

IN THE LABOUR COURT OF LESOTHO

LC/REV/271/2006

HELD AT MASERU

IN THE MATTER BETWEEN:

PRESITEX ENTERPRISES

APPLICANT

AND

DIRECTORATE OF DISPUTE
PREVENTION AND RESOLUTION

1ST RESPONDENT

MICHAEL SEBOKA

2ND RESPONDENT

JUDGMENT

Date: 21/08/08

*Review of DDPR award - Evidence led not contradicted -
Finding of arbitrator consistent with evidentiary material
presented before him - Award accordingly justifiable -
Application dismissed.*

1. This is an application for the review of the award of the Arbitrator of the 1st respondent in which he awarded 2nd respondent to be paid M8,652-00 as underpayments for the period April 2001 to August 2004.
2. The 2nd respondent referred a dispute to the 1st respondent claiming that whilst he was employed by the applicant as a heavy duty driver, he was never paid wages of the incumbent of the position in terms of the relevant wages orders. In response the representative of the applicant did not controvert 2nd

respondent's testimony that he was employed as a heavy duty driver. He instead advanced evidence that 2nd respondent did not drive a heavy duty vehicle. He however agreed that applicant had a heavy duty license.

3. During submissions, 2nd respondent made a single statement in these words, "I worked for the respondent as a heavy duty driver and I was employed as such." In response the applicant's representative stated:
"we do not want to waste your time, we are aware that we have underpaid him but we do not have the vehicles for the heavy duty license he was employed possessing."
4. Against the backdrop of these facts the learned arbitrator set out to make his ward in favour of the 2nd respondent on the basis that, it was common cause between the parties that the 2nd respondent was employed as a heavy duty driver. He found that the representative for the applicant had failed to contradict 2nd respondent's evidence that he was employed as a heavy duty driver. He accordingly found that 2nd respondent was underpaid as he had claimed.
5. The applicant approached this court to have the award of the learned arbitrator reviewed and set aside on the following grounds:
 - (a) The arbitrator erred in saying that it was common cause that the 2nd respondent was employed as a heavy duty driver for this was exactly what was in dispute.
 - (b) The arbitrator erred in ignoring the fact that the 2nd respondent was employed as a driver who drove light and medium size vehicle although he had a heavy duty license.
 - (c) The arbitrator failed to make an enquiry as to the type of vehicle 2nd respondent alleged to have been driving.
 - (d) The arbitrator failed to enquire whether the applicant had heavy duty vehicles.
6. An administrative decision is reviewable if "....conclusions reached are not capable of reasonable justification when regard is had to the factual premises on which (it is) based." (see

Gimini Indent Agencies cc t/a S&A Marketing .v. CCMA & Others (1999) 20 ILJ 2872 at 2876 and the cases referred to therein.). In our view the uncontradicted evidence of the 2nd respondent that he was employed as a heavy duty driver clearly informed the learned arbitrator's finding in his favour.

7. The learned arbitrator cannot be faulted for proceeding from the premise that the contractual relationship of the parties was common cause. 2nd respondent's evidence that he was employed as a heavy duty driver was not challenged under cross examination. Neither was any evidence to the contrary adduced.
8. Ms. Sephomolo for the applicant argued that the arbitrator was not even shown the contract of employment that the 2nd respondent was relying upon. We do not think that that was necessary in the circumstances of this case, when regard is had to the fact that the evidence was not denied. Even assuming it was, a bare denial would not suffice on the part of the applicant. It would have to proffer an alternative contractual arrangement between the parties, which the onus would be on it (the applicant) to prove it. Accordingly, the contract of employment if necessary at all would have to be produced by the applicant to rebut the 2nd respondent's version of the capacity in which he was employed.
9. The second ground of review is even more far fetched. There is no scintilla of evidence adduced to contradict what 2nd respondent alleged he was employed as. That he drove light and medium vehicles is not what the arbitrator based his award on. His award was clearly based on the contract that the 2nd respondent entered into, which the representative of the applicant did not dispute.
10. That the learned arbitrator did not enquire as to the type of vehicle that 2nd respondent drove may well be so. However, that would have been an irrelevant enquiry because the undisputed facts before him showed that 2nd respondent's contract of employment was of a heavy duty driver. That he was made to drive light and medium vehicles is neither here nor

there. What was of paramount importance to the learned arbitrator was the contract.

11. Equally irrelevant would be an enquiry into whether the applicant had heavy duty vehicles. The proven and undisputed facts did not make that necessary. In all the circumstances of this case the award of the learned arbitrator is justifiable on the basis of the evidentiary material before him. It cannot therefore be assailed. Accordingly, the review application ought not to succeed. It is accordingly dismissed.

THUS DONE AT MASERU THIS 21TH DAY OF AUGUST 2008

L. A. LETHOBANE
PRESIDENT

D. TWALA
MEMBER

I CONCUR

M.THAKALEKOALA
MEMBER

I CONCUR

FOR APPLICANT:
FOR RESPONDENT:

MS. SEPHOMOLO
MR.L. MOLATI