

RESCISSION RULING

Panellist/s: Dr. Mohamed Alli Chicktay
Case No.: PSCB289-08/09
Date of Ruling: 2 November 2010

In the matter between:

PSA obo Amos C

(Union / Applicant)

and

Department of Justice and Constitutional Development

(Respondent)

DETAILS OF APPLICATION:

A decision was made against the applicant by Commissioner Carlton Johnson in an award dated 12th August 2010. The applicant had thus made an application to rescind the award.

ISSUE TO BE DECIDED:

I must decide whether to have the aforesaid award rescinded.

SURVEY OF SUBMISSIONS AND ARGUMENT:

The applicant believes that the arbitrator was in violation 144 (b) and (c) of the Labour Relations Act 66 of 1995. The applicant argued that the respondent did not exercise its discretion fairly. The applicant's salary was stopped before the respondent had exercised its discretion and it was also not referred to its service provider. The discretion was thus prematurely exercised. The respondent had deviated from its own internal procedures. It argued further that the arbitrator also failed to consider the fact that the applicant timorously applied for temporary incapacity leave.

ANALYSIS OF EVIDENCE AND ARGUMENT:

While the applicant argues that the arbitrator was in violation of section 144(b) and (c) of the Labour Relations Act 66 of 1995 the applicants fails to prove this. The applicant does not show that there was any ambiguity,

error or omission. Nor does he show that there was a mistake common to both parties as required in the specified sections. The applicant is in fact not happy with the arbitrators reasoning. The applicant states specifically that "it cannot be reasonable to argue that the respondent has properly and fairly exercised its discretion". The applicant then makes argument as to why he questions the reasonableness of this decision e.g. he argues that it is not reasonable to conclude that the respondent made its decision fairly since the respondent made this decision prematurely and failed to refer it to its service provider. Since the applicant is questioning the reasonableness of the decision the matter is not one for rescission but is rather one that could have been sent on review to the Labour Court, provided that it satisfied the requirements. In *Sidumo & another Rustenburg Platinum Mines Ltd & other* (2007) 12 BLLR 1097 (CC) the Constitutional Court stated that an award should only be reviewable if it is one that no reasonable decision-maker could reach.

Since the applicant fails to prove that the arbitrator was in violation of section 144(b) and 144(c) the applicant application for rescission is dismissed

Signature: 

Panellist/s: Dr. Mohammed Ali Chicktay