

IN THE LABOUR COURT OF SOUTH AFRICA(HELD AT CAPE TOWN)CASE NO: C779/01DATE: 29-11-2001

In the matter between:

TRS SOUTHERN AFRICAN TOURS CC Applicant

and

CRAIG PARVESS Respondent

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J U D G M E N TLANDMAN, J:

1. TRS Southern African Tours CC seeks to review and set aside an award of a Commissioner of the Commission for Conciliation, Mediation and Arbitration ("the CCMA") who delivered an award in favour of its former employee, Craig Parvess, during June 2000 under case number WE28432.

2. The employer raises several points. The first point relates to the denial of representation at the arbitration hearing. It is apparent from the award that the Commissioner considered whether or not the employer could be represented by the Small Enterprise Employers of South Africa ("SEESA"), which is an employer's organisation. The Commissioner says:

*"In the case of the corporation I established that it only joined the employer's association some time after the dispute had arisen. The Act allows representation by a*

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*member /...*

## JUDGMENT

*member of that party's trade union or employer's organisation. However, the Labour Court has ruled that where a trade union seeks to represent an employee, she or he must have been a member when the dispute arose (see NEHAWU v Mtshali N E & Others unreported LC J1696/99) the same principle must therefore apply in the case of an employer's association. I therefore refuse to allow representation in the case of the corporation."*

The submission has been made that the case on which the Commissioner relies (the Machali case) concerned whether a union should be allowed to charge its members professional and other related fees. The case does not, so it was submitted, canvass the issue with which the Commissioner was confronted.

3. The Machali case refers to General Industries Workers Union of South Africa & Others v Elsie van Aard (Tvl) (Pty) Ltd 1991 12 ILJ 122 (LAC). There the Court found that it was permissible for a union to litigate on behalf of its members even where those members had not been members at the time of their dismissal. That was a case decided under the Labour Relations Act, 28 of 1956. However, the case appears to hold good for the Labour Relations Act of 1995. Section 138(4) provides: "*In any arbitration proceedings a party to the dispute may appear in person or be represented only by (c) any member, office-bearer or official of that party's registered trade union or registered employers organisation.*"

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## JUDGMENT

The section does not say that the member must have been a member at the date that the dispute arose. It is true that the position might change having regard to a Bill which is pending before Parliament, but that does not affect the situation as it

prevailed before the Commissioner when he made his ruling.

4. In the circumstances I am therefore of the opinion that the Commissioner's ruling, that the employer was not entitled to be represented by the employers association, constituted a gross irregularity. I am unable to say what the position would have been had the employer been represented. The outcome might have been entirely different. The failure to permit the employer to be so represented was a fundamental denial of the employer's rights and therefore the award is reviewed and set aside. The matter is remitted back to the CCMA for arbitration afresh before a Commissioner other than the second respondent. The third respondent is ordered to pay the costs of these proceedings.

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Signed and dated at BRAAMFONTEIN on this \_\_\_\_ Day of January 2002

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Landman AA

Judge of the Labour Court of South Africa