

AT THE SOUTH AFRICAN ROAD PASSENGER BARGAINING COUNCIL

IN THE DISPUTE

BETWEEN

TAWUSA obo T Mngeni

APPLICANT

AND

Algoa Bus Company

RESPONDENT

RULING

CASE NUMBER:

RPNT857

DATE RULING SUBMITTED:

08 September 2011

NAME OF COUNCIL COMMISSIONER:

Julia Cameron

South African Road Passenger Bargaining Council

Tel: 011 326 0473

Fax: 011 326 0465

First Floor, Sonsono Building

344 Pretoria Avenue

Randburg

2125



1. DETAILS OF APPLICATION AND PROCESS

This matter came before the bargaining council for arbitration in terms of section 191 of the Labour Relations Act No 66 of 1995 ("LRA"). It was scheduled to be heard at the offices of the MEIBC in Port Elizabeth on 8 September 2011. The applicant, Mr T Mngeni, was represented by Mr M Tiso of TAWUSA. The respondent, Algoa Bus Company, was represented by Ms A Nockfar, its Senior Human Resources Officer.

2. ISSUE TO BE DECIDED

The issue to be decided it whether to postpone the proceedings as per the request of the applicant.

3. BACKGROUND TO THE ISSUE

The applicant was dismissed with effect from 7 December 2010. Due to a condonation application and ruling, a certificate of non-resolution was only issued on 3 May 2011. The matter was referred for arbitration on 30 May 2011 and scheduled for arbitration hearing on 30 June 2011. The applicant arrived at the arbitration hearing with a representative from a union called JAMAFO. As he was not a member of this union at the time of dismissal, Commissioner Oosthuizen ruled that, in terms of the constitution of the bargaining council, the applicant could not be represented by JAMAFO. The matter was therefore rescheduled for arbitration for 8 September 2011, at which stage the applicant appeared, along with his TAWUSA representative.

4. ANALYSIS OF EVIDENCE AND ARGUMENT

At the outset of the arbitration hearing, the applicant's representative, Mr M Tiso, indicated that he only arrived in Port Elizabeth for the arbitration that morning and that he needed time to prepare for the hearing. For this reason the arbitration only began one hour after the scheduled starting time. During this time, I attempted to resolve the matter. However, although the respondent was willing to negotiate a compensation settlement, the applicant was not willing to settle on anything other than reinstatement.

When the respondent was to begin leading evidence, the applicant requested a postponement of the proceedings, on the basis that his representative only became aware of the arbitration the day prior to the arbitration and for this reason he was still not sufficiently prepared for the matter. The respondent opposed the postponement application, stating that the notice of set down was served at least 21 days prior to the arbitration, and that TAWUSA should have been more prepared.



In order to make a decision regarding the postponement I asked some questions relating to the merits of the matter in order to determine whether the applicant had good cause. It was quite clear from the bundle that had been handed up by the respondent that the charges against the applicant were no different from those against many other bus drivers who had been dismissed by the respondent and whose dismissals had been upheld by various Commissioners. It was evident that the applicant's only defence in the matter was to merely deny the charges. I indicated that I had concerns regarding the merits of the matter, and that if the applicant insisted on requesting a postponement, that I may consider making a cost order against the applicant and the union if it is indeed found after all evidence is adduced that there are no merits in the matter.

Despite the above, the applicant continued in his request for a postponement. I therefore, granted the postponement, and instructed the parties to argue the issue of costs at the end of the arbitration proceedings.

5. RULING

The matter is postponed. It must be rescheduled for arbitration.

The parties may argue the issue of wasted costs at the end of the arbitration proceedings.



COUNCIL COMMISSIONER: JULIA CAMERON

