



DEMARCATIION ARBITRATION AWARD

Case Number: MP3999-15
 Commissioner: Raymond Dibden
 Date of Award: 19 October 2015

In the ARBITRATION between

VREDELUS VERVOER CC
 (Applicant)

And

NATIONAL BARGAINING COUNCIL FOR ROAD FREIGHT AND LOGISTICS INDUSTRY
 (Employer / Respondent)

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PREAMBLE

- [1] This is a Demarcation award. The rules of proceedings before the CCMA will be referred to as the rules or CCMA rules.
- [2] The Basic Conditions of Employment Act will be referred to as the BCEA and reference to the Employment Equity Act will be to the EEA. The Labour Court will be referred to as the LC and the Labour Appeal Court as the LAC or our labour courts.
- [3] No discrimination is intended or implied in the use of any words denoting gender or race within this award.
- [4] An arbitration award is not intended to be a verbatim transcript of the evidence led at an arbitration hearing, but is more importantly a determination with brief reasons. The parties had the opportunity to hear and cross-examine the evidence.
- [5] Evidence relevant to the determination or to support any of the elements of fairness as required may be referred to. This does not imply that the Commissioner in coming to a determination failed to consider other evidence or ignored such evidence.

DETAILS OF THE HEARING

- [6] The dispute was scheduled for an Arbitration hearing under the auspices of the CCMA in the offices of the CCMA in Kruger Street Witbank, on 9 October 2015.
- [7] Both parties were present and represented as per cover sheet.
- [8] The process of a demarcation had been explained at the first fact finding meeting and was re-explained to the parties given that the applicant's representation had changed.
- [9] There was no reasonable prospect of settlement and the dispute proceeded to be heard.
- [10] The applicant handed in a bundle of documents.

- [11] I explained the process to be followed and emphasized the issues which parties needed to canvas in respect of the demarcation dispute. I emphasized the need to point me to the relevant main agreement / scope of registration and any authority which the party relied upon to support an argument. Not limited to case law and which could include references to similar businesses within the scope of registration or excluded and or previous demarcation awards which assist the commissioner in coming to a reasoned decision.
- [12] The parties were called upon to make submissions and they were afforded the opportunity to respond to questions and to make final submissions.
- [13] The commissioner's hand written notes are to be found in the dispute file and support the electronic record.
- [14] I explained that demarcation process and the necessity for the demarcation award to go through a vetting process by the demarcation committee and or as well as NEDLAC.

PRELIMINARY ISSUES

- [15] There were no preliminary issues and the parties agreed that there was no necessity for an in loco inspection.

ISSUES TO BE DECIDED

- [16] To assess whether the nature of the applicant's business fell with the scope of registration of the NCRFI and to make an appropriate order.

SUMMARY OF ARGUMENTS AND EVIDENCE

BACKGROUND TO THE DISPUTE

The applicant's business was restricted to providing a domestic waste removal service to Tubatse Chrome (Pty) Ltd in respect of the mine owned village not serviced by the municipality.

I will summarize the essence of the party's submissions for brevity sake.

[17] The applicant submitted that there was a supply of service agreement with Tubatse to remove domestic waste from the company property as the services was not provided by the municipality. The applicant argued that the nature of the business was a service not defined in the main agreement. The applicant submitted that there was no end destination within the service level contract and neither was the client prescriptive of the way in which the applicant was to carry out the contract. The applicant stated he could have used a donkey cart instead of a truck as he was not remunerated for kilometers travelled and that other than having to dump the domestic waste at a legal dump there was no specific destination. He could drive to Cape Town and dump there as long as he carried his own costs. The applicant submitted that the employees were not dedicated drivers as they were responsible to ensure that the domestic waste was brought to a pick up point and loaded same self. They also offloaded at the dump site selected by the owner. The applicant's representative drew the attention of the commissioner to a number of labour court decisions with reference to having to determine the nature of the business and not the title given to employees.

[18] The respondent in essence submitted that in terms of the collective agreement transportation of goods fell under the scope of the bargaining council and because the applicant was using motor transport to carry out its work the drivers should be considered to fall under the council.

ANALYSIS OF ARGUMENTS AND EVIDENCE

[19] In considering whether the applicant should fall under the scope of registration / main agreement consideration needs to be given to the actual nature of the employer's business and not the terminology parties employ to describe the job functions and or the titles one ascribes to an employee. The principles regarding whether or not an employer and its employees fall within a particular sector for purposes of demarcation have been summarized in *Coin Security (Pty) LTD v CCMA and others (2005) 26 ILJ* and reference is made to *Greatex Knitwear (Pty) Ltd v Viljoen & others NO 1960 (3) SA 338 (T)*.

[20] The jurisdiction of the respondent must be determined with reference to its scope of registration as it appears in its certificate of registration, which reads "for the purposes hereof the transportation of goods means the undertaking in which employers and their employees are associated for carrying out one or more of the following activities **for hire or reward**: (l) the transportation of goods by means of

motor transport; (ii) the storage of goods, including the receiving, opening, unpacking, packing, dispatching and clearing of or accounting for of goods where these activities are ancillary or incidental to paragraph (i) hereof; and (iii) the hiring out by labour brokers of employees for activities or operations which ordinarily or naturally fall within the transportation of goods irrespective of the class of undertaking, industry, trade or occupation in which the client is engaged as an employer".

- [21] In essence the Road Freight and Logistics Industry means the sector in which employers and employees are associated with the transportation of goods by means of motor transport for hire or reward.
- [22] The parties agreed that the applicant was essentially providing a complimentary service similar to the municipality in respect of domestic waste removal in circumstances where the municipality did not have the capacity to service a private village owned by the client.
- [23] The crux of the dispute was whether or not the applicant's business activity falls within the jurisdiction of the respondent, namely, does the applicant transport by road in South Africa, goods for hire or reward.
- [24] Although the applicant suggested that there was no involvement in any secondary operation related to recycling and the domestic waste had no other value, this activity if any would have been incidental to the core function of the applicant i.e. the removal of domestic waste by means of transport.
- [25] It was common cause that the applicant had a service agreement with the client to remove domestic waste from the client's business premise and residential area and to transport such domestic waste to a suitable municipal landfill site (dump). For the carrying out of this service the applicant receives payment from the client.
- [26] All the applicant's employees are directly involved in the collection and transportation of domestic waste for the client.
- [27] On a reading of the main agreement, domestic waste would fall within the definition of the respondent's main agreement which states "any movable property including but not limited toany solid matter and containers".

- [28] Equally an argument that the waste was of no value cannot be sustained. The domestic waste has value as it forms the sole basis for the applicant's business and it was the property of the client, albeit property which the client wanted to dispose of.
- [29] The applicant derives its sole income from the collection and transportation of domestic waste.
- [30] This dispute was similar to decided demarcation arbitration awards, namely, Madiba Waste Management cc v NBCRFI (4 Oct 2012); Jade Waste v NBCRFI (12/2/2010); read with the Labour Court decision in the matter of NBCRFI and No1 Disposal & others (15/9/2009).

DETERMINATION

The business of the applicant, Vredelus Vervoer cc, being removal of domestic waste falls within the registered scope of the respondent, the National Bargaining Council for the Road Freight and Logistics Industry (NBCRFI);

DATED AND SIGNED ELECTRONICALLY AT WITBANK ON 19 OCTOBER 2015



SNR COMMISSIONER: RA DIBDEN



NATIONAL ECONOMIC DEVELOPMENT AND LABOUR COUNCIL

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11 November 2015

Ms N Khan
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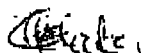
Dear Ms Khan

**RE: ARBITRATION AWARD: VREDELUS VERVOER CC vs NATIONAL
BARGAINING COUNCIL FOR THE ROAD FREIGHT AND LOGISTICS
INDUSTRY (NBCRFLI): MP 3999-15**

The above demarcation dispute was forwarded to Nedlac in terms of Section 62 (9) of the Labour Relations Act 66 of 1995.

After due consideration, the standing committee hereby informs you that it is in support of the revised award issued by the Commissioner.

Kind Regards



TSHOLO LELAKA
LABOUR MARKET CHAMBER COORDINATOR