

EMPLOYMENT

The meaning of the term ‘pay back’ in a settlement agreement

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Genrec Engineering (Pty) Ltd v Metal and Engineering Industries Bargaining Council and Others [2016] ZALCJHB 213 (17 June 2016)

ISSUE

What does the term ‘back pay’ mean in a settlement agreement?

COURT’S DECISION

In the recent case of *Genrec Engineering (Pty) Ltd v Metal and Engineering Industries Bargaining Council and Others* [2016] ZALCJHB 213 (17 June 2016), the applicant employer instructed its employees to attend a BEE share incentive presentation. A number of employees (who were already on written warnings at the time) refused to do so and were then dismissed. The employees challenged the fairness of the dismissals. At the subsequent arbitration proceedings the arbitrator found the dismissals to be substantively unfair and ordered reinstatement (without back pay). The employer sought to review the arbitrator’s award. However, the parties consented to the award being set aside as the record of the arbitration proceedings had been deleted by the Bargaining Council. A second arbitration was commenced before a new arbitrator after which the parties reverted to mediation.

During the mediation proceedings the parties concluded a settlement agreement. The agreement provided, among other things, that the employer would reinstate the employees ‘with effect from’ 19 September 2011. What was left to be determined by the arbitrator was the amount of back pay payable. In 2012, the arbitrator awarded back pay retrospectively to the employees, i.e. from the date of their dismissal in February 2006, to the date of their reinstatement in 2011.

The employer took this decision on review. At the Labour Court the employer argued that the arbitrator had misinterpreted the settlement agreement, but more specifically the meaning of the term ‘back pay’. The employer argued that where the settlement agreement made reference to ‘back pay’ what it actually meant was ‘compensation’. The employer wished to pursue this argument because while the amount that can be awarded as ‘back-pay’ is unlimited, the amount that may be awarded by way of ‘compensation’ is limited by section 194(1) of the Labour Relations Act (‘LRA’). This interpretation, so the employer contended, was bolstered by the fact that the settlement agreement expressly stated that reinstatement would take place ‘with effect from’ 19 September 2011, which meant that the reinstatement could not be retrospective, and that the remuneration could not be ‘back pay’.

The Court reasoned that the manner in which the term ‘back pay’ was used in the settlement agreement meant that it referred to remuneration from the date of dismissal to the date of reinstatement. Furthermore, there was nothing in the wording of the settlement agreement to suggest that the arbitrator’s powers were limited to only awarding 12 months compensation as contemplated by the LRA. The Court held that it would not be a reasonable interpretation to imply section 194(1) into the settlement agreement in the absence of a clear reference to the provision or similar language.

In conclusion the Court found the arbitrator’s award to be reasonable, and dismissed the applicant’s review application.

IMPORTANCE OF THIS CASE

This case highlights the importance of ensuring that settlement agreements are carefully and precisely drafted.

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