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IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: J469/01

2001-11-09

In the matter between

M C MATIWANE

Applicant

and

VICTOR RECRUITMENT INTERNATIONAL

Respondent

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J U D G M E N T

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LANDMAN J: This is an application brought in terms of section 158(1)(c) of the Labour Relations Act 66 of 1995 by Mr M C Matiwane to make a settlement agreement an order of court. Mr Matiwane was employed by M-Tell during 1998 as a filing clerk on an temporary basis. He earned a salary of R1 936 per month.

During April, M-Tell negotiated with Victor Recruitment International to take over certain of its personnel including Mr Matiwane. This meant that Mr Matiwane would be an employee of Victor Recruitment International but be placed to work as a filing clerk at M-Tell.

During November 2000 Mr Matiwane was absent from work and this lead to

a disciplinary inquiry. Mr Matiwane was dismissed. He approached the CCMA. At a conciliation meeting during which both parties as well as a representative of M-Tell were present, a settlement agreement was negotiated. The settlement agreement reads:

"The employee would be reinstated as a temporary assignee as from Monday 15 January 2001. This is in full and final settlement of the dispute by both parties. The applicant will call the employer after three days."

Mr Matiwane attended at the offices of Victor Recruitment International on 17, 18 and 23 January. It is common cause that when he attended Victor Recruitment International attempted to consult with him in regard to his possible retrenchment. He acknowledges that certain offers were made to him. He says:

"Yes, the consultation sessions were held and I didn't participate because of 'how can I help/advise my opponent as how to tackle me.'"

It is also common cause that Victor Recruitment International attempted to find employment for Mr Matiwane but was unable to do so.

In its opposition Victor Recruitment International says that it did in fact reinstate Mr Matiwane. It did this by paying him for the full period from his initial dismissal up until his retrenchment on 23 January and it provided him with all his benefits. It also paid him a severance package.

It is submitted by Mr Short, who appears on behalf of Victor Recruitment International, that the company has fully performed in terms of the settlement agreement and that the court is not entitled to make the agreement of settlement an order of court.

I find this to be the case and therefore the settlement agreement cannot be made an order of court and the application must be dismissed. Mr Short did not seek an order for costs and no order for costs will be made.

If Mr Matiwane is of the view that he was not properly retrenched then he should launch an application in this court complaining about his unfair retrenchment. That will result in a trial and if the court finds that he was not properly retrenched he will be entitled to whatever relief the court may grant him.

However, as far as this application is concerned, it is dismissed and no order is made as to costs.

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A A Landman

Judge of the Labour Court of South Africa

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