

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT JOHANNESBURG

CASE NO. J211/97

In the matter between :

EDUCATION HEALTH &  
ALLIED WORKERS UNION

Applicant

and

PRESSING METAL INDUSTRIES

Respondent

JUDGEMENT

ZONDO, J

[1] In this matter the applicant has brought an unfair dismissal claim against the respondent on behalf on a number of workers who, according to it, are its members. The workers concerned were dismissed in February 1998. This matter came before me for trial. Before the trial could start, I raised a point about whether this Court has jurisdiction in respect of this matter. This judgement therefore deals with that point of jurisdiction.

[2] The applicant alleges in its statement of claim that the reason for the dismissal of its members by the respondent is that they refused to work overtime. The applicant contends that the workers were under no obligation to work overtime and, therefore, it was unfair for the respondent to dismiss them in those circumstances.

[3] The respondent alleges a different reason for the dismissal of the workers. It alleges that they were dismissed on the basis of operational requirements in a retrenchment exercise. In this regard the respondent has annexed to its response to the statement of claim copies of correspondence through which it had, prior to the dismissal, invited the union and, thereafter, an attorney who had been appointed by the union to participate in a consultation. The respondent alleges that the representatives of the workers did not take up these invitations.

[4] The reason alleged by the workers through their union as the reason for their dismissal raises the question whether, in the light of

the provisions of sec 191(5) of the Labour Relations Act, 1995 (Act No 66 of 1995) (“the Act”), this court has jurisdiction to adjudicate this dispute. Sec 191(5) of the Act says :-

“if a council or commissioner has certified that the dispute remains unresolved, or if 30 days have expired since the council or commissioner received the referral and the dispute remains unresolved -

- (a) the council or commissioner must arbitrate the dispute at the request of the employee if -
  - (i) the employee has alleged that the reason for the dismissal is related to the employee’s conduct or capacity, unless paragraph (b)(iii) applies;
  - (ii) the employee has alleged that the reason for dismissal is that the employer made continued employment intolerable; or
  - (iii) the employee does not know the reason for dismissal;
- or
- (b) the employee may refer the dispute to the Labour Court for adjudication if the employee has alleged that the reason for

dismissal is -

- (i) automatically unfair;
- (ii) based on the employer's operational requirements;
- (iii) the employees participation in a strike that does not comply with the provisions of chapter iv; or
- (iv) because the employee refused to join, was refused membership or was expelled from a trade union party to a closed shop agreement".

[5] It is clear, therefore, from the provisions of sec 191(5) that whether or not this Court has jurisdiction to adjudicate a particular dismissal dispute depends upon what the employee or employees concerned allege is the reason for his/her or their dismissal. It does not depend on the reason as alleged by the employer. If it depended on the reason for dismissal as alleged by the employer, in this case this Court would clearly have jurisdiction. The reason alleged by the workers is one which relates to conduct on the part of the employees and, as such, it falls squarely within the ambit of par 191(5)(a)(i) of the Act. Such a dismissal dispute is required to be referred to arbitration and sec

157(5) provides that this Court has no jurisdiction in respect of such a dispute.

[6] Faced with this jurisdictional difficulty, Counsel for the applicant made two attempts to overcome it. The first attempt was that the Court should allow oral evidence to be heard and he would prove that this was an automatically unfair dismissal. I reject this request because the jurisdiction of the Court must appear *ex facie* the statement of claim. At any rate when one reads the applicant's statement of claim, no case of an automatically unfair dismissal is alleged. Applicant's Counsel was seeking to lead oral evidence to prove a case different from the case which has been pleaded which is not permissible.

[7] Another submission made by applicant's Counsel was that this Court, being a superior court of the same status as the High Court and, having inherent jurisdiction, has jurisdiction to deal with all labour disputes. This submission also has no merit because some disputes are required to be referred to arbitration while others are

required to be adjudicated by this Court and the applicant must show that this dispute is one of those that are required to be adjudicated by this Court. This the applicant has not shown. Applicant's Counsel further sought to argue that by virtue of sec 158(2)(b), this Court has jurisdiction. That is not correct as the respondent did not give the consent required in sec 158(2)(b). Even if it had, there is nothing suggesting that it would be expedient for the Court to deal with the matter itself sitting as an arbitrator.

[8] As to what this Court should do once it has found in a case such as this one that it does not have jurisdiction, sec 158(2) says :-

“ If at any stage after a dispute has been referred to the Labour

Court, it becomes apparent that the dispute ought to have been referred to arbitration, the Court may-

(a) stay the proceedings and refer the dispute to arbitration;

or

(b) with the consent of the parties and if it is expedient to do so,

continue with the proceedings with the Court sitting as an arbitrator, in which case the Court may only make any

order that a commissioner or arbitrator would have been entitled to make.”

I cannot see what useful purpose it would serve to stay these proceedings when this Court has no jurisdiction to deal with the dispute. It seems to me that the appropriate route would be to dismiss the matter for lack of jurisdiction.

[9] With regard to costs the respondent is not entitled to any costs as the matter is not being disposed of on the basis of any point raised by it. At any rate its counsel did not ask for any costs. Before I conclude there is only one matter I wish to raise which the parties will need to apply their minds to if they are to proceed with the applicant’s unfair dismissal claim wherever they may proceed. That is that in terms of the questions and answers which the parties exchanged with a view to limiting issues for the purposes of trial, they inter alia agreed that the contents of documents which were yet to form an agreed bundle were true. The difficulty with that agreement is that the applicant’s documents included letters purporting to emanate from the respondent to the effect that the workers were dismissed for not

obeying a reasonable or lawful command whereas the respondent's documents include correspondence suggesting that the reason for the workers' dismissal was a retrenchment. The parties must apply their minds to the implications of their agreement in this regard. In other words these are documents with contradictory contents with regard to the reason for dismissal in the bundle.

[10] In conclusion the applicant's referral of this claim is dismissed for lack of jurisdiction. There is to be no order as to costs.

R. M. M. ZONDO

JUDGE : LABOUR COURT OF S.A.

Date of Judgement : 11 June 1998