

IN THE LABOUR COURT OF SOUTH AFRICA

(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

CASE NO: C326/01

DATE: 1-11-2002

In the matter between:

L NYMAN Applicant

and

J ENGELBRECHT Respondent

J U

D G M E N T

REVELAS, J:

1. This is an application in terms of section 145 of the Labour Relations Act 66 of 1995 ("the Act"). In this matter, the arbitrator found in favour of the first and second respondents by finding that the dismissal for alleged operational requirements was substantively and procedurally unfair and made an award in their favour.

2. However, what is noted that the basis on which the arbitration award is sought to be set aside is on the basis that the arbitrator did not have the necessary jurisdiction to arbitrate the matter since it was a matter which should have been referred to the Labour Court by virtue of the fact that it was a dispute about the employer's alleged operational requirements. In such a

matter parties may agree that the matter which should normally be adjudicated in the Labour Court, be arbitrated at the Commission for Conciliation, Mediation and Arbitration ("the CCMA"). However, the parties may not agree that a matter which should be arbitrated can go to the Labour Court for adjudication.

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3. /...

JUDGMENT

3. These considerations are, however, irrelevant in this matter. The arbitrator who conducted the proceedings under the auspices of the CCMA was not cited as a party, or asked for his views on the question of jurisdiction. Merely the two employees are cited as the first respondent and second respondent respectively. Relief is sought which would affect the arbitrator but none of those parties who were involved at that stage are cited. In the circumstances the application is defective and cannot be entertained.

4. In the circumstances the application is dismissed.

REVELAS, J