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IN THE INDUSTRIAL COURT OF SOUTH AFRICA

HELD AT PRETORIA

CASE NO NH 11/2/5494

In the matter between

TRANSPORT AND ALLIED
WORKERS UNION

First Applicant

JEREMIAH MOFOKENG

Second Applicant

and

PUTCO LIMITED

Respondent

Constitution of the court

Adv F F J Brand

Senior Member

On behalf of

Applicants

Adv A I S Redding, instructed by Bowman Gilfillan-Hayman
Godfrey

Respondent

Adv N Cassim, instructed by Werksmans Attorneys

SUMMARY

Section 46(2) is peremptory - disputes that fall under section 46(2) cannot be brought in terms of section 46(9) before this Court.

The Industrial Court is a creature of statute and the jurisdiction of it should be found within the four corners of the Act. An agreement by the parties or participation in conciliation board proceedings cannot be equated to submission to jurisdiction of this Court and the respondent cannot rely upon estoppel. Neither can a fatally defective decision of the conciliation board to refer the dispute for determination in terms of section 46(9), clothe this Court with jurisdiction it does not otherwise have.

The dispute between the parties was referred to this Court by the chairman of the conciliation board for determination in terms of section 46(9) of the Labour Relations Act, 1956.

Mr Cassim for the respondent objected against the jurisdiction of this Court. He contended that this matter should have been brought in terms of section 46(2) of the Act because the respondent is an employer referred to in section 46(1).

Mr Redding, inter alia, submitted that the respondent is estopped from taking this point at this stage. He also contended that the parties "agreed" that the dispute should be so referred and that the reference was duly made. If I understood him correctly, he also contended that subsections (1) and (2) of section 46 refer to "disputes of any nature" whilst section 46(9) refers particularly to unfair labour practices. Therefore this dispute could be brought under section 46(9). (I did not understand Mr Redding to say that unfair labour practices cannot be brought under section 46(2).)

During argument, I was inter alia referred to the judgment of Goldstein J in Ventersdorp Munisipaliteit v

S A Association of Municipal Workers (1991) 2 a SALLR 76
(LAC).

For the purposes of section 46(2), section 46(1) of the Act defines an employer to include an employer who provides passenger transportation. However I need not dwell on such definition, since it is common cause that the respondent is an employer as contemplated in section 46(1).

Section 46(2) of the Act reads as follows:

"Whenever an industrial council or a conciliation board which has had under consideration a dispute in which the parties are one or more of the employers referred to in subsection (1) and one or more of the employees referred to in subsection (1) -

- (a) has failed to settle the dispute within a period of 30 days reckoned from the date on which the dispute was referred to the industrial council or the date on which the application for the establishment of a conciliation board was lodged, as the case may be, or within such further period or periods on which the parties to the dispute may agree, or the period or periods as the Director-General may from time to time fix on good cause shown;
or

(b) before the expiry of that period or further period or periods has resolved that further deliberations will not result in the settlement of the dispute,

it shall report accordingly to the Director-General and the dispute shall be referred to arbitration in accordance with the provisions of this section."

Section 46(9) relates to disputes concerning unfair labour practices. If such a dispute has gone to an industrial council or conciliation board unsuccessfully, it is referred to this Court for determination.

In my view the question is whether the present dispute falls under section 46(2) or under section 46(9), or whether it can fall under either. The same question was considered by Goldstein J in the Ventersdorp Munisipaliteit case (supra). After dealing with all the relevant provisions of the Act, Goldstein J came to the following conclusion:

"Since subsection (2) is obviously peremptory, it must, I believe, fall under that subsection. Moreover while subsection (9) is of general application, subsection (1) - (6) apply only to specific employers and their employees. And in the interpretation of statutes general provisions yield

to specific ones. There is no reason why compulsory arbitration cannot be concerned with unfair labour practices. Indeed subsection (6)(d)(i) indicates that this is so. (See too section 43(6)). It cannot therefore be contended that subsection (9) relates to unfair labour practices and that subsections (1) - (7) do not ...

I conclude that the matter in the industrial court could not be brought before it in terms of section 46(9)."

After a careful consideration of the facts and circumstances of the present matter, I can find no reason to distinguish this matter from Ventersdorp Munisipaliteit case (supra).

The contention that in view of the conduct of the parties and/or the fact that the dispute has been referred to this Court, the Court is bound to hear the matter, does not hold water. This Court is a creature of statute and the jurisdiction of it should be found within the four corners of the Act. An agreement by the parties or participation in conciliation board proceedings cannot be equated to submission to jurisdiction of this Court and the respondent cannot rely upon estoppel. Neither can a fatally defective decision of the conciliation board to refer the dispute for determination in terms of section 46(9), clothe this Court with jurisdic-

tion it does not otherwise have. See Tornado Transport (Pty) Ltd v Apostoleris NO and Others (unreported, NH 13/2/5099 - LAC) and the Ventersdorp Munisipaliteit case (supra).

I therefore conclude that disputes which fall under section 46(2) cannot be brought in terms of section 46(9) before this Court, and consequently, I find that this Court has no jurisdiction to hear this matter.

No order is made as to costs.

MADE and SIGNED at PRETORIA on this 23rd day of JANUARY 1992.



F F J BRAND
SENIOR MEMBER: INDUSTRIAL COURT