

CCMA arbitration awards

Organisational rights

The matter between Fawu and Dairy Belle came before the Commission for Conciliation, Mediation and Arbitration (CCMA) for arbitration as a withdrawal of an organisational rights dispute. The commissioner was required to determine whether the CCMA had jurisdiction to hear the dispute and whether the union acted frivolously in referring the matter to the CCMA.

The parties in this matter entered into a collective agreement on 31 May 1997. Certain organisational rights, similar to those contained in ss11 to 16 of the Labour Relations Act (LRA), were conferred upon the union in the collective agreement and these rights were regulated by the said agreement.

The agreement remained in force until the company notified the union in July 1999 of its intention to cancel it. The union was further advised that the parties needed to negotiate changes, which would reflect the changes in practices and norms that took place within the company.

Dairy Belle argued that the parties, in terms of s21(3), had not attempted to reach a collective agreement, and therefore rendered the referral invalid. The respondent also stated that the union was warned that the referral was premature and accordingly sought an order for costs against the union.

The union denied that the referral was

The following are some of the recent arbitration awards handed down by CCMA commissioners.

unreasonable and argued that it was common cause that the deduction of union subscriptions ceased only in respect of certain employees. These employees were members of the union and union subscriptions should accordingly be deducted from the salaries. The union felt that the company had not challenged the referral at the time of the conciliation hearing. They felt the dispute was correct and they had not acted in a frivolous manner by referring the matter for arbitration.

In this matter the organisational rights were conferred by way of a collective agreement that was reached between the parties. The organisational rights that were conferred by the collective agreement would therefore be regulated either by the provisions contained in the agreement itself or by part B of Chapter 3 of the LRA. Ss23(4) reads as follows: 'Unless the collective agreement provides otherwise, any party to a collective agreement that is concluded for an indefinite period may terminate the agreement by giving reasonable notice to the other parties'.

The employer had complied with both the provisions of the collective agreement and ss23(4) of the Act in cancelling the collective agreement. The commissioner found the withdrawal of some or all of the organisational rights, arising from the valid cancellation of the collective agreement, could not be challenged by the union.

The commissioner felt that the conciliating commissioner therefore erred in issuing a certificate of non-resolution when quite clearly there is no provision made by the Act for a union to lodge a dispute regarding the withdrawal of organisational rights.

The arbitrator held that it was clear that the union had not notified the employer in writing that it sought to exercise their rights as conferred by ss21(1) to (3) of the Act. The CCMA lacked the jurisdiction to deal with the matter – the application was accordingly dismissed.

Poor performance

The applicant (McDonald) was employed by the respondent (Ems-Ven Medical (Pty) Ltd) as a quality control manager. She was dismissed after a disciplinary hearing at which she was charged with insubordination and gross negligence.

The applicant worked for a company that produced consumable medical supplies. The company had obtained foreign investors who had agreed to sign contracts with the company. However, these contracts were subsequently cancelled due to quality problems. The company had to upgrade its quality in order to comply with the very stringent standards both locally and abroad. One of the applicant's duties was to be responsible for reading the extent of pressure within the production environment. It was critical that these readings be administered correctly to

remain in line with the newly established standards of the company.

The respondent discovered that these readings were incorrect from the period that the applicant was assigned to monitor the pressure. The applicant was therefore charged and dismissed essentially for the incorrect reading of the monometer and the failure to take action when the readings were below the specified minimum. Secondly, the applicant was often found by the respondent to be concerned about human resources issues (other employees' personal problems) instead of concentrating her efforts on her own job.

After reviewing the evidence, the commissioner found that the applicant was grossly negligent in the performance of her duties as a result of her lack of interest in her job, and that this negligence had potentially serious repercussions for the respondent.

The dismissal was held to be procedurally and substantively fair.

Getting shafted...

The commissioner had to determine whether the applicant, the United Association of South Africa, Holtzhausen was guilty of sexual harassment for which he was dismissed and whether the dismissal was an appropriate sanction.

Ms Pillay was one of the first females working underground as a 'ventilation officer' at Beatrix Mine. She experienced an incident of sexual harassment at the workplace which led to a charge being laid against the applicant. This led to a disciplinary enquiry at which the applicant was found to be guilty of sexual harassment and summarily dismissed. The dismissal was confirmed at the appeal.

Mr R Hart, the mining manager in charge testified that the dismissal was an

appropriate penalty in this instance, given the attitude of the applicant, the seriousness of the offence, and the dangerous signal which a lesser sanction would have sent to other workers, especially as more female workers were being deployed underground at the mine. Mr Hart also testified to a previous relevant and current final disciplinary warning of the applicant for assault.

The evidence given by the witnesses assisted the commissioner in determining that the applicant was in fact responsible for the behaviour as alleged by Ms Pillay. Indeed, the evidence was clear that she was treated in such a way as to cause her to protest repeatedly and which also resulted in her lodging a complaint immediately against the applicant.

The applicant's representative union, in argument suggested that the conduct did not amount to sexual harassment but 'attempted sexual harassment'. The Code of Good Practice on the Handling of Sexual Harassment Cases clearly stipulates that 'attempted' sexual harassment constitutes sexual harassment.

The commissioner therefore, decided that the union acted frivolously in referring the matter for arbitration and should have known that the case had no merit. Costs were therefore, awarded against the union in order to cover the costs incurred by the respondent's representative in the conduct of the arbitration.

The dismissal of the employee was confirmed and upheld.

Short-term contracts

The Kwazine Adult Centre employed J Lebogo (and six others) at various occasions. They all signed one-year contracts. At the expiration of the contract period, they were required to re-apply and sign new contracts.

At the end of 2000 the respondent informed the applicants that interviews would be conducted as a result of a circular received from the District Office of the Department of Education. All Adult Basic Education educators were required to meet certain standards of competency and education prior to their being appointed. Some of the teachers were appointed, however, none of the applicants was found to be suitable.

Therefore the interviews were conducted in order to comply with the circular. Furthermore, the department had threatened to close the centre as it had not attracted sufficient learners.

The applicants contended that not all the teachers had been subjected to an interview. The respondent gave adequate evidence revealing that the contracts of some teachers were still in force, and their interviews would be conducted when their contracts expired. The commissioner decided that this was a reasonable explanation and did not suggest any discriminatory or unfair conduct by the respondent.

The commissioner believed the applicants were all aware that their contracts would expire after a year. They had therefore, failed to justify the legitimate expectation of renewing their contracts. The commissioner further contended that if the applicants believed their interviews were not conducted appropriately then they should refer an unfair labour practice or discrimination dispute to the CCMA for conciliation.

The commissioner found that the applicants were not unfairly dismissed and accordingly dismissed the application.

Information supplied by the CCMA's information department. For more information call (011) 377-6650.