IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT JOHANNESBURG

Case No: J671/2000

Applicant

and

BROADCASTING, ELECTRONIC MEDIA

Respondent

JUDGMENT

Bruinders AJ

Applicant was one of three employees employed at respondent's office from which it operates as a trade union. The second employee, like the applicant, was an office administrator. The third is a cleaner. During 1998 the two office administrators were suspended after an audit revealed a number of administrative and financial irregularities. After investigation, the other office administrator was dismissed. The applicant was not. After being suspended on full pay for about eleven months, he returned to work.

On his return on 22 July 1999, at a meeting with two office bearers, including the president, one du Buisson, who testified at the trial, applicant was informed that during his absence, it became apparent that there was no need for an office administrator and that his work was being carried out comfortably by some of the office bearers. He was also informed that his retrenchment was being contemplated and he was offered an alternative part-time position or a retrenchment package. After the meeting, respondent furnished applicant with written notice complying with s189(3) of the Labour Relations Act 66 of 1995 (the Act) inviting him to participate in consultations. Applicant referred the notice to his attorneys who requested information

relating to the contemplated retrenchment. The attorneys fell out of the picture shortly afterwards because applicant did not have the necessary funds.

The next written communications between the parties are letters published in an in-house SABC magazine, Intercom, during November 1999, in which applicant complains, among other things, about his retrenchment and, in which respondent declines to discuss his retrenchment in a public forum. Thereafter respondent furnished applicant with a retrenchment letter dated 1 December 1999 in terms of which he was retrenched with effect from the end of December. Between July and December 1999, respondent claims that three consultation meetings were held, on 26 August, 6 September and 1 November 1999. Respondent disputes that consultations were held at all, disputes that his retrenchment was procedurally and substantively fair, claiming that he was retrenched to make way for the full time employment of du Buisson.

The retrenchment was procedurally fair for the reasons which follow. I have no reason not to believe du Buisson when he says that there were consultations. Applicant urges me to find that there were no consultations because there is no documentary record that any were held. He is wrong that there is no documentary record . In his letter dated 26 July 1999, he records that a meeting took place on 22 July 1999 where he was informed of the contemplated retrenchment and the alternative job offer and retrenchment package. Respondent clearly never kept a note of any of the meetings. But there is documentary evidence which supports the probability that consultations were held. The first is a draft letter by du Buisson in preparation for the reply published in Intercom. In that draft, it is recorded that the retrenchment was postponed to December 1999 for humanitarian reasons. du Buisson referred to this when he gave evidence and said that applicant was informed of the postponement during one of the consultations, despite the original notice that the retrenchment was intended to take place at the end of August 1999.

The second is a set of time sheets kept by a girl Friday employed by respondent. The time sheets record that during the period August to November 1999, applicant took off lots of time, including parts of days and 22

whole days. Du Buisson explained that it was agreed during consultations that applicant could take off time to look for other work. Applicant asked me to reject the time-sheets because he said they were "cooked". I can find no evidence that they were false or manufactured, reject applicant's submissions in this regard and find that he took off to look for other work as had been agreed. This finding is supported by the fact that applicant was not disciplined for absenteeism during this period. I conclude that there must have been consultations, as testified by du Buisson, in which the parties agreed that applicant could take time off and the consultations must have been in compliance with s189 of the Act, as testified by du Buisson, since applicant maintained that none were held.

The retrenchment was also substantively fair for the reasons which follow. Applicant claims that the retrenchment was not genuine. He says that the real reason for the termination of his contract was not an operational requirement but the need to get rid of him to make way for the full time employment of du Buisson. The latter worked for the SABC. During September 1999 disciplinary proceedings were instituted, culminating in his dismissal on 6 December 1999. It is apparent that applicant was first notified of his contemplated retrenchment before disciplinary proceedings were instituted against du Buisson and before the latter's dismissal by the SABC. du Buisson then concluded a contract with respondent on 7 December 1999 in terms of which he is paid a retainer for providing it with a range of services. These include office administration, although he, along with other office bearers, has been carrying out the office administration since the suspension of the office administrators. There has been no replacement of the office administrators and the contract of the temporary girl Friday, who was employed at the respondent during applicant's suspension, was terminated during 1999.

In addition to the unfair retrenchment claim applicant also claimed his pension benefits, unemployment insurance (in respect of which I do not have the necessary jurisdiction, besides the fact that these claims have not been made out in any acceptable sense) and leave pay. Applicant accumulated leave for which he

was not paid. This is not disputed. The only dispute, in so far as there is any, is that respondent did not know how much leave applicant accumulated. He testified that he began working for respondent during January 1997, since when he has not taken any leave. Respondent conceded that he was entitled to 18 days leave a year. Applicant is owed leave pay for 1997, the period January to August 1998 and August to December 1999. He is not owed leave pay for the period September 1998 to July 1999 because he was on suspension then.

I have a discretion to award costs. Although respondent succeeds in the retrenchment application, I decline to award it the costs of that application because applicant has been unemployed since his retrenchment and he has succeeded in his claim for leave pay. In the result, the application for reinstatement and/or compensation is dismissed, respondent is ordered to pay applicant the equivalent of thirty six days leave, calculated at his rate of pay applying at the date of his retrenchment, and each party is ordered to pay its own costs.

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T J Bruinders,

Acting judge of the Labour Court

Date of hearing :08-09 February 2001

Date of judgment :13 February 2001

For the applicant :Chris Mokone (in person)

For the respondent :P.J Assenmacher

Instructed by : Le Roux, Meyer Assenmacher Attorneys