IN THE LABOUR COURT OF SOUTH AFRICA

(Held at Johannesburg)

Case No. J1204/99

In the matter between:

NATIONAL UNION OF CONSTRUCTION WORKERS Applicant

and

ORANJE MYNBOU EN VERVOER MAATSKAPPY BPK

Respondent

JUDGMENT

REVELAS, J:

1] In this matter the applicant had approached this court to make a settlement agreement entered into with the respondent, an order of court in terms of section 158(1) (c) of the Labour Relations Act 66 of 1995 ("the Act"). The parties to the Deed of

Settlement are the Building Construction and Allied Workers Union and “Booysen P and Others”.

2] The respondent was not present at court, despite the fact that it has filed opposing affidavits in this matter. In the respondent's answering affidavit the respondent has raised the point that the agreement was not reached between itself and the applicant now before court, but with another union and it therefore does not regard itself bound by the agreement which it did not comply with. It appears that on this ground alone the applicant may not entitled to the relief it seeks. However, another question arises, namely whether a trade union can enforce a settlement agreement, such as the one in question.

3] The deed of settlement envisaged that 49 dismissed employees were to be reinstated in the employ of the respondent. The applicants allege that the respondent did not comply with the agreement.

4] The agreement of settlement in question was entered into between a trade union and an employer (the applicant) and seems to fall within the definition of

a "Collective Agreement" in section 213 of the Labour Relations Act , No 66 of 1995 ("the Act"). The definition reads:

"'Collective Agreement' means a written agreement concerning terms and conditions of employment or any other matters of mutual interest, concluded by one or more registered trade unions on the one hand, and on the other hand;

(a) one of more employers;

(b) on or more registered employers organisations; or

(c) one or more employers or one or more registered employers organisations."

5] The settlement agreement in question deals with terms and conditions of employment, the reinstatement part of it at least. Therefore it has to be a collective agreement as defined in the Act. The definition does not specifically exclude agreements between trade unions and employers which were reached to resolve dismissal disputes. Such an exception or exclusion is not capable of being read into the definition.

6] Section 24(1) of the Act reads as follows:

"1. Every collective agreement, excluding an agency shop agreement, concluded in terms of section 25 or a closed shop agreement concluded in terms of section 26, must provide for a procedure to resolve any dispute

about the interpretation or **application [my emphasis] of the collective agreement. The procedure must first require the parties to attempt to resolve the dispute through conciliation and if a dispute remains unresolved, to resolve it through arbitration."**

Section 158(1)(c) of the Act provides that the Labour Court may

"make any arbitration award or any settlement agreement, **other than a collective agreement**, (my emphasis) **an order of court."**

7] The latter two sections are plain in their meaning. Any dispute about the application of a collective agreement has to be referred to the Commission for Conciliation, Mediation and Arbitration ("the CCMA") and the Labour Court may not make such agreements orders of court. In section 158(1)(c) of the Act the words "other than a collective agreement," clearly distinguishes collective agreements from other settlement agreements. The wording suggests that it is envisaged, that certain settlement agreements may be collective agreements, and vice versa.

8] Whether a dispute about the "application" of a

collective agreement, referred to in section 24(1) of the Act, would include the enforcement of a collective agreement when it is breached, is a further question which needs to be decided.

9] Enforcement of an agreement only becomes an issue when there is some form of non-compliance with that agreement. When a party wishes to enforce the agreement it would be, at least *inter alia,* because it believes the agreement is applicable to the party who is in breach thereof. Therefore a "dispute about the application of a collective agreement" (section 24 (1) of the Act) applies to the situation where there is non-compliance with a collective agreement and one of the parties wishes to enforce its terms. Consequently, the CCMA, and not the Labour Court, should entertain disputes arising from the non-compliance with collective agreements.

10] The applicant therefore has to refer this dispute to the CCMA because the breach of the agreement gives rise to a dispute about the application of a collective agreement which is also a settlement agreement. If the dispute is not resolved through conciliation, the

CCMA may arbitrate this dispute about the agreement, and any award then made, may be made an order of the Labour Court.

11] I do appreciate that the applicant's members are in an akward position. I do not believe it was the intention of the drafters of the Act that individual employees in unfair dismissal disputes may have their settlement agreements made orders of court, whereas similar agreements between trade unions and employers may not be enforced in the same way. I am however bound by the wording and the provisions of the Act. It would then also appear that agreements between trade unions and employers reached at court, in respect of urgent applications, or disputes about dismissals for operational requirements, should not be made orders of court or before following the conciliation and arbitration route at the CCMA. This anomolous situation clearly calls for legislative intervention.

12] The application is dismissed.

E REVELAS

Date of Hearing: 22 October 1999

Date of Judgement: 22 October 1999