

AMALUNGELo WORKERS ' UNION AND OTHERS v PHILIP MORRIS
SOUTH AFRICA (PTY) LIMITED AND ANOTHER (CCT20/18) [2019]
ZACC 45 (26 NOVEMBER 2019)

BACKGROUND

The Applicants are Amalungelo Workers' Union (and 75 of its members) who were employed by Philip Morris South Africa (Pty) Ltd and Leonard Leonard Dingler (Pty) Ltd, the Respondents.

The Applicants alleged that the Respondents have, in contravention of section 34 of the Basic Conditions of Employment Act ("BCEA"), deducted tax (in respect of company cars) from their salaries. Based on this allegation, the Applicants instituted proceedings in the Labour Court for an order compelling the Respondents to refund them for the deducted amounts and sought an interdict restraining the Respondents from continuing to make the deductions in the future.

LABOUR COURT ("LC"):

The LC *mero motu* raised an *in limine* point of jurisdiction.

After having heard the parties on the point and relying on earlier decisions, the LC held that it lacked the jurisdiction to directly enforce the provisions of the BCEA unless such provisions form part of contractual terms in section 77(3).

Essentially, the LC found that unless the claim was based on a breach of contractual terms, it couldn't adjudicate the dispute acting as a court of first instance. Accordingly, the LC dismissed the claim.

LABOUR APPEAL COURT ("LAC"):

The Applicants sought leave to appeal from the LAC, but their application was also dismissed.

CONSTITUTIONAL COURT ("CC"):

The question of whether the LC had requisite jurisdiction to adjudicate the Applicants claim raises a constitutional issue, which brings it within the jurisdiction of the CC.

It is clear from the heading of section 77 of the BCEA that the LC has exclusive jurisdiction over matters under the BCEA. However, that exclusivity is only subject to the Constitution and the jurisdiction of the LAC. What this means is that s 77 of the BCEA must be construed in such a manner that promotes and facilitates access to the LC rather than a meaning that prevents such access.

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The CC found that s 77(3) of the BCEA expands the LC's jurisdiction to cover disputes arising from contracts of employment. Such jurisdiction, however, is not exclusive but is shared with the civil courts.

Regarding direct access to the LC with a claim under the BCEA, the CC held that the LC has the power to determine disputes relating to the compliance with the BCEA, except for the specific functions of labour inspectors (i.e. the LC may not advise employers and employees of their rights and obligations, conduct inspections, investigate complaints made to an inspector or endeavour to secure compliance with the law by securing undertakings from employers or issuing compliance orders).

HELD

Unlike the Labour Relations Act ("LRA"), the BCEA does not have a provision equivalent to s 191 of the LRA which obliges parties to refer dismissal disputes to the CCMA before submitting them to the LC.

The CC concluded that all claims to which the BCEA applies, fall within the exclusive jurisdiction of the LC. The dispute was remitted to the LC to adjudicate the lawfulness of the deductions.

VALUE

On a proper reading of s 77 of the BCEA, the Labour Court enjoys exclusive jurisdiction over all disputes and claims arising from the BCEA.

Written Jordan Dias Checked by Pierre van der Merwe

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