

Sneller Verbatim/HVDM

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: J4204/00

gment: 2001-02-03

In the matter between

RUSTENBURG PLATINUM MINES LTD

Applicant

and

R MOLEFE AND 14 OTHERS

1st to 15th Respondent

16TH Respondent

THE COMMISSION FOR CONCILIATION

17TH Respondent

J U D G M E N T

REVELAS J:

1. This is an application in terms of section 158(1)(g) of the Labour Relations Act 66 of 1995, the ("LRA"), to review and set aside the following findings of the 16th respondent ("the arbitrator"):

"1. The 17th respondent ("the CCMA") has the requisite jurisdiction to conciliate a dispute which the 1st respondent referred to the CCMA for and on behalf of himself and the 2nd to the 15th respondents.

2. The decision of the commissioner to join the 2nd to 15th respondents as parties to the dispute which was referred to the CCMA by the 1st respondent.

3. The decision of the commissioner to issue a certificate in terms of

section 135(5) of the LRA stating that the dispute remained unresolved between the parties under circumstances in which no conciliation of the dispute took place under the auspices of the CCMA."

2.The 15th respondent has been re-employed by the applicant and he does not form part of the proceedings currently before court.

3.The complaint raised by the applicant at the CCMA was the fact that the first respondent, Mr Molefe, had signed a referral form and purported to do so on behalf of the other applicants. Their names were attached to the LRA 7/11 form in a list also stating their identification numbers and bearing their signatures.

4.The applicant argues that the Labour Relations Act provides an exhaustive list of representatives who may act on behalf of employees and employers. The applicant argues that an employee is not entitled to act on behalf of other employees. I was referred to judgments dealing with the aspect of representation. In particular, I was referred to the judgment in Impact Maintenance Services v The CCMA and Others (unreported case no. J4203/98) in which I held that a labour consultant may not represent employees and may not sign a referral form on behalf of a party referring a dispute to the CCMA. This judgment was arrived at on the basis of the exhaustive list of persons who may act on behalf of others in terms of the Act. Section 138(4) of the LRA provides as follows:

he dispute may

appear in person or be represented only by -

(a) a legal practitioner;

(b) a director or employee of the party; or

(c) any member, office-bearer or official of that party's registered trade union or registered employers' organisation."

5.In terms of this section, an employee may act in person, or be represented

by "any member" of his or her trade union. (Section 138 (4)(c)). An employee may therefore be represented by a co-employee, if they both belong to a union.

6.If an employee who is not a union member, is precluded from not filling in a form on behalf of other employees referring a dispute to the commission or the CCMA, this could lead to absurd results. Not all employees are represented by unions. Unfortunately and frequently mass dismissals occur in this country. In a matter where 400 employees are dismissed *en masse*, it would be absurd to require from each of them, to fill in a LRA 7/11 form.

7.Whereas it is quite plainly the legislator's intention to limit the category of persons who may represent employers and employees, the legislature also did not intend to condemn non-union employees in a mass dismissal dispute to the inconvenience as demonstrated in this example.

8.I agree with counsel on behalf of the applicant that it could be highly prejudicial to an employer if one employee fills in a form and later several employees who were not identified before, are joined and added to the dispute.

9.On the facts in this case there clearly is no prejudice to the applicant. Mr Molefe had carefully listed each and everyone of the employees. He had even gone as far as to identify them by listing their identification numbers. The language of the referral form is clear. There are several references to "we" when he speaks of the other applicants. The entire tone of the referral form reflects that Mr Molefe had completed the LRA form on behalf of the other respondents in this matter.

10.Consequently the arbitrator or commissioner cannot be criticised for joining the 1st to 15th respondents as employees. In the circumstances the application is dismissed with costs.

Padi Seabela Inc.

Adv. M J van As, instructed by Leppan Beech Att.

E. Revelas