

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT PORT ELIZABETH

CASE NO: P201/98

In the matter between:

TRANSPORT AND GENERAL

WORKERS' UNION

1st Applicant

2nd - 20th Applicants

and

KEI SECURITY

Respondent

J U D G M E N T

REVELAS, J:

[1] The second and further applicants' services were terminated by the respondent on 9 March 1998. The applicants challenged their dismissal by the respondent and the matter has come before the Labour Court in terms of section 191 (5) (b) of the Labour Relations Act, 66 of 1995 ("the Act").

[2] The respondent has raised three points *in limine* relating to the following issues:

- 1) The applicants' delay in filing its statement of case.
- 1) 2) The state of the applicants' pleadings and failure to comply with the provisions of Rule 6(1)(b)(ii) and (iii) of the Rules of Conduct of Proceedings in the Labour Court.

[2] The question of the late filing of the statement of case has already been disposed of in the sense that the matter has been postponed to 17 June 1998 for the applicants to bring an application for condonation to this Court.

[3] Insofar as the failure to comply with the provisions of Rule 6 of the Rules of Court are concerned, I deal with as follows.

[4] In terms of section 151 of the Act, this Court is established as a court of law and a court of record. This Court is a superior court that has authority, inherent powers and standing in relation to matters under its jurisdiction, equal to that which a court of the Provincial Division of the High Court has in

relation to matters under its jurisdiction.

[5] In terms of Rule 6 of the Labour Court Rules a document initiating proceedings is known as a "Statement of Claim" and must:

(a) have a heading containing the following information:

- (i) the title of the matter;
- (ii) the case number assigned by the registrar to the matter;
- (iii) an address of the party delivering the document at which that party will accept notices and service of all documents in the proceedings; and
- (iv) a notice advising the other party that if that party intends opposing the matter, a response must be delivered in terms of sub-rule (iii) within 14 day of service of the statement of claim, failing which the matter may be heard in that party's absence and an order may be made against that party.

(b) The statement of claim must also have a substantive part containing the following:

- (i) The names, description and addresses of the parties;
- (ii) A clear, concise statement of the material facts in chronological order on which the party relies, which statement must be sufficiently particular to

enable any opposing party to reply to that document; and

(iii) a clear and concise statement of the legal issues that may arise from the material facts, which statement must be sufficiently particular to enable any opposing party to reply to the document; and

(iv) the relief sought.

(c) It must be signed by the party to the proceedings;

(d) Express all dates, sums and numbers contained in the documents in figures; and

(e) be accompanied by a schedule listing the documents that are material and relevant to the claim.

[6] In my opinion the information given by the applicant in this matter in its statement of claim is sparse and not sufficiently particular to enable the respondent to reply properly thereto. On the papers which the applicants have filed, I cannot determine what the exact nature and extent of the dispute between the parties is, to decide whether this court has jurisdiction or not.

[7] Even though reference is made to a dismissal, which seems to be one which is allegedly an automatically

unfair dismissal, the papers are lacking with regard to an explanation why the dismissal is described in these terms. The matter apparently relates to a procedural or unprocedural strike. I cannot determine which one of the two is alleged at this stage.

[8] The papers do not allege that the dismissal was not for a fair reason. Neither

is it alleged whether or not, a fair procedure was followed.

[9] It is not clear to me exactly what relief is sought.

[10] Para 17 of the statement of case reads as follows:

[1] **"It is with that note therefore that the dispute at plant level coincided with the other one at national level."**

[11] Firstly, it must be pointed out that I am not in a position to determine which disputes existed at the time and what the impact would be on this particular case. That is not pleaded with any sufficient particularity. Para 18 and 19 of the statement of case merely read as follows:

"18. The dispute at plant level was about double pay on Sundays while the

dispute at national level was about wages and conditions of employment.

(Copy of pamphlet is attached hereto as Annex-

ure 'E').

**19. The dispute at plant level was superceded/preceded by the
dispute at
national level."**

[12] The aforesaid does not make sense to me. A proper reading of both parties' documents do not assist me in determining what the issues between the parties are. The applicants' papers are not intelligible enough to assist therewith.

[13] In my opinion, even if a proper pre-trial is held in this matter, these shortcomings in the papers will not be addressed sufficiently. Consequently the respondent's exception to the applicants' statement of case must succeed.

[14] I make the following order:

- (a) The matter is postponed until 17 June 1999.
- (b) The applicants are directed to file their condonation application on or before 27 May 1999.

(c) The respondent is directed to file its answering affidavits on or before 10 June 1999.

(d) Any reply thereto may be filed by 15 June 1999.

[15]

And: (i) The applicants are directed to amend their statement of claim in order that it might conform with the provisions of Rule 6 within 14 days of the date of this order and should do so by no later than 10 June 1999.

(ii) The applicants are ordered to pay the respondent's costs of this application.

E REVELAS

Date of hearing: 29 April 1999

Date of Judgment: 29 April 1999

For the applicant: Mr Lubabalo of Transport and General Workers Union
(Umtata)

For the respondent: Advocate R Bwade

Instructed by: Drake Flemmer and Orsmond

This judgment is also available on the Internet at
website:

<http://www.law.wits.ac.za/labourcrt>

