



THE LABOUR COURT OF SOUTH AFRICA, GQEBERHA

Not Reportable
Case No: PS42/17

In the matter between:

NUMSA obo C LUDWICK AND 4 OTHERS

Applicants

and

ALOE OIL (PTY) LTD

Respondent

Heard: 02 March 2023

Delivered: 17 March 2022

Summary: A default judgment in respect of a referral in terms of section 191 of the Labour Relations Act, 1995. In terms of section 192 of the LRA, where a dismissal is established, an employer bears the *onus* to justify the dismissal so established. Dismissal was established and the employer failed to discharge its statutory *onus*. Held (1): The dismissal of the five employees is substantively and procedurally unfair. Held (2): The respondent is ordered to pay to each of the employees, maximum compensation. Held (3): There is no order as to costs.

JUDGMENT

MOSHOANA, J

Introduction

- [1] This is a referral in terms of section 191¹ of the Labour Relations Act² (LRA). The respondent, Aloe Oil (Pty) Ltd (Aloe), dismissed five members of Numsa, namely Mr. Clint Ludwick; Mr. Matyumza Ndodomzi; Mr. Elton Schoeman; Mr. Aarief Gallagher; and Mr. Scheepers Johan (hereafter collectively “the dismissed employees”). This referral was throughout the pleadings stage opposed by Aloe. Aloe had alleged that the dismissed employees were dismissed for reasons of its operational requirements. Leading to the trial, parties informed the Registrar that they were discussing settlement of the dispute. This Court issued a directive that this matter, if not settled by the parties, will proceed to trial on the allocated date.
- [2] On the morning of a two-day trial (2 March 2023), the attorneys of Aloe withdrew their services. Since there was already counsel on brief, Mr Grobler, he made a brief appearance to advise the Court of the late withdrawal. He asked to be excused from the matter and begrudgingly he was duly excused. This Court remarked that it was troubled by the eleventh hour withdrawal. Nevertheless, the Court proceeded with the matter on a default basis.

Background facts and evidence led

- [3] Aloe is a company involved in the transporting of fuel and oil. The dismissed employees were employed as Bulk Vehicle Operators (BVO) on various dates ranging from November 2010 up to and including July 2016. In support of their case of alleged unfair dismissal, the evidence of Mr. Clint Ludwick was

¹ Section 191(5)(b)(ii) – “the employee may refer the dispute to the Labour Court for adjudication if the employee has alleged that the reason for dismissal is-based on the employer’s operational requirements.”

² Act No. 66 of 1995, as amended.

tendered. It suffices to mention that he testified that him and his co-employees were dismissed for no valid reasons. He further testified that he and others do not seek reinstatement. They seek compensation instead. Mr. Le Roux, appearing for the dismissed employee undertook to file an affidavit in support of a plea for compensation by 16 March 2023. The applicants' version remained unopposed. Indeed, on 16 March 2023, affidavits were filed setting out the earnings of the dismissed employees.

Evaluation

- [4] The fact that the dismissed employees were dismissed became common cause. In terms of section 192 of the LRA, once a dismissal is established, the *onus* of an employer is to justify the fairness of that dismissal. Aloe was statutorily obliged to justify the dismissal so established. No testimony was led to justify the dismissal. Axiomatically, and owing to lack of justification, the dismissal of the dismissed employees is both substantively and procedurally unfair.
- [5] The primary remedy available to the dismissed employees is that of reinstatement unless the dismissed employees do not wish to be reinstated. What then remains for them is a *just and equitable* compensation³. Having had regard to the fact that the dismissal is both substantively and procedurally unfair a maximum compensation of 12 months' remuneration is just and equitable. The remuneration shall be based on the dismissed employees' respective remuneration they last earned.
- [6] In the results the following order is made:

Order

³ Section 194 of the LRA. See *ARB Electrical Wholesalers (Pty) Ltd v Hibbert* (2015) 36 ILJ 2989 (LAC) para 24-25.

1. The dismissal of the dismissed employees is both substantively and procedurally unfair.
2. The respondent, Aloe Oil (Pty) Ltd, is ordered to pay to each of the dismissed employees an amount equivalent to 12 months' remuneration based on each's last remuneration rate.
3. There is no order as to costs.

G. N. Moshwana
Judge of the Labour Court of South Africa.

Appearances:

For the Applicant: Mr F Le Roux.
Instructed by: Gray Moodliar Inc, Gqeberha.
For the Respondent: No appearance, (attorneys withdrew and Mr. Grobler asked to be excused).