THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

JUDGMENT

Not Reportable

Case Number C690/15

In the matter between:

//KHARA HAIS MUNICIPALITY	Applicant
and	
IMATU obo WELLEN & Others	First Respondent
MAPUTLE MOHALE N.O.	Second Respondent
SOUTH AFRICAN LOCAL GOVERNMENT BARGAINING COUNCIL	Third Respondent

Date heard: 5 February 2015

Delivered: 5 August 2015

JUDGMENT

RABKIN-NAICKER J

[1] This is an opposed application to review an arbitration award under case number NCD 041422. The second respondent (the arbitrator) was required to determine whether the applicant Municipality had contravened a collective agreement in disbanding its law enforcement unit and transferring employees to positions of security guards.

[3] In his award the arbitrator found that the municipality had acted unfairly in transferring the applicants after disbanding the law enforcement unit, and had also failed to consult as per the relevant provisions in the Main Collective Agreement on consultation in the Local Labour Forum (clause 2.8. thereof). He ordered the individual employees be reinstated as law enforcement officers on the same pay and benefits as applied at the date of transfer and to fulfil only those functions "as they are declared to be peace officers in terms of the Criminal Procedure Act 51 of 1977 – Declaration of Peace Officers (2002)."

[4] The award records that: "The parties agreed that they were not going to lead oral evidence and that the matter could be determined through oral submissions with option of reply on the day." Common cause facts are recorded as follows:

> "The parties agreed as common cause that consultations were not held at the LLF; the law enforcement unit was disbanded on 06 January 2014; the law enforcement officers became security guards; as law enforcement officers, they enforced municipal by-laws; the applicants were transferred to become security guards without their consent."

[5] In short, the case for the Municipality at arbitration was that its law enforcement division was not lawfully established as a "municipal police service" and thus the need for it to cease to exist. It was further submitted at the arbitration that given the municipal manager's view that the appointment of law enforcement officers had been unlawful in terms of the Municipal Systems Act, and void ab initio, it was pointless to consult to reach consensus. Imatu's position was that the law enforcement officers were appointed in terms of section 334(1)(a) of the Criminal Procedure Act 151 of 1997 which gives the Minister of Justice the power to declare that categories of Law Enforcement Officers have certain powers. Reliance was

placed on Government Notice R209 dated February 2002. One of those categories is that of law enforcement officers appointed by municipalities.

[6] On review, the applicant Municipality pleaded inter alia that the award was not reasonable and that the arbitrator made an error of law. In my judgment, the issue of whether the individual employees had been appointed as law enforcement officers in terms of the Criminal Procedure Act, on which the arbitrator pronounced, was beyond his remit, even on the face of the award itself. He should have only confined himself to the issue to be decided which he recorded as:

" The issue to be decided was whether or not the respondent had consulted in terms of the Labour relations Act 66 of 1995 (as amended) or at the Local Labour Forum (LLF) in disbanding the law enforcement unit and transferring the employees unlawfully to positions as security guards."

[7] In the transcript of the proceedings the arbitrator is recorded as stating the following:

"The nature of the dispute is referred as one of interpretation on the application of a collective agreement. The collective agreement being the first standard condition of employment agreement in particular section 6.4 of dealing with transfers reading as follows: 'A transfer shall take place only when the Council is of the opinion that it will be to the advantage of the council's service and with the proviso that the employee agrees thereto."

[8] The record reflects that the individual employees sought the remedy of re-appointment as law enforcement officers, which in effect meant the re-establishment of the law enforcement unit which had been disbanded by the municipality. The arbitrator did not appear to examine whether such a remedy was open to him to award but gave the employees the remedy they sought premised on his finding that the individual employees were appointed in terms of the Criminal Procedure Act as law enforcement officers. This is a classic case of

an arbitrator misconstruing the nature of the enquiry before him and coming to an unreasonable result.[1]

[9] The arbitrator should have confined himself to the issue of whether there had been proper consultation in terms of the collective agreement, and to fashion an appropriate remedy if there had not been. There was no unfair labour practice dispute before him and his finding in respect of fairness also reflects a misapprehension of the nature of the enquiry before him.

[10] One further observation I wish to make is that on the papers in the review and in the record of the arbitration a dispute exists regarding the issue of consultation and/or meaningful consultation in that there was an invitation to Imatu and the affected members to meet the municipal manager to discuss the situation of the disbandment of the unit, albeit not in the local labour forum. This issue should have been dealt with by means of oral evidence.[2]

[11] In all the above circumstances, and taking into account the ongoing relationship between the parties, I make the following order:

Order

1. The award under case number NCD 041422 is reviewed and set aside;

2. The dispute in terms of section 24 of the LRA is remitted to the third respondent for hearing before an arbitrator other than second respondent;

3. There is no order as to costs.

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H. Rabkin-Naicker

Judge of the Labour Court

[1] Herholdt v Nedbank Ltd (Congress of SA Trade Unions as Amicus Curiae) 2013 (6) SA 224 (SCA) at para 25

[2] As yet unreported case C233/14, Rabkin-Naicker J delivered on 30 April 1015

Appearances:

For the Applicant: P.M Venter instructed by Adrie Hechter Attorneys

For the First Respondent: Imatu representative