

**THE LABOUR COURT OF SOUTH AFRICA,
(HELD AT JOHANNESBURG)**

Case No: J1764/19

NOT REPORTABLE

In the matter between:

NTHABISENG MAAKE

Applicant

and

**SOUTH AFRICAN AIRWAYS
TECHNICAL (SOC) LTD**

Respondent

Heard: 27 August 2019

Delivered: 28 August 2019

Summary: (urgent application – to interdict shortlisting and interviews for a post applicant claims to be appointed to – application dismissed)

JUDGMENT

LAGRANGE J

Introduction

- [1] This is an urgent application to interdict the respondent (SAA Technical) from shortlisting or conducting interviews for the position of Senior Aviation Instructor advertised on 13 August 2019, with a closing date for submitting applications being 16 August 2019. The application is for interim relief pending the outcome of a substantive application to compel SAA Technical to appoint the applicant to the position of senior aviation instructor with effect from 1 June 2018, which will be launched within 20 days of an interim order being granted.
- [2] The applicant claims that she has already been appointed to the post which has been advertised and that if the recruitment process set in motion by the advertisement mentioned is allowed to run to conclusion it could result in the appointment of another person in the same post she occupies, which would “complicate” her own efforts to compel the respondent (SAA Technical) to recognize her permanent appointment in the position.

Urgency

- [3] Although it is true that the applicant has in the past asserted her claim to be recognized as permanently appointed to the position in question, it is the threat posed by the possibility of a reasonably imminent appointment of someone else to the post that has caused her to launch this application. The application was launched within seven days of her becoming aware of the advertisement. In the circumstances I believed that she has acted with the necessary expedition and the application can be entertained on an urgent basis.

Has the applicant met the requirements for interim relief?

- [4] It is trite law that an applicant for interim relief must establish: (a) a *prima facie* right, even though open to some doubt; (b) a well-grounded apprehension of irreparable harm if the interim interdict is not granted; (c) no other satisfactory remedy and (d) the balance of convenience favours the granting of interim relief.

- [5] It is important to stress that the right which the applicant asserts is essentially her right to be recognized as the lawfully appointed permanent occupant of the post in question. In order to establish a *prima facie* right to the position, she needs to demonstrate a reasonable prospect of success in the application for a declaratory that she intends to launch.¹
- [6] Her claim to this position as set out in the founding affidavit rests on a document at page 25 of the founding papers headed “SAAT Acting Instructor/Examiner/Assessor letter of authority and DOA” in which it is stated that the applicant is “employed by South African Airways Technical at OR Tambo International Airport as a Senior Aeronautical Instructor”, who meets certain standards and requirements and who is authorized with effect from 1 June 2008 to provide tuition on certain itemized courses.
- [7] In her replying affidavit, the applicant suggests that when her application for a declarator is heard she may place reliance on other indicators of her permanent employment. In this regard she alludes to clause 5.2.4 of the SAA Technical Acting Policy Guidelines. Reading this together with paragraphs 6.1 and 6.4 of the conditions of employment relating to Probation and Appointment to Permanent Employment, she finds support for her claim to be permanently employed after acting in the post for six months. Strictly speaking, to consider this as part of the merits of her claim in this application this point ought to have been made in her founding affidavit.
- [8] The respondent points out that the document at page 25 of the founding papers on which she relies does not imply that the applicant was appointed in terms of that letter in anything other than an acting capacity. Insofar as reliance might be placed on the acting policy guidelines and conditions of service relating to probation, even though clause 6.4 relating to probationers deems an appointment to be automatically made one week after a six month probation period has passed without the employee receiving a written confirmation of appointment, the respondent refers to clause 6.1 which makes it clear that probation applies to newly hired or

¹ See *Johannesburg Municipal Pension Fund and Others v City Of Johannesburg and Others* 2005 (6) SA 273 (W) at 280 at paragraph [8].

newly promoted employees, which is not the same as a person appointed in an acting position, even though paragraph 5.2.4 of the Acting Policy Guideline provides that management should ensure nobody acts in a position for longer than six months.

- [9] I am not persuaded on the basis of arguments in favour of the applicant's permanent employment above that she has a reasonable prospect of success in an application for final declaratory relief.
- [10] Secondly, if, as she claims, she is indeed the holder of the position of Senior Aeronautical Training Officer provided she makes it plain that she reserves her right to assert her entitlement to the post and that the respondent takes steps to appoint someone else at its peril, nothing prevents her from asserting that right in the face of an attempt to replace her. To put it differently, her entitlement to the post is based on alleged facts which are quite independent of the outcome of a subsequent recruitment process. The applicant implicitly recognizes this by noting that an appointment made subsequent to completing the recruitment process would merely be a complication in the pursuit of her own claim.
- [11] Consequently, I am not persuaded that she would suffer irreparable harm or that she would be denied the opportunity to obtain declaratory relief.
- [12] For the above mentioned reasons, I am satisfied the applicant has failed to make out a case for interim relief.

Order

- [1] The matter is dealt with as one of urgency and non-compliance with the rules of service and time periods in the labour court rules is condoned.
- [2] The application is dismissed.
- [3] No order is made as to costs.

R G Lagrange
Judge of the Labour Court of South Africa

APPEARANCES

APPLICANT: B Ford instructed by Maraga Attorneys Inc.

RESPONDENT: S July of Werksmans Attorneys

LABOUR COURT