

Sneller Verbatim/ssl

IN THE LABOUR COURT OF SOUTH AFRICA

(HELD AT BRAAMFONTEIN)

CASE NO: JR381/01

2002-01-22

In the matter between

RUSTENBURG PLATINUM MINES

Applicant

and

NOSILELA & OTHERS

Respondents

J U D G M E N T

LANDMAN J:

1. This is an application in terms of s 158(1)(g) of the Labour Relations Act 66 of 1995 to review and set aside the rulings of a Commissioner of the CCMA, the 23rd respondent, in this matter.

2. The rulings are contained in the papers. They relate to the fact that the Commissioner decided that the first respondent, one Mr Nosilela, was entitled to refer a dispute on his behalf and on behalf of 21 fellow-employees. It is clear from LRA 7/11 that Mr Nosilela referred the dispute to the CCMA. He purported to do so on behalf of 2nd and 22nd respondents whose names appear on an annexure to that referral.

3. There is nothing in the papers that indicated they had authorised Mr Nosilela to refer the matter on their behalf. They could have done this. They individually signed a list which was attached to the referral of the dispute for arbitration, thereby indicating that they associate themselves with the referral to arbitration.

4. Section 191(1) of the Labour Relations Act 66 of 1995 states that:

"If there is a dispute about the fairness of a dismissal, the dismissed employees may refer the dispute in writing within 30 days from date of dismissal to -

(a) a council. If the parties to the dispute fall within the registered scope of that council, and

(b) the Commission, if no council has jurisdiction."

5. It is trite law that a trade union may refer a dispute to the CCMA for and on behalf of its members. This court has held on a number of occasions, see ***Sigwale & Others v Libanon (a Division of Kloof Gold Mine Ltd)*** [2000] BLLR 215 (LC) 223F-J that it is not competent for an individual employee to refer a dispute on behalf of fellow-employees.

6. It would of course be competent for a fellow-employee who has a power of attorney or is in some other way mandated or authorised to further dispute, to do so. In this particular case there is no indication that this was done. It is on this basis that I come to the conclusion that the Commissioner made a finding of which is wrong in law. This being so the ruling is reviewable.

7. The decision is therefore reviewed and set aside in the following terms:

1. The 23rd respondent's finding that the 2nd to 22nd respondents properly referred the dispute to the CCMA as contemplated in section 191 of the Labour Relations Act is reviewed and set aside. However, the referral

in respect of the first respondent is unaffected by this judgment.

2. The 23rd respondent's finding that 2nd to 22nd respondents could be joined as co-respondents in the dispute referred to the CCMA by the first respondent is reviewed and set aside.
3. There is no order for costs.

Signed and dated at BRAAMFONTEIN this 26th day of February 2002.

AA Landman

Judge of the Labour Court of South Africa