

Sneller Verbatim/MS

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: J2834/2000

2001-09-14

In the matter between

FCCDTAWU obo MATHIBA

Applicant

and

CLOVER SA (PTY) LTD

Respondent

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J U D G M E N T

Delivered on 14 September 2001

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REVELAS, J:

- 1.The applicant has referred a matter to this court regarding the respondent's alleged refusal to pay him his severance pay following a dismissal ostensibly for the operational requirements of the respondent. The applicant does not, and his representative assured me, attack the fairness or otherwise of his dismissal.
- 2.What was referred to the CCMA, and this still is the case, is that the applicant has a dispute with the respondent solely about the payment of severance pay.
- 3.In terms of section 196 which has been repealed, the Labour Court did not have the necessary jurisdiction to entertain disputes surrounding the isolated question of the non-payment of severance pay.
- 4.However section 196 of the Labour Relations Act 66 of 1996 (the Act) was replaced by section 41(10) of the Basic Conditions of Employment Act

which reads the same as section 196(10) of the LRA. In other words this court still does not have the necessary jurisdiction to hear the matter and the matter should have been arbitrated by the CCMA.

5. The applicant's representative informed me from the bar that he was advised by the official of the CCMA that the CCMA does not have the necessary jurisdiction to entertain the matter and that the matter had to be referred to the Labour Court. I considered this fact and whether or not the applicant should pay the respondent's costs in this matter.

6. However I decline to make a cost order against the applicant in this matter and make the following order:

1. The Labour Court does not have the necessary jurisdiction to entertain the question of the non-payment of severance pay in this matter.
2. The matter is referred to the Commission for Conciliation, Mediation and Arbitration to arbitrate the issue which has already been conciliated. (The Commissioner of the CCMA are referred to section 41(10) of the Basic Conditions of Employment Act.)

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E. Revelas