

CCMA

ARBITRATION AWARD

Case Number: GAJB10233-11

Commissioner: Fataar Feizal

Date of Award: 6 October 2015

In the **ARBITRATION** between

National Bargaining Council for the Road Freight Industry

(Union/Applicant)

and

Fidelity Security Services (Pty) Ltd

(Respondent)

Union/Employee's representative: Adv. Watt-Pringle SC

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DETAILS OF HEARING AND REPRESENTATION

1. An arbitration hearing was held at the CCMA offices in Port Elizabeth, as well as the offices of the applicant's attorney, Crafford Attorneys in Johannesburg. The applicant, the Bargaining Council for Road Freight and Logistics Industries, was represented by Adv. Watt-Pringle SC, instructed by Moodie Robertson Attorneys. The first respondent, Fidelity Security Services (Pty) Ltd, was represented by Adv. Van der Westhuizen, instructed by Crafford Attorneys. The third respondent, Motor Transport Workers Union, was also present.

ISSUES TO BE DECIDED

2. I am required to determine whether or not the first respondent's service contract with All Pay and Cash Payment Services should be demarcated to reside within the jurisdiction and ambit of the applicant.

EVIDENCE

3. The applicant is a registered National Bargaining Council with its scope and ambit found in its Constitution and Certificate of Registration. The applicant has various 'chambers' or areas within its jurisdiction. One of these chambers is the Cash in Transit ("CIT").
4. The first respondent is a registered national company that discharges, in main, various security services to various clients in South Africa. The first respondent has a Cash in Transit division, which is registered with the applicant.
5. The issue in dispute between the parties relates to the first respondent's contractual relationship it has/had with All Pay and Cash Payment Services (CPS) and the services they provide/provided to them.
6. All Pay and CPS are the legal entities which had secured the tender from the Eastern Cape Provincial Government to administer the payouts of the social pensions within the Eastern Cape. Of importance for this matter, my award will be based solely on the activities of the Port Elizabeth and surrounding areas. If I understood it correctly, All Pay, initially had the tender/contract to administer the social pension payments. Thereafter, CPS had taken over and discharged the same function on behalf of the Eastern Cape Provincial Government.

7. The first respondent provided/provides a specific service to All Pay and CPS. The nature and extent of such services is usefully summarised by the first respondent in factual matrix attached to its Heads of Argument. The applicant had disputed certain of these facts, but in majority, the facts are common cause and/or not disputed between the parties.
8. The First respondent provides transportation of cash to various designated social grants pay out destinations within the Port Elizabeth and surrounding areas on behalf of All Pay and CPS.
9. The nature and extent of the service provided by the First respondent to All Pay and CPS can be briefly summarised as follows:
 - 9.1 The social grant monies are transported by the First respondent in a specially built armoured vehicle. This vehicle is owned by the First respondent. There are safes at the back of the vehicle. Each safe takes three canisters. Two of the canisters contain cash and third is a sealed bin not containing any money.
 - 9.2 When the social grant monies have to be transported, there are certain employees of the First respondent who travel in the armoured vehicle. These employees consist of the team leader (who is also the driver of the vehicle) and depending on a site, usually 3 other employees (these 3 employees are usually called the 'crew'). These employees are all registered with the Security Officers Board as security guards. All the employees are armed with firearms and ammunition, they receive bulletproof protection and are issued with radios.
 - 9.3 The First respondent charges All Pay and/or CPS for the number of guards and equipment that are used. The equipment includes the vehicle, the firearms, bulletproof vests and radios.
 - 9.4 The team leader and the crew, driving in the armoured vehicle would collect the social benefit monies at the First respondent's depot in Port Elizabeth. The social benefit monies, which are in cash, are administered by at least 4 employees of the First respondent. The monies are placed in the individual canisters and placed in a sealed bag. When the armoured vehicle arrives, the money canisters (the sealed bags) are place in the safes of the armoured vehicle. The safes are loaded, and according to the First respondent, both keys to the locks are kept by All Pay / CPS. There is a difference of testimony as to whether or not the team leader and/or the guards would assist in the loading of the canisters. The First respondent says they did. The applicant's witnesses' testimony was that they did assist.

- 9.5 Once loaded, the armoured vehicle would go to the social grant pay sites either in Port Elizabeth or Grahamstown, Somerset East, Graaff Reinet, Humansdorp, Tsitsikama and Joubertina. The CPS staff would go to the same sites in their own vehicle with the machines used in the payout process.
- 9.6 At the pay site, the employees of the First respondent would secure the site. The driver would remain in the vehicle and keep the engine running. The All Pay / CPS staff would then, according to the First respondent, offload the sealed bags from the safe of the vehicle and take it into the pay site. The applicant's testimony was that the crew would assist in the offloading.
- 9.7 Whilst the payouts are being made, the crew would provide security for the social grant monies. When the payouts had been made, the canisters are placed back in the safe. The key is kept with the CPS staff. If there was another site for payouts, the First respondent would then transport the monies there and same procedure of security would be discharged. Once all payouts are made, the team leader and the crew would return to the depot where the canisters would be offloaded.

ANALYSIS OF EVIDENCE AND ARGUMENT

10. The principles regarding whether or not an employer and its employees fall within a particular sector for purposes of demarcation have been summarised in *Coin Security (Pty) Ltd v CCMA & others* (2005) 26 ILJ 849 (LC). The Labour Court referred to the *Greatex Knitwear (Pty) Ltd v Viljoen & others* NO 1960 (3) SA 338 (T) case where the following was held:
- (a) The meaning of "industry" as used in the agreement, is determined. This usually requires the interpretation of some definition appearing in the agreement. It seems that a restrictive interpretation is often applied, cutting down the scope of the general words in the definition. Although not specifically invoked, the mode of interpretation appears to be that applied in *Venter v R* 1907 TS 915 (cf *Rex Scapszac and Others* 1929 TPD 980; *Rex v Ngcobo* 1936 NPD 408; *Rex v Goss* 1957 (2) SA 107 (T) at 110).
- (b) The activities of the employer (personal and by means of his employees) are determined.
- (c) The activities and the definition (as interpreted) are now compared. If none of the activities fall under the definition, *caedit quaestio* ; if some of the activities fall under the definition, a further question arises: Are they separate from or ancillary to his other activities? If they are separate he

is engaged in the industry (unless these activities are merely casual or insignificant - *Rex v CTC Bazaars (SA) Ltd* 1943 CPD); if they are ancillary to his other activities, he is not engaged in the industry (unless these ancillary activities are of such a magnitude that it can fairly be said that he is engaged in the industry within the meaning of the definition (*AG Tvl v Moores SA (Pty) Ltd* 1957 (1) SA 190 (A)).

(d) Inherent in this approach is the possibility that an employer may be such in more than one industry (*Rex v Giesken & Giesken* 1947 (4) SA 561 (A) at p 566), despite the difficulties that may arise from such a situation (*cf Rex v Auto-Parts (Pty) Ltd and Ano* 1948 (3) SA 641 (T) at 648)."

11. The jurisdiction of the applicant must be determined with reference to its scope of registration as it appears in its Certificate of Registration. The applicant's Certificate of Registration 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:
 - (i) The transportation of goods by means of motor transport;
 - (ii) The storage of goods, including the receiving, opening, unpacking, packing, despatching 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."
12. The First respondent usefully summarises the inherent requirements that has to be met in order for a company to fall within the applicant's jurisdiction. These are: transportation, by means of road transport in South Africa; of goods; and for hire or removal.
13. The First respondent has argued that due to the nature of the contract and the activities they discharge with All Pay and CPS, they do not fall within the jurisdiction of the applicant. More specific, the First respondent contended that 'cash' is not goods within the meaning of the definition and secondly, even if cash can be described as goods, the transportation thereof is not for hire and reward.
14. As to whether or not 'cash' constitutes 'goods' as per the applicant's Certificate of Registration, the First respondent has argued that 'cash' is a means of exchange used in its normal function as money which will be used for the purchasing or selling of commodities. Therefore, it falls outside the ordinary dictionary meaning of 'goods' which defines it as a commodity.

15. There has been various arbitrations and judgements in the Cash in Transit ('CIT') and Asset in Transit ('AIT') areas that has concluded that 'cash' can be included to mean 'goods' for purposes of the applicant's Certificate of Registration. See *Sonqoba Security (MP) (Pty) Ltd v National Bargaining Council for the Road Freight Industry & others* CCMA Case No: HO 1034/08 by Pat Stone, TGWU & others Case No: GA 369 by M.H. Marcus. The analysis and findings Commissioner Floors Brand in *SBV Services (Pty) Ltd & other v National Bargaining Council for the Road Freight & Logistics Industry* Case No: GAJB 19997/05 is extremely persuasive in me concluding that goods include money for purposes of the applicant's Certificate of Registration.
16. Brand C in the SBV Services case supra states that 'goods' should not be given a restricted meaning and in terms of the applicant's Certificate is concerned with the substance of what is transported and should be given its ordinary meaning which includes all tangible and movable property. The interpretation of 'goods' must be done in context, which in this case relates to transporting of tangible and movable property and that the presence of money in the CIT division is clearly not to be used as a means of exchange or in its normal function as money. 'At the end of the day it is metal and paper which are placed in containers and bags for transportation from point A to B as any other commodity.' (see para. 33).
17. I now turn to the question of whether the transfer of goods, in this case, is for hire or removal. I find this 'denial' by the First respondent rather strange. The First respondent admits that the client/s pay them for the crew, and the equipment, which includes the armoured vehicle. Their primary duty is to transport the goods to various destinations. If they are not paid for transporting, are they discharging their primary duty free of charge? I do not think so. On their own version they are being paid for the use of equipment and manpower. Such equipment and manpower play an integral part in the transport of the social grant monies. If that equipment and manpower is not there, would the primary duty in terms of their service agreement be discharged? The answer is logical: No! The First respondent was given ample opportunity to elaborate on this argument. They had failed in this regard, and in my view, had acted frivolously in persisting with this argument.
18. The last issue which needs consideration is the issue whether or not the security services provided to the client/s was the main or essential duty of the service agreement with All Pay / CPS and that the transporting was incidental thereto.
19. The First respondent provides for the transport of social grant monies on behalf of All Pay / CPS to various destinations within the Eastern Cape. The first respondent provides security services to

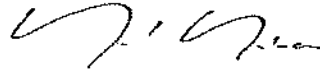
protect the goods in the armoured vehicle as well as at the pay-point sites. In a nutshell, the first respondent provides both transportation and security to its clients.

20. From the evidence and submissions before me, it is my finding that the first respondent's essential service towards its clients is one of transportation of goods for reward. Without the transportation of the goods, there would be no need for the first respondent to continue securing the assets of the clients. I agree with the applicant's argument 'AIT / CIT companies have as the main contracting obligation to their clients, the duty to transport the client's assets for reward. The security measures taken to safeguard the client's valuable freight are incidental to the nature of the freight. Expressed differently, goods are not transported for their safety. They are transported because the client requires the goods to be moved from A to B and they are safeguarded whilst in transit. The fact that valuable goods require special safety measures whilst in transit does not alter the essential nature of the obligation undertaken ... namely transportation for reward.'
21. In *Transport and General Workers Union v Coin Security Group & others* CCMA Case No: GA14406/01, Savage C had the following to say: "Using the R v Sidersky approach, it is not the occupation in which employees are engaged but the nature of enterprise for which the employer and employees are associated for a common purposes that is relevant in a dispute such as this. Where a business or a definable portion of a business has features common to two different industries, it must be decided with which industry the employer and its employees are most closely associated. For, while an employer may operate within two or more industries, it is in the scheme of the LRA that an employer's business cannot fall within two industries."
22. If we compare the facts of this matter to the applicant's scope relating to CIT division and that of private security, it has to be concluded that the functions of the first respondent are more closely associated with the CIT division at the applicant and not that of private security.
23. Given the above, it is my conclusion that the first respondent's prime contractual obligation towards its clients remains that of transporting its client's cash to its destination, the security element being one incidental to and necessary for the achievement of that object.

AWARD

24. The first respondent, Fidelity Security Services (Pty) Ltd, division relating to the transportation and securing of state social grant monies for All Pay / CPS, and their employees therein, are determined to

be engaged in the transportation of goods for hire or reward by means of road transport and therefore falls within the scope of the road freight logistics industry as defined in the applicant's, Bargaining Council for Road Freight and Logistics Industries, Certificate of Registration.



Signature: _____

Commissioner: ***Fataar Feizal***

Sector: ***Transport (private)***