CASE NO: P 1023/2001

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT PORT ELIZABETH

In the matter between –

TRANSPORT AND ALLIED WORKERS' UNION OF SOUTH AFRICA APPLICANT

TETHANI, BLACKIE, QEQE AND KWEKWANI 2ND & FURTHER APPLICANTS

and

FNQ LUXURY COACH TOURS RESPONDENT

J U D G E M E N T

The applicants referred a dispute to the Labour Court about the alleged unfair retrenchment of the four individual applicants ("the employees") by the respondent. The application in terms of s 189 of the Labour Relations Act, 66 of 1995 ("the Act") was placed on the roll for hearing on 20 November 2001 under Case No P 307/2000 ("the main matter"). The main matter did not

continue on 20 November 2001 due to the fact that there were too many matters on the roll.

Subsequent thereto, the respondent filed a notice of motion seeking the following relief:

"**Directing that the dispute concerning whether or not the further applicants were dismissed be heard separately from the dispute as to whether or not such dismissal was unfair in the matter under Case No P307/2000.**

Declaring that this Honourable Court does not have jurisdiction to hear the dispute under Case No P307/2000"

This application was heard before me, and what I have to adjudicate on is –

1 whether or not there should be a separation of the issues; and

2 whether or not this Court has the necessary jurisdiction to adjudicate on the dispute.

The facts as set out by the respondent in its founding affidavit were not disputed. The employees simply contend in their affidavits that oral evidence should be led.

A court is obliged to satisfy itself that it has jurisdiction before hearing a matter.

See –

Xaba v Portnet Limited (2000) 21 *ILJ* 1739 (LAC) at 1750E-F

On the papers, the undisputed facts are the following:

The employees of the respondent are mostly drivers and cleaners. They are placed in a so-called “pool”. As and when contracts are secured, drivers and cleaners are called upon to perform duties on a specific bus for a specific contract. According to the respondent employees are employed on a “*as and when*” basis. Certain drivers and cleaners are, however, employed on a permanent basis and permanent contracts have been secured by the respondent for certain bus-routes.

An example of a more permanent contract is referred to in the respondent’s

response to the applicants' statement of claim, as the "Fish River Casino Contract".

This contract was entered into during 1995, and drivers and cleaners in the "pool"

were approached and their terms and conditions were amended to allow for more

regular attendance and payment.

The second and further applicants, or the employees in question, were moved

from the "pool" to the Fish River Casino Contract. When that contract was

terminated the respondent was obliged to restructure its operations.

During January 2000 the respondent advised the first applicant of the termination

of the contract. On 3 February 2000, the applicants were advised that the

employees would revert to their original conditions of employment which applied

before the Fish River Casino Contract. The second to further applicants continued

to be in the employ of the respondent, but on a different basis. The amended

terms of employment were provided to the second and further applicants in a

letter dated 22 February 2000. According to the respondent, this amendment of

conditions of service were implemented following consultations, or rather attempts

to consult with the applicant.

The facts which appear from the founding affidavit are the following:

1 Prior to 22 February 2000, Mr Thethani and Mr Kwekwani were employed as cleaners by the respondent. Subsequent to 22 February 2000 they remained as cleaners performing the same duty. There has been no break in their contracts of service. Both employees are still contributing members of the respondent's provident fund; their hourly rate of payment remains the same, but they now work a 30-hour week as opposed to a 40-hour week.

2 As far as Messrs Blackie and Qeqe are concerned, their position is much the same. They were employed as bus-drivers. After 22 February 2000 they remained in the employ of the respondent as bus-drivers and there has been no break in their contracts of service. Both these employees are also still benefiting from the respondent's provident fund.

3 Prior to 22 February 2000 Messrs Blackie and Qeqe were employed at a weekly wage of approximately R420.00 per week. Subsequent thereto, they were paid R50.00 a day for the transport of school children, and this payment formed a type of basic salary and this income was supplemented by additional special bus trips which were arranged on an *ad hoc* basis, and for which they were remunerated according to the nature of the trip.

The applicants' terms and conditions of employment were simply amended. They were not dismissed. The undisputed facts on the papers demonstrate this. Even if I accept that they were dismissed, on the facts before me they accepted alternative employment within the organization of the respondent so as to avoid dismissal. If they are entitled to a remedy, I am of the view that they should approach the Commission for Conciliation, Mediation and Arbitration on the basis that their terms and conditions of service have been unilaterally and unfairly amended.

It then follows that on the undisputed facts before me, this Court

does not have the necessary jurisdiction to entertain this application.

I am not inclined to make a costs order in this matter, as I believe that costs have been saved and the first applicant did not oppose the application.

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E REVELAS

lovember 2001
March 2002

dent from Joubert Galpin Searle

TAWU