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Is a collective agreement valid and binding, despite a dispute as to the authority of those purporting to conclude the agreement?

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South African Airways (Soc) Ltd & another v National Transport Movement & others (Case no: J1872/2015, 12 May 2016)

ISSUE(S)

Whether a collective agreement is valid and binding, despite a dispute as to the authority of those purporting to conclude such an agreement.

COURT'S DECISION

In the case of *South African Airways (Soc) Ltd & another v National Transport Movement & others* (Case no: J1872/2015, 12 May 2016), the National Transport Movement ('the trade union') was divided into two camps, namely "the Mphahlele camp" and "the Molefe camp". These two groups had been involved in on-going litigation to determine which group was the rightful leadership of the trade union. South African Airways ('SAA'), the employer, sought an order that the collective agreements entered into with the Mphahlele camp, be declared valid and binding. SAA also sought a second order that all future collective agreements entered into with the Mphahlele camp be declared binding and barring the Molefe camp from alleging to represent the trade union pending the settlement of the litigation between them. Thirdly, SAA sought interdictory relief prohibiting the Molefe Camp from interfering with an on-going dispute before the CCMA to which the trade union was a party.

The Molefe camp alleged that the collective agreements could not be given effect to because the Mphahlele camp was not duly authorised to represent the trade union at the time of the conclusion of the agreements.

The Court held that even if the Mphahlele camp were not duly authorised to conclude the collective agreements, that would not, in itself, render the agreements void. It would merely render them voidable. This is so because the conclusion of the collective agreements were authorised by the trade union's constitution. In essence the collective agreements were to remain effective until such time as they could be set aside by a court of competent jurisdiction. In this particular case the validity of the agreements had not been challenged by either camp and therefore the Court did not consider setting it aside.

The Court was unable to grant the second order seeking to declare all future agreements entered into by the Mphahlele camp valid and binding, because litigation surrounding this issue was already pending in a different court. Furthermore, the Court held that it would not be appropriate to determine such a matter in motion proceedings.

The Court also warned that employers do not have the right to seek an order declaring one group to be in control of the trade union. In terms of section 95(1)(d) of the LRA, read with section 95(2)(b) of the same Act, a trade union must be independent and 'free from any interference or influence of any kind from any employer'. Therefore to allow an employer to influence the leadership of a trade union would undermine the process of collective bargaining and would raise issues of collusion between trade unions and employers.

IMPORTANCE OF THIS CASE

This case suggests that even where there is a dispute as to the purported leadership of a trade union, a collective agreement entered into between that trade union and an employer will not be void, but rather voidable provided the constitution of the trade union in question allows for the trade union concerned to enter into collective agreements. In essence this means even if the agreement is concluded by unauthorised persons and is capable of being set aside by a court it nevertheless remains valid and binding until such time as this is done or, alternatively, validly terminated or cancelled in accordance with its provisions.

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Andre van Heerden

Director

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