

IN THE LABOUR COURT OF SOUTH AFRICA

(HELD AT JOHANNESBURG)

CASE NUMBER: J805/98

DATE: 1999-04-07

In the matter between:

Applicant

and

1st Respondent

2nd Respondent

JUDGMENT

BASSON, J:

- [1] This is an unopposed application for interim relief in review proceedings.
- [2] An interlocutory order is asked for in terms of the Court's wide discretion under the Rules to deal with any matters that are to give effect to the Act (the Labour Relations Act, 66 of 1995).

- [3] In the main application, the applicant seeks to review the issuing of a certificate by the first respondent, a Commissioner of the Commission for Conciliation, Mediation and Arbitration (“the CCMA”) under case number: GA12919.
- [4] The present application concerns two matters or prayers for relief. First, access to the first respondent's file in the matter which is sought to be reviewed and second, directing the first respondent to furnish reasons for the issuing of the aforesaid certificate.
- [5] Although this is an unopposed application, the views of the CCMA appear from a letter (at page 47 of the papers ANNEXURE PJS5). I quote from this letter of the CCMA:
- "...is of the view that the documents are private or confidential. As you know the process of conciliation and mediation is private and confidential and more importantly without prejudice. The Commissioner may explain to the parties at commencement of every conciliation process. It is important to note, since the resolution of a dispute at this level depends entirely upon information given to the Commissioner, some of which may be confidential and could only be disclosed by the parties without prejudice."
- [6] I am not persuaded that the documents in question are privileged documents as it is understood in terms of the law. Conciliation proceedings cannot be privileged even if it is part of settlement negotiations undertaken without prejudice.
- [7] Furthermore, the applicant is entitled to these documents in order to advance its case in the pending review proceedings.
- [8] In this regard, the record is of great significance in review proceedings (see, for instance, **Ndlovu v Mullins N.O. and Another** 1999 (20) ILJ 177 (LC) at 180 to 183,)

[9] Regard should be had to section 32 of the Republic of South African Constitution Act, 1996 (“the Constitution”) read with item 23(2)(a) of schedule 6 to the Constitution. A litigant such as the applicant is thus entitled to have access to all documents held by the state. It is trite that the CCMA is such an “organ of state.”

(20)

(30)

[10] Further, a litigant such as the applicant has been held to be entitled to information in order to enforce its rights. In this regard, I refer to the cases of **Van Niekerk v Pretoria City Council** 1997 (3) SA 39 (T) and **Le Roux v Direkteur-Generaal van Handel en Nywerheid** 1997 (4) SA 174 (T).

[11] In my view, the first respondent is thus legally obliged to make available all the documents called for, as set out above.

[12] I now turn to the second prayer (*supra*). In terms of section 33 of the Constitution, read with item 23(2)(b) of schedule 6, the applicant is entitled to be (and I quote):
"Furnished with reasons in writing for administrative action which affects any of

their rights or interests, unless the reasons for that action has been made public."

[13] The applicant is accordingly clearly entitled to be furnished with reasons. This is, of course, an integral part of review proceedings as the applicant must be placed in a position to deal with that which exercises the mind of an organ of state who purported to act in terms of a discretion.

[14] The first respondent (as commissioner of the CCMA) has under oath stated why she came to the conclusion to issue the certificate (see paragraph 4.6 at page 69,). However, in my view, these are not "reasons" as the reasoning is clearly inadequate. The first respondent should accordingly be ordered to give proper reasons for the furnishing of the certificate.

[15] In the event, I make the following order:

1. The first respondent is directed to make the entire file contents, which culminated in the proceedings on 26 August 1997, available to the Registrar and the applicant at a date, not later than ten court days from the date of this order.
2. The first respondent is ordered to furnish reasons for the issuing of the certificate of outcome of dispute referred for conciliation under case number: GA12919 on 30 September 1997 to the Registrar and the applicant on a date not later than ten court days from the date of this order.
3. No order is made as to costs.

BASSON, J