REPUBLIC OF SOUTH AFRICA

IN THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

JUDGMENT

Not Reportable

C439/2014

In the matter between:

ALI KIMPALA WAYI WAYI	First Applicant
FREDDY MBUYI KABUNDA	Second Applicant
And	
METAL AND ENGINEERING INDUSTRIES BARGAINING COUNCIL	First Respondent
COMISSIONER SH CHRISTIE	Second Respondent
TRYMORE INVESTMENTS 117 CC	Third Respondent

Date heard: 25 November 2011

Delivered: 12 March 2015

JUDGMENT

RABKIN-NAICKER J

[1] This is an opposed application to review and set aside an arbitration award under case number MEWC 8629 and 8634 dated the 2 June 2014.

Background

[2] First applicant was employed by the third respondent (the company) as an operator from August 2009. Second applicant was also employed in that capacity as from 2001. On 21 August 2013, a notice was placed on the company's noticeboard stating that all workers were to be put on short time for the rest of the year and each week workers were to be informed by notice on the board which workers were required to work.

[3] On 28 November 2013, a new notice containing the roster for 2 December 2013 was put up. The employees were aware that if their names were not on the roster, they need not come to work the following week. Prior to the notice of 28 November, the first applicant had not been put on short time although the second applicant had as had many other employees. About a week before the 28th November 2013, the first applicant and other employees discussed various complaints they had about the way short time was being organized. The first applicant made notes and hoped to get his colleagues to sign the notes he typed out planned to give these to managing member of the employer on 29 November. The applicants claimed at arbitration that they had learned from the factory manager that the owner was planning to dismiss them, and another staff member, who also had some complaints.

[4] The applicants' evidence was that the owner had told them that he did not have work for them and they should look for another job. They subsequently referred a dispute to the first respondent on 2 December 2013. The referral mentioned the Provident fund and various irregularities regarding short time, but did not refer to their dismissal. On the 6th December 2013, when the company became aware that a dispute been referred to the Council, the first applicant was called by a Ms Joemat to enquire why he was not at work. According to her, he refused to discuss it and put the phone down on her.

[5] The company's operations had shut down for the summer recess on 13 December 2013 and reopened on 13 January 2014. On 21 December 2013, First Applicant went to Edgars Clothes Store. He had earlier applied for a card and had given his employer's details as third respondent. He was told that they would have to confirm his employer's details. His evidence was that the

Edgars staff member called him later in the day to say he had phoned third respondent and a man told him that he was no longer working at Trymore “as his contract had expired”.

[6] On 28 January 2014, both applicants lodged unfair dismissal disputes claiming they had been dismissed on 28 November 2013 and applied for condonation. It is recorded by the Arbitrator that on 28 January 2014 the company wrote letters to both applicants requesting them to return to work. First applicant claimed that he never received the letter, whilst second applicant conceded that he did. A copy of the letter is attached to their condonation application in the record before me. It is also recorded by the arbitrator that reinstatement was offered to the applicant’s at the condonation hearing, which they rejected. After the condonation hearing, the applicants went to the company to collect their UIF forms. At the Department of Labour they were told they were not eligible for any benefits because the respondent had recorded the reason for their termination as “resigned”.

[7] It was the commpany’s case that the applicants were never dismissed. They were told “there was no work” on 2 December i.e. because of the short time. The arbitrator made a finding that the applicants had failed to prove that they had been dismissed. She stated that the applicant’s had offered no explanation for their rejection of the offer of reinstatement in December, January and at the condonation hearing.

Evaluation

[8] The applicants have formulated their grounds of review in their founding affidavit verbatim from those contained in section 145 of the LRA. Many of the documents they have filed in this application do not comply with the rules of court. They were resolute in regard to representing themselves in court and have obviously invested a great deal of time and emotion into their case. In their submissions before me they made a number of allegations against the arbitrator who they argued was biased, exchanging looks with the attorney for the company respondent, and pushing the applicants to move along with their presentation. None of these amount to a reasonable apprehension of bias.

[9] If regard is had to the award and the record of the proceedings there is simply no basis to review this award. The arbitrator recorded the evidence before her with care. It was common cause that third respondent had been putting employees on short-time for some time. The letters telling the applicants to return to work were attached to their applications for condonation. However first applicant denied at his arbitration that he had ever had sight of the document. His submissions amounted to a series of conspiracy theories against the employer, the MEIBC and the arbitrator. No basis in law was established to review the award. In all the circumstances I make the following order:

Order:

1. The review application is dismissed.

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H. Rabkin-Naicker

Judge of the Labour Court

Appearances:

Applicants: In person

Third Respondent: R. Claasen of Maserumule Inc