



Collaboration Space / UCT Equality Law Database / 2010

BEDDERSON v SPARROW SCHOOLS EDUCATION TRUST

Created by Jenny Erasmus [Administrator], last modified on May 10, 2013

YEAR: 2010PLAINTIFF / APPLICANT / APPELLANT: BEDDERSONDEFENDANT / RESPONDENT: SPARROW SCHOOLS EDUCATION TRUSTCOURT: LABOUR COURTCITATION: (2010) 4 BLLR 363 (LC); (2010) 31 ILJ 1325 (LC)POST / PRIOR ACTION: CCMAJUDGE(S): LE ROUX (Acting Judge)GROUND(S) OF DISCRIMINATION: AGESTATEMENT OF FACTS:

The applicant was a 70 year old teacher employed by the respondent. The respondent, a non-profit organisation operating schools for children with learning disabilities, unilaterally invoked a new policy within its schools which dictated a compulsory retirement age of 65 years old. Employees over the age of 65 would be considered for temporary fixed term contracts up until the age of 70, at which time employment would cease. As a result of such policy the respondent terminated the applicant's employment. Represented by the Employees Labour Association, the applicant referred the matter to the CCMA. The conciliation proceedings failed and the matter was referred to the Labour Court.

ISSUE OF LAW:

The applicant made the following claims:

1. a claim based on an allegation of an automatically unfair dismissal on the grounds of age as envisaged in section 187(1)(f) of the Labour Relations Act, 66 of 1995 ("LRA");
2. a claim based on an allegation of unfair discrimination in terms of section 6 of the Employment Equity Act, 55 of 1998 ("EEA");
3. a claim based on an allegation of an unfair dismissal.

DECISION, RATIO AND OUTCOME (including minority judgment when applicable):

The court made the following determinations with respect to the following claims of the applicant:

1. The claim based on an allegation of an automatically unfair dismissal on the grounds of age as envisaged in section 187(1)(f) of the LRA

It was common cause that the applicant's dismissal was due to her age. The respondent relied on s 187 (2)(b) which provides that a dismissal based on age is fair if the said employee has reached the normal or agreed retirement age for such persons employed in a particular capacity. The respondent argued while there had been no agreed upon retirement age when the applicant had commenced her employment with the respondent, the applicant's contract of employment allowed the respondent to introduce and amend its policies, to which the applicant had agreed to be bound. Therefore, it argued, the retirement age of 65 as introduced in the form of a policy was an agreed retirement age and s 187 (2)(b) applied.

The court held that the retirement policy did not apply retrospectively. The fact that when the policy was introduced the applicant was 70 years old did not lead to the automatic termination of her employment. Employers are permitted to introduce policies and procedures

that govern the employment relationship, however this common law right does not extend to amending how the employment relationship can be terminated. The scope of the introduced or amended policy must be within the framework of the contract which permits their development. On the facts, the applicant's contract of employment did not provide for a retirement age. As such the employer could not amend this 'fundamental aspect of the employment relationship.' The court held that there was no evidence that the retirement age was the normal retirement age or the agreed retirement age as contemplated in s 187 (2)(b).

Section 187 (2) provides for two permissible grounds where a dismissal will be fair despite the provisions of s 187 (1)(f). The court accepted, on the facts of the case, that such grounds were not exhaustive and there existed a general defence of fairness on which an employer can rely to justify a dismissal. It added that such a general defence of fairness should be critically scrutinized to maintain the sanctity of core constitutional values such as equality and the eradication of discrimination. Relying on the general defence of fairness the respondent justified the dismissal on the basis that it was required to introduce a retirement age in order to attain an accreditation, without which the respondent's schools could not operate. The court noted that the accreditation agency did not stipulate an age for retirement, it merely required there be an retirement age in place. The age of retirement was determined by the respondent's management.

The court held the requirement for the accreditation justified the introduction of a retirement age, however, this was not the relevant consideration. Rather the relevant question was whether the application of the retirement age to the applicant, who had attained and passed the retirement age, could be justified. The court held that the application of the retirement age to the applicant was not justifiable. No evidence had been lead to show that the accreditation would have been lost had the applicant not been dismissed nor was there evidence that the issue had been taken to the accreditation agency. Furthermore the applicant's individual circumstances had not been considered. As such, while the purpose of the introduction of a retirement age was justifiable, the respondent's dismissal of the applicant was not proportional in respect to how the policy was implemented in the context of the applicant. As the respondent could not justify its dismissal of the applicant, the court held that the dismissal was automatically unfair.

2. The claim based on an allegation of unfair discrimination in terms of section 6 of the Employment Equity Act, 55 of 1998 ("EEA")

The court accepted that an applicant can concurrently institute a claim for an automatically unfair dismissal under the LRA and a claim of unfair discrimination under the EEA.

The court held that there was differentiation based on age, a prohibited ground in terms of s 6 of the EEA, which amounted to discrimination. The listed grounds in s 6 (2) of the EEA that justified an act of discrimination did not apply to the facts. The court accepted for the purpose of the judgment that such grounds of justification were not exhaustive and there existed a general defence of fairness. On the facts the respondent had failed to prove that the dismissal of the applicant was fair. Therefore the dismissal of the applicant amounted to a breach of s 6 of the EEA.

Remedy:

The applicant sought compensation equal to 24 months remuneration in terms of s 193(4) of the LRA and compensation in terms of s 50 (2)(a) of the EEA. The court dealt with the compensation claims jointly. The court awarded the applicant compensation equal to six months remuneration. In determining such amount the court considered that the applicant had omitted to quantify her loss and justify as to why the full 24 months remuneration should be awarded in terms of s 193 (3) of the LRA. She alleged that she had been humiliated by the respondent's conduct yet her personality traits indicated to the court that she could have spoken up and lodged a grievance, which she did not do. In addition she had indicated that she was not opposed to the retirement policy but that she felt like she was forced to retire too early when she had a few more months to give. The court further considered the financial implications of the award on the respondent. While it noted that such a consideration was not usual, on the facts the applicant had not proven that she had suffered any loss and the implications of the financial award on a non-profit organisation, funded by donations, that operates schools for children with learning disabilities would be detrimental to the functioning of the schools. Based on the above considerations, an award of compensation equal to six months remuneration was just and equitable.

In addition the applicant sought damages in terms of s 50 (2)(b) of the EEA. The court did not award damages to the applicant as she failed to adduce evidence as to extent of the damages she had suffered.

LINK TO FULL DECISION: <http://www.saflii.org/za/cases/ZALC/2009/167.html>

LABELS: