 ed, 436. Discrimination takes place when two similarly circumstanced individuals are treated differently. Pay differentials are justified by the fact that employees have different levels of responsibility, expertise, experience, skills, and the like.

[7] The applicant has failed to place before this Court any facts that justify the conclusion that he was paid less than Louw merely because he is black, and Louw white, or that the difference in their incomes was for any other arbitrary reason. There is accordingly no basis from which to draw the inference that the applicant was discriminated against in the sense contemplated by item 2(1)(a), or at all.

[8] I merely add in passing that to the extent that the applicant seeks to rely on his subsequent "demotion" to security guard, that is a matter falling under section 2(1)(b) of Schedule 7, and hence not within the jurisdiction of this Court.

[9] It follows that the application is dismissed.

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GROGAN A J  
ACTING JUDGE OF THE LABOUR COURT

For the applicant : Mr Masupha, of the TGWU  
For the respondent: Mr Shabangu, of Bayete Security

Date of hearing: 9 December 1998  
Date of judgment: 9 December 1998