Employment Law

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SOUTH AFRICA

Is any agreement capable of enforcement under the Labour Relations Act?

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Is any agreement capable of enforcement under the Labour Relations Act?

Under section 158(1)(c) of the Labour Relations Act 66 of 1995 (LRA), the Labour Court has jurisdiction to, *inter alia*, make an arbitration award or any settlement agreement an order of court. Over the years, there has been much debate and conflicting judgments on whether a wide or narrow interpretation of "*any settlement agreement*" should be adopted.

Preceding the 2014 amendments to section 158, the endorsed position was largely that the court would enjoy jurisdiction where it had *prima facie* jurisdiction over the matter which had been settled – and it must have related to the LRA. Provided that the issue was justiciable under the LRA, it was irrelevant whether the settlement agreement had been concluded before or after the statutory mechanisms had been engaged.

Post the amendments, in *Harrisawak v La Farge (2001) 22 ILJ 1395 (LC)*, the Labour Court endorsed a narrow interpretation and confined the application of section 158(1)(c) to agreements entered into under the auspices of the Commission for Conciliation, Mediation and Arbitration (CCMA). Van Niekerk J, however, differed in *Molaba v Emfuleni Local Municipality (2009) 30 ILJ 2760 (LC)* and held that *"any settlement agreement"* must be limited to instances where there has been a valid referral of a dispute and where that dispute has, at any time after the referral, been settled. A divergent approach was subsequently followed in *Tsotetsi v Stallion Security. (2009) 30 ILJ 2802 (LC)* The court held that a settlement agreement is eligible to be made an order of court even if the underlying dispute has not yet been referred for conciliation or litigation, provided a party has the right to refer it.

Capable of being referred to arbitration or adjudication

The Labour Appeal Court (LAC) in *Greeff v Consol Glass (2013) 34 ILJ 2385 (LAC)* finally determined the issue in 2017, upholding the broad approach. The reference to *"right"* in section 158(1A) is not to be construed in the strict sense as a legal right open to immediate exercise. Instead, the dispute should be of a kind, if unresolved and all procedural requirements have been met, that is capable of being referred to arbitration or to the Labour Court for adjudication.

Recently, in *IMATU obo Espach v Polokwane Local Municipality [2024] 45 ILJ 308 (LC)*, the employee sought to enforce the outcome of a grievance process, as an order of court. The employee had been aggrieved by what he described as the Polokwane Local Municipality's (Municipality) unfulfilled promises to promote him. He lodged a grievance on the back of the *"long outstanding promise of post upgrading/acting"*. A grievance hearing was held, chaired by a nominee of the municipal manager. The following outcome was rendered

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on 4 April 2017: *"the employee's post must be upgraded to post level 5 with all existing benefits and the position be changed accordingly … further that the grievance lodged by the employee is upheld and that he be placed accordingly with immediate effect."* The employee considered this outcome to be a settlement agreement.

The employee was not promoted as per the outcome. He sent correspondence to the Municipality's acting municipal manager demanding compliance with the grievance outcome. The Municipality still did not promote him. Consequently, he turned to the Labour Court for relief. He sought to make the grievance outcome an order of court on the basis that he considered it a settlement agreement. The Municipality opposed the application.

The meaning of an agreement

The court revisited the meaning of *"agreement"*. An agreement only comes into being by way of offer and acceptance. While an offer could theoretically be made out of a grievance process, in the circumstances, the lodging of the grievance and the handing down of the ruling did not constitute the necessary meeting of the minds for an agreement to arise. By lodging a grievance, the employee was not, in the strictest sense, making an offer.

Furthermore, the chairperson had not been delegated with powers to enter into an agreement on behalf of or bind the Municipality. This was a further basis of invalidity of the purported agreement.

The court obviously rejected the employee's contention of an agreement. The chairperson's role during the grievance hearing was adjudicative as opposed to one endeavouring to reach an agreement, and the Municipality's grievance policy empowered him to merely provide a *"written outcome"*, and not have the parties reach an agreement. The court iterated that only settlement agreements concluded under the auspices of the CCMA are capable of enforcement as contemplated in section 158(1)(c) of the LRA. The definition of a settlement agreement in terms of section 158(1)(c) must be read subject to section 158(1A).

The court relied on the LAC's judgment in *Fleet Africa (Pty) Ltd v Nijs (2017) 38 ILJ 1059 (LAC)* which followed *Greeff's* endorsement of the wide approach. All that is required by section 158(1A) is the existence of a dispute that a party has the right to refer to arbitration or adjudication.

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It does not matter whether a dispute has been referred to conciliation at the time of concluding the settlement agreement, in order to acquire the right to refer to arbitration or adjudication to the Labour Court (the court would lack jurisdiction over a dispute which has not been referred to conciliation).

Although section 158(1)(c) speaks of *"any settlement agreement"*, the court must *prima facie* have jurisdiction over the matter which has been settled in this sense that it must relate to the LRA. At the heart of *IMATU's* issue was an unfair labour practice dispute related to promotion, albeit no referral to conciliation had been made under section 186 of the LRA. The court accepted that he met the requirements of section 158(1A). However, no valid agreement had been concluded. A settlement agreement envisaged by section 158(1)(c) must comply, first, with the common law requirements of a valid contract. For this reason, the application was dismissed.

Conclusion

The fundamental point highlighted in *IMATU* is a re-emphasis of the principle that if a valid agreement is concluded, even if it is outside the auspices of the CCMA or bargaining council, it may be capable of enforcement as an order of court where the CCMA or Labour Court would have jurisdiction over the main issue in dispute.

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