

REPUBLIC OF SOUTH AFRICA
IN THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN
JUDGMENT

Not Reportable

C434/2019

In the matter between:

BREEDE VALLEY MUNICIPALITY

Applicant

and

IMATU OBO J THEUNISSEN

First Respondent

**SOUTH AFRICAN LOCAL GOVERNMENT
BARGAINING COUNCIL**

Second Respondent

THUTHUZELA NDZOMBANE N.O.

Third Respondent

Date heard: 8 August 2021 on the papers

Delivered: 18 January 2022

JUDGMENT

RABKIN-NAICKER J

- [1] This application to review an arbitration award under case number WCP061816 was originally opposed. However, the first respondent, prior to the hearing of the matter, gave notice that it would abide the order of the Court.
- [2] In terms of the Award, the Third Respondent (the Arbitrator) ordered the applicant to reinstate Mr. Theuissen (the employee) retrospectively on an indefinite contract of employment.
- [3] The dispute was referred to conciliation in terms of section 198D of the LRA before the employment relationship between the parties had terminated on 30 June 2018. The conciliator's certificate of outcome noted a section 198B

dispute and unfair dismissal dispute. In the form prepared for arbitration by the Conciliator, she wrote that “Subsequent to the referral the applicant’s employment terminated. Imatu will allege unfair dismissal and will also rely on s198B.”

- [4] The arbitrator then dealt with the dispute before him as an unfair dismissal dispute and ordered that the employee be reinstated. One of the arguments raised on behalf of the applicant (the Municipality) is that the Arbitrator assumed jurisdiction incorrectly in these circumstances, in which an unfair dismissal dispute had not been properly referred to arbitration.
- [5] This Court is of course able to consider the matter of jurisdiction of the Bargaining Council (a creature of statute) and may even in situations where the issue is not raised by the parties.¹ In casu the point of law is raised.
- [6] The dispute referred to the Bargaining Council was not one identified by the applicant as an unfair dismissal. Even if it could have been argued to be related to an unfair dismissal dispute, it was premature. An unfair dismissal dispute that is referred prematurely does not clothe an arbitrator with jurisdiction to arbitrate the matter.² The content of the Conciliation Certificate, as is now trite, has no legal force.
- [7] In the Court’s view the award therefore stands to be reviewed and set aside for want of jurisdiction. I also note from the content of the Municipality’s supplementary affidavit, that the employee accepted a job offer prior to leaving the employ of the Municipality and prior to referring the section 198D dispute. The transcript of the arbitration is cited in respect of this averment which I have confirmed. I mention this aspect in order to record that whether there was a dismissal at all even at a later date is questioned by the Municipality in the papers before me and is undisputed.
- [8] The heads of argument filed of record contained a range of further submissions which are not necessary to traverse, more especially relating to section 196B.

¹ Sarfu Rugby Players’ Association & Others v SA Rugby (Pty) Ltd & Others [2008]

² Helderberg International Importers (Pty) Ltd v McGahey NO & others (2015) 36 ILJ 1586 (LC) ;Avgold – Target Division v Commission for Conciliation, Mediation & Arbitration & others (2010) 31 ILJ 924 (LC)

[9] For the reasons set out above, the Award is reviewed and set aside for want of jurisdiction.

[10] I make the following Order:

Order

1. The Award under case number WCP061816 is reviewed and set aside.

H. Rabkin-Naicker

Judge of the Labour Court of South Africa

On Record:

Applicant: BCHC Inc