

IN THE LABOUR COURT OF SOUTH AFRICA

(Held at Johannesburg)

Case No: J 1358 / 2000

In the matter between:

LIBERTY LIFE ASSOCIATION

Applicant

and

1st Respondent

THE COMMISSION FOR CONCILIATION

2nd Respondent

3rd Respondent

JUDGMENT

LANDMAN J:

1. Mr Rikhotso was employed by Liberty Life Association of Africa Ltd. He was dismissed on 29 May 1998. Mr Rikhotso's labour consultant signed a referral form LRA 7.11 and referred a dispute concerning his dismissal to the CCMA. The matter was not conciliated and a certificate of outcome was issued. Mr Rikhotso's labour consultant signed a request for arbitration on 23 November 1998. On 24 November 1999 the labour consultant served on Liberty Life a notice of intention to amend the request by substituting page 2, signed by the labour consultant, with another page 2 signed by Mr Rikhotso.

2. The matter came before a commissioner of the CCMA, the first respondent. He proceeded from the premise that the "amendment" was effective from the date of the notice and the personal signature, namely 24 November 1999. The commissioner said in his award:

"The question is whether the defect in the request for arbitration has been cured.

In my view one should not adopt an overly technical approach to matters of this nature. The Labour Relations Act requires the request for arbitration (or conciliation) to be made by the employee himself and the purpose is obviously to ensure that unscrupulous or unqualified persons do not purport to act on behalf of employees without their authority. By submitting a replacement page with his own signature the applicant has clearly associated himself with the request and there can be no question of a consultant acting without authority."

The commissioner went on to say:

"The certificate of outcome of conciliation was issued on 18 November 1998, which is before the amendment of section 136 (1) which introduced the 90-day period within which a dispute has to be referred for arbitration, came into force. The time period therefore did not apply at that time. It may be argued that any period must nevertheless be a reasonable period. What a reasonable period is, depends on the circumstances. In this case steps had been taken to refer the dispute timeously for arbitration, albeit defective steps. It can therefore not be said that the applicant had been dilatory in referring the dispute for arbitration. The delay in rectifying the defective referral is the result of bad advice given to the applicant. I find therefore that the delay was not unreasonable.

I therefore find that the defect in the referral for arbitration has been cured. The point in limine is dismissed."

3.Liberty Life seeks to review and set aside the ruling. Mr Sutherland SC appeared at the review hearing. Mr Sutherland summed up Liberty Life's objection this way:

*"The point in issue is crisp. No jurisdiction existed for an arbitration to take place. The condition precedent for jurisdiction was a valid referral of the dispute for arbitration. A purported referral, signed by a labour consultant, was put before the Commissioner. An objection was raised on behalf of the Applicant. The Commissioner permitted an **"application to amend"** the invalid referral and thereupon granted an amendment which purported to cure the defect. It is contended that the conceptual assumptions upon which this decision was made, and the entire procedure, were wholly irregular."*

4.It was contended, although not as the principal ground, that as the initial referral of the dispute was signed by a labour consultant, it was a nullity and that the conciliation and certificate of outcome were also of no effect. However, no attempt had been made now or then to review the conciliating Commissioner's certificate. The arbitrating Commissioner was therefore entitled to assume that the certificate of outcome was valid. See **Fidelity Guards Holdings (Pty) Ltd v Epstein NO and others** (2000) 21 ILJ 2382 (LAC).

5.Commissioners of the CCMA are enjoined to arbitrate disputes with "the minimum of legal formalities." See s 138(1) of the Labour Relations Act 66 of 1995.

6.The Commissioner, I think, treated the amended request as a fresh request as he was entitled to do. He noted it was out of time, considered whether it should be condoned and proceeded to condone the late application. This being done the Commissioner was clothed with the necessary jurisdiction to entertain the arbitration.

7.In the result the application must fail and it is dismissed.

Signed and dated at BRAAMFONTEIN this 28th day of March 2001.

LANDMAN J

Judge of the Labour Court of South Africa

: 20 March 2001.

: R T Sutherland SC, instructed by Hlatshwayo Du Plessis Van Der Merwe (Riaan Du Plessis Inc).