



NOT REPORTABLE

CASE NO: LCA 85/2011

IN THE HIGH COURT OF NAMIBIA

MAIN DIVISION

HELD AT WINDHOEK

In the matter between:

**SPRINGBOK PATROLS (PTY) LTD t/a NAMIBIA
PROTECTION SERVICES**

APPELLANT

and

L. NTELAMO N.O.

1ST RESPONDENT

BARAKIAS NAMBANDI

2ND RESPONDENT

CORAM: HOFF, J

Heard on: 01 June 2012

Delivered on: 01 June 2012 (*Ex tempore*)

LABOUR JUDGMENT

HOFF, J: [1] This is an appeal against a compliance orders (dated 25.07.2011) granted in terms of section 126(1) of Act 11 of 2007 by the first respondent, the labour inspector, against the appellant to the effect that the appellant must refund its employees

all deductions made for other replacement uniforms (except the first uniform) The appeal is unopposed. The grounds of appeal were raised in the notice of appeal. The first ground is that the first respondent erred in law and/or on the facts and/or misdirected himself, alternatively acted *ultra vires* his powers in that he issued an order that the appellant should reimburse the respondents for a violation of a collective agreement. The second ground of appeal is that the respondent erred in law and/or on the facts and/or misdirected himself in that he found that the deductions made by the appellant from the employees were deductions *in lieu* of uniforms to its employees. The third ground of appeal is that the first respondent erred in law and/or on the facts and/or misdirected himself in that he ignored and/or failed to take into consideration article 10.3 of the collective agreement, which states that any dispute must be settled through conciliation or arbitration.

[2] Section 126(1) Act 11 of 2007 reads as follows:

“(1) An inspector who has reasonable grounds to believe that an employee has not complied with a provision of the Act may issue a compliance order in the prescribed form.

(2) An employer must comply with a order issued in terms of subsection (1) unless the employer appeals to the Labour Court in terms of subsection (3).

(3) An employer may appeal against a compliance order to the Labour Court within 30 days after receiving it.”

[3] In terms of section 117(1)(a)(iii) of Act 11 of 2007 the Labour Court has exclusive jurisdiction to determine appeals from a compliance order issued in terms of section 126.

[4] It was submitted on behalf of the appellant that section 126(1) an inspector may issue a compliance order where an employer has failed to comply with any provision of

the Labour Act in contradistinction to non-compliance with a collective agreement. I agree. The provisions of section 126(1) are clear and unambiguous – it refers to provisions of the Labour Act. The collective agreement is binding on the parties in as much as the terms thereof should be regarded as terms and conditions of employment. The provisions of the Labour Act do not elevate the contents of a collective agreement equal to that of provisions of the Act.

[5] Mr Wilfred Somseb in his founding affidavit stated that the deductions made by the applicant were deductions for shoes, jackets and shirts ordered from the appellant by its employees.

[6] Article 9.4 of the collective agreement reads as follows:

- “9.4.1 A newly-appointed employee shall be required to pay a deposit equivalent to the cost of the uniform;
- 9.4.2 The employer shall refund the deposit to the employee at the time of the employee's termination of service upon return of the uniform;
- 9.4.3 The employer shall replace the uniform of each employee, as needed at the employer's cost.”

[7] In a letter addressed to the appellant after the issuance of the compelling order, the first respondent *inter alia* reminded the appellant that “the new collective agreement (of 2009) does not categorize what is perceived as uniform like in the old collective agreement of March 2005, therefore everything is part of uniform as per the new collective agreement”.

[8] Mr Somseb in his founding affidavit stated that this misinterpretation is to a large extent due to the fact that appellant was never afforded the proper opportunity by the first respondent to be heard in respect of its interpretation of the provisions of the collective

agreement as far as the definition of the “uniform” is concerned and that the first respondent took it upon himself to determine what constitutes a uniform.

[9] Mr Somseb further stated that the appellant provides to its employees, as a uniform, one set of trousers, one shirt and/or combat set, one cap, a pull-over, and a belt. These items of clothing bear the insignia of the appellant. Items which are deducted from the remuneration of the employees of the appellant and which do not form part of a uniform are the following: shoes, both boots and black step-outs, T-shirts, and jackets not bearing the company insignia. The employees become the owners of these clothing items and are not required to return the clothes if their employment terminate. In my view the first respondent misinterpreted the provisions relating to “uniform” in the collective agreement and the compliance order stands to be set aside on this ground.

[10] The third ground of appeal relates to Article 10.3 of the collective agreement which reads as follows:

“Any dispute must be settled through conciliation or arbitration as the parties may agree and as provided for by relevant Namibia Legislation.”

[11] Mr Somseb stated that the parties intended for any and all disputes relating to the content and effect of the collective agreement to be resolved by the conciliation and/or arbitration procedure provided for in the Act and that the wording of Article 10.3 does not lend itself to disputes being resolved by way of labour inspectors.

[12] Section 73 of Act 11 of 2007 provides a follows:

“(1) Every collective agreement must provide for a dispute resolution procedure including an arbitration procedure to resolve any dispute about the interpretation, application or enforcement of the agreement in

accordance with Chapter 8 Part C or D unless provisions is made in the another collective agreement for the resolution of that dispute.

- (2) If there is a dispute contemplated in subsection (1), any party to the dispute may refer the dispute to the Labour Commissioner if –
- (a) the collective agreement does not provide for procedure as required by subsection (1); or
 - (b) the procedure is not operative.”

[13] As indicated aforementioned the collective agreement does provide for a conciliation and/or an arbitration procedure and that the third ground of appeal should succeed as well.

[14] In the result the following order is made:

1. The compliance order (dated 25.07.2011) issued by the first respondent is hereby set aside.

HOFF, J

ON BEHALF OF THE APPELLANT:

ADV. SMALL

Instructed by:

GF KÖPPLINGER LEGAL PRACTITIONERS

ON BEHALF OF THE 1ST RESPONDENT:

NO APPEARANCE

Instructed by:

ON BEHALF OF THE 2ND RESPONDENT:

NO APPEARANCE

Instructed by: