



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JR 214/2016

In the matter between:

**CITY OF JOHANNESBURG METROPOLITAN
MUNICIPALITY**

Applicant

and

**SOUTH AFRICAN MUNICIPAL
WORKERS UNION OBO MATSHEKA.**

First Respondent

**SOUTH AFRICAN LOCAL GOVERNMENT
BARGAINING COUNCIL**

Second Respondent

MAPALO TSATSIMPE

Third Respondent

Heard: 21 July 2017

Delivered: 14 December 2017

JUDGMENT

SEDILE AJBackground Summary

- [1] The application is to review and set aside an arbitration award (the award) granted by the Third Respondent under case number HQ071518 held on 16 November 2015.
- [2] The third respondent is the employee and currently employed as an Organisational Development Consultant within a sub-directorate of the Applicant called Organisational Development (OD).
- [3] The employee referred a dispute on 10 July 2015 to the South African Local Government Bargaining Council, National Division (Central / National). The nature of the dispute was described, in the referral form requesting conciliation, as interpretation / application of collective agreement in that it is a refusal by the employer, Director OD to implement a grievance outcome.
- [4] The same manner of description of the dispute was repeated in the referral for arbitration. The decision sought was that the Applicant should be ordered to implement the outcome of the grievance.
- [5] The matter was not resolved at conciliation and was ultimately referred to arbitration which took place on 16 November 2015.
- [6] The arbitrator characterised the issue to be decided as being whether the Applicant failed to comply with the recommendations made by the Chairperson in the employee's grievance hearing.
- [7] The arbitrator correctly found that a Main Collective Agreement (MCA) was entered into between the South African Local Government Association (SALGA) on behalf of its members and labour, and that the Applicant as a

municipality operates in terms of the Municipal Systems Act¹ (The Act) and is a member of SALGA and as such bound by the MCA.

- [8] The evidence led, and which the arbitrator found, was that the employee launched a grievance in June / July 2014 and that a step 1 of the grievance hearing took place. The outcome did not satisfy her.
- [9] The chairperson of the grievance hearing concluded that the employee acted in the position of OD for two years without being remunerated accordingly and that she was not given the tools like other employees occupying the same position.
- [10] The evidence before the arbitrator was that the grievance chairperson recommended that the employee should be formally appointed in the position of OD: Consultant and be remunerated accordingly and that she be provided with the tools of trade like other employees occupying a position similar to hers.
- [11] In her analysis of the submissions, the arbitrator found that the Applicant has complied with the recommendation that the employee should be formally appointed in the position of OD: Consultant and be paid accordingly. However, the Applicant has not given her the tools of trade (3G Card and cellular phone) as recommended and had also not paid her the locomotive allowance.

ANALYSIS OF THE GRIEVANCE PROCEDURE

- [12] The MCA, on which the arbitrator relied, provides for grievance procedure. The grievance is a condition of service and such as, the employer and employee are bound to follow the procedure contained therein.

¹ Act 32 of 2000.

- [13] Step 1 of the procedure is that an aggrieved employee should lodge a grievance in writing with his or her immediate superior setting out the complaint and desired outcome. The immediate superior must endeavor to resolve the outcome and inform the employee in writing thereof.
- [14] Step 2 applies if the employee is not satisfied with the step 1 outcome. In that event and within 10 days of the outcome in step 1, the employee may refer the grievance to the head of the department if it has not been resolved to the satisfaction of the aggrieved employee. In step 2, the head of department must arrange a meeting and hold discussions with the affected parties in an attempt to achieve a resolution. The employee must be informed in writing of the outcome.
- [15] In terms of the grievance procedure if the employee is still not satisfied with the outcome, the employee may, within 10 days of the outcome of step 2, escalate the grievance to step 3 where it is dealt with by the Municipal Manager. The Municipal Manager shall hold a meeting with the employee and other relevant persons to obtain details of the grievance as well as proposals on a resolution of the issue. The Municipal Manager must inform the employee in writing of the outcome.
- [16] The arbitrator found that the grievance was escalated to step 2 by the employee and that employee did not escalate the grievance further to the City Manager as prescribed in Step 3 of the grievance procedure.

Grounds of review

- [17] The Second Respondent lacked jurisdiction to adjudicate the dispute and that the ruling be reviewed and be set aside.

Analysis / evaluation

- [18] It is evident that the employee followed steps 1 and 2 of the grievance procedure but not step 3 and that the outcome of step 2 was a recommendation in favour of the employee and the employer did not accept
- [19] Therefore the dispute remained unresolved and the employee had to refer the grievance to the Municipal Manager in terms of 3 of the grievance procedure.
- [20] The employee decided to ignore step 3 and referred the grievance to the bargaining council. The MCA which the representative trade union of the employee is a party is certainly binding on all the parties and should have been followed by the employee.
- [21] The Second and Third Respondents were obliged and bound to apply the provisions of the MCA and which they failed to adhere to. The Third Respondent is obliged to exhaust all the processes as prescribed by the MCA before any dispute can be adjudicated by the Second Respondent.

Order

- [1] The award granted by the Third Respondent under case number HQ:071518 dated the 25 November 2015 is reviewed and set aside.
- [2] The Second Respondent lacked jurisdiction to adjudicate the dispute.
- [3] The First Respondent to follow step 3 with Municipal Manager.
- [4] There is no order as to costs order.

P. Sedile

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicants: Advocate. Nalane

Instructed by: SGV Attorneys

For the Respondents: Attorney J. Gwebu

Instructed by: MGM INC