

IN THE LABOUR COURT OF SOUTH AFRICA
SITTING IN DURBAN

OF INTEREST

CASE NO **D601/00**

DATE HEARD 2003/04/24

DATE _____ DELIVERED _____

2003/04/24

In the matter between:

CTL GROUP (PTY) LIMITED

Applicant

and

G F MEMELA

First Respondent

**SHERIFF OF THE HIGH COURT,
SANDTON**

Second Respondent

**JUDGMENT ON POINT *IN LIMINE* DELIVERED BY
THE HONOURABLE MS JUSTICE PILLAY ON 24 APRIL
2003**

ON BEHALF OF APPLICANT:

ADVOCATE B DA

COSTA

INSTRUCTED BY

:

KERN

AND PARTNERS

ON BEHALF OF RESPONDENTS:

MR P O JAFTA OF
JAFTA AND

CO.

TRANSCRIBER

SNELLER RECORDINGS (PROPRIETARY) LTD - DURBAN

JUDGMENT

(ON POINT *IN LIMINE*)

PILLAY D, J

- [1] The employer makes the submission that the employee is not entitled to payment other than that which is set out in the award. In the award back pay due to the employee was calculated in an amount of R25 718, and the arbitrator awarded reinstatement with effect from 15th April 2002.
- [2] Ms Da Costa, for the employer, submits that the employee is not entitled to any further payment for the period from the 15th April to the date when this Court made the award an order of Court, or until the applicant is physically reinstated.
- [3] She submits that the only remedy available to the employee is to proceed by way of contempt of court. In support of that argument, Ms Da Costa relied on the Zimbabwean decision of *Chegututu Municipality v Manyora* 1997 18 ILJ 2 323, and *Brassey*, volume 3, at A8 65, where the meaning of "reinstatement" was discussed.
- [4] That case refers to South African case law based on the old Labour Relations Act of 1956, which predates the Constitution of the Republic of South Africa Act No 108 of 1996 and its notion of fair labour practices. The discussion of the meaning of "reinstatement" in that case, I agree with

Mr Jafta for the employee, is also distinguishable from the context in which it is used in this case.

[5] At the heart of the matter, the effect of the employer's submission, if it were to be accepted, is to permit an employer who defies an award or order of Court to profit from it. That, as an elementary principle of the common law, cannot be tolerated. As a matter of course, this has been the response of the Labour Court when exercising its powers in terms of section 158(1)(c) of the Labour Relations Act 66 of 1995 (the "LRA") to make awards orders of this Court and issuing writs therefore.

[6] Orders for the payment for the period between the date of the award or the date on which the award orders reinstatement and the date of the order of the Labour Court have been granted regularly by this Court without debate. It is manifest, for instance, in the judgment of LANDMAN J in *Ntombela v Herridge Hire & Haul CC and Another* (1999) 20 ILJ 901 (LC), where the learned Judge said that more than a financial penalty should be imposed on an employer who fails to abide by orders of the Court. In that case the Court went

on to impose a fine, with the alternative of imprisonment.

[7] Implicit from that judgment is the acceptance that there can be a monetary remedy over and above the contempt remedy that might be available to an employee who is deprived of physical reinstatement in terms of a valid award and order of this Court.

[8] In the circumstances, the submission by the employer is rejected with costs.

PILLAY D, J
21 June 2003.