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Is a trade union entitled to organisational rights in terms of the LRA after acquiring majority representation at a single branch?

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Professional Transport and Allied Workers Union obo members / Professional Aviation Services [2016] 4 BALR 421

ISSUE

Whether a trade union is entitled to organisational rights in terms of sections 12 to 16 of the Labour Relations Act 66 of 1995 ("**LRA**"), after acquiring majority representation at only a single branch of an employer, even though the trade union only represented a fraction of the employer's total national workforce.

COURT'S DECISION

In the case of *Professional Transport and Allied Workers Union obo members / Professional Aviation Services* [2016] 4 BALR 421 (CCMA), the trade union recruited 14 out of the 18 employees employed by Professional Aviation Services, at their Bloemfontein branch.

The employer is an international company with its head office in Lanseria. The trade union informed the employer, in writing, of its intention to acquire organisational rights, after which a meeting was held between the parties. No agreement was reached between the parties and the trade union referred a dispute to the CCMA.

The CCMA found that the primary issue in dispute was whether the trade union had sufficient representation within the workplace in order to obtain one or more of the requested organisational rights.

The employer contended that it had 380 employees in its employ throughout the country and only 18 in Bloemfontein. The Bloemfontein was not, according to the employer, a separate workplace. The Bloemfontein operations formed part of the larger workplace and, as a consequence, the trade union's level of representativeness should be considered in respect of the entire workforce of 380 employees. The employer claimed that, as a result, it was clear that the trade union was not entitled to any organisational rights.

The Commissioner considered section 21(8) of the LRA, which sets out factors which a Commissioner must take into account when resolving a dispute about whether or not a trade union is a representative trade union and held that a key consideration in such matters is the principle of majoritarianism. The Commissioner also pointed out that in order to decide whether the applicant was entitled to organisational rights, he had to consider the meaning of "workplace".

Section 213 of the LRA states that 'workplace' means –

"the place or places where the employees of an employer work. If an employer carries on or conducts two or more operations that are independent of one another by reason of their size, function or organisation, the place or places where employees work in connection with each independent operation, constitutes the workplace for that operation."

Commissioner found that, notwithstanding the fact that the Bloemfontein branch was part of a larger company, it was independent from the head office in Lanseria. The head office was responsible for largely administrative functions of the branch office. Furthermore, the employees who were recruited were employed in Bloemfontein and worked only in Bloemfontein. They had their own branch manager and their performances were in no way linked to any of the other branches in South Africa. In addition, there was no national union presence within the employer.

The Commissioner found that the branch in Bloemfontein was in fact the 'workplace', and that by having recruited 12 of the 18 employees, the trade union has secured more than 50% of the workforce as members. In conclusion the Commissioner granted the trade union organisational rights in terms of section 13, 14, 15 and 16.

IMPORTANCE OF THIS CASE

The meaning of "workplace" in the LRA is determined by reference to a range of factors, not only geographical location. The "workplace" will not always necessarily be where the head office is situated or where the majority of the workforce is employed.

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