



IN THE LABOUR COURT OF SOUTH AFRICA

HELD IN DURBAN

Not Reportable

Case no: D 1455-18

In the matter between:

DEVARAJH MOODLEY

(ID number [....])

Applicant

and

MINISTER OF SAFETY AND SECURITY

First Respondent

OFFICE OF THE CLUSTER COMMANDER

SOUTH AFRICAN POLICE SERVICES

ETHEKWINI INNER SOUTH

Second Respondent

Heard: 18 July 2018

Delivered: 18 July 2018

EX TEMPORE JUDGMENT

WHITCHER J

- [1] The applicant's history from 2007 to date has been characterized by extraordinary long absences from work and applications for workmen's compensation, sick leave and temporary incapacity leave, which on his version was caused by an injury on duty in 2007. During this period he has lodged claims to re-open workmen compensation claims, lodged disputes with the bargaining council and internal grievances regarding the non-payment of remuneration during these very long periods of absence.
- [2] On 18 May 2018 he received a letter wherein the respondent noted that the applicant has been off sick for a long period of time and instructed the applicant to submit outstanding medical certificates within a set time frame.
- [3] On 6 July 2018 the respondent instructed the applicant, in writing, to attend a career session in terms of the respondent's Work-Integration Strategy and National Instruction 5/2015 on 18 July 2018.
- [4] In response, the applicant's attorney sent a letter submitting that the applicant "believes that the meeting is a ploy to extract information to [his] prejudice' and that the meeting be rescheduled until the applicant's formal grievance was finalized.
- [5] The respondent replied on 13 July 2018 that the applicant's grievance regarding unpaid leave and the delay in re-opening his old injury – I presume they mean to say his old workmen's compensation claim] does not relate to the meeting scheduled for 18 July 2018, as the sole purpose of that meeting is in line with National Instructions and is an attempt to re-integrate the member into the workplace and possible alternative placement since he has been off sick from September 2016.
- [6] In response the applicant launched this application on 17 July 2018, served it on the respondent via the state attorney at 14h11 and requesting the registrar to enroll the matter to be heard on 17 July 2018. The registrar enrolled the matter on 18 July 2018 to be heard at 9am.

- [7] In the application the applicant seeks to interdict the respondent from proceedings with the meeting scheduled for 18 July 2018, pending the finalization of his grievance hearing.
- [8] I dismissed the application for the reasons that follow.
- [9] The application fails to set out what right of his will be infringed by the hearing on 18 July 2018 or that he will suffer irreparable harm if he attends the meeting and that he has no alternative other than to approach this court.
- [10] Other than the vague and unsubstantiated claim that the meeting is a ploy to extract information to [his] prejudice' and that he has a grievance hearing, pending the applicant has failed to demonstrate that the respondent is not entitled in law to hold the meeting in question.
- [11] To argue that the meeting should not be conducted while a grievance hearing is pending has no merit. Each procedure serves its separate function and there is no reason why one function should be delayed while the other is performed, albeit that they might in some respects cover the same ground.
- [12] Clearly, the purpose of the meeting is to address the applicant's alleged incapacity.
- [13] It is a trite principle of law that an employer is entitled to enquire into the incapacity or otherwise of its employees and in the meeting both parties are entitled to extract information from the other to assist in a proper determination of the matter. Thus the vague and unsubstantiated claim that the meeting is a ploy to extract information to [his] prejudice' does not assist the applicant.
- [14] If an employee has concerns about the meeting, for example, that it is premature because the findings of another hearing may impact on the finding of the incapacity hearing, or that he has not been given proper notice of the meeting, or has not had sufficient time to prepare for the meeting and gather the document and information he needs or that he first requires discovery of certain information and documents prior to the meeting further, all these

concerns must be addressed with the chairperson of the hearing – not this court.

[15] There is no evidence before me that the applicant will be denied a fair hearing.

[16] In the premises, the following order is made:

Order

1. The application is dismissed with no order as to costs.

B Whitcher

Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Manoj Haripersad and Associates

For the Respondent: State Attorney, KZN

Labour Court