



Collaboration Space / UCT Equality Law Database / 2007

DIRECTOR-GENERAL OF THE DEPARTMENT OF LABOUR v JINGHUA GARMENTS (PTY) LTD

Created by Jenny Erasmus [Administrator], last modified on Jun 24, 2013



YEAR: 2007

PLAINTIFF / APPLICANT / APPELLANT: APPLICANT: DIRECTOR-GENERAL OF THE DEPARTMENT OF LABOUR

DEFENDANT / RESPONDENT: RESPONDENT: JINGHUA GARMENTS (PTY) LTD

COURT: LABOUR COURT

CITATION: (2007) 28 ILJ 880 (LC)

POST / PRIOR ACTION: n/a

JUDGE(S): SANGONI AJ

GROUND(S) OF DISCRIMINATION: n/a

STATEMENT OF FACTS:

The respondent, a designated employer in terms of the Employment Equity Act 55 of 1998 (EEA), failed to comply with a written undertaking in terms of s 36 of the EEA. As a result a compliance order was issued against the respondent, as contemplated in s 37 of the EEA. The respondent failed to comply with the compliance order within the stipulated time.

The applicant sought an order that, amongst other things, the compliance order be made an order of court in terms of s 37(6) of the EEA, and that a fine of R500,000 be imposed against the respondent for contravention of ss 16,19,20,21,22 and 23 of the EEA.

ISSUE OF LAW:

Whether the fine of R500,000, contemplated within schedule 1 of the EEA, is for the non-compliance with the compliance order or the contravention of each violated section of the EEA.

DECISION, RATIO AND OUTCOME (including minority judgment):

The respondent's failure to comply with its written undertaking and the compliance order was undisputed. The respondent admitted that it violated ss 16, 19-21, and 23 of the EEA. The alleged contravention of s 20 did not apply as the respondent was not a public company.

The judgment focused on the payment of the fine provided for in schedule 1 of the EEA. Conflicting wording within s 37(2)(e) and s 50 (10)(g), read with schedule 1, of the EEA, brought to the fore whether the fine to be imposed applied for each contravention of the EEA, alternatively, to the contravention of the compliance order. The court found that the more lenient interpretation should be preferred as the conflicting provisions related to the imposition of a penalty. It noted that imposing a fine on individual contraventions would produce a vastly different result to imposing a fine for the non-compliance of a compliance order.

The number of provisions violated was relevant to the determination of the amount of the fine. The court approved the below factors as relevant considerations in assessing the appropriateness of the fine:-

1. the purpose of the Act;
2. the extent of the contravention;
3. the period the contravention has endured;
4. the reason for not complying;
5. the attempts made to comply, if any;
6. the maximum fine prescribed;
7. any relevant considerations relating to the respondent.

On the facts of the case, in determining the amount of the fine to be imposed, the court took into account:-

1. that the respondent was not trading at the time of the application;
2. the respondent was a foreigner which had unknowingly engaged the services of an organisation which lacked the skills to ensure the respondent's compliance with the EEA;
3. that the respondent had engaged the services of an organisation to ensure its future compliance with the EEA;
4. the respondent was not obstructive during the course of the proceedings; and
5. that the purpose of the fine was punitive and preventative, and not retributive.

The court imposed a fine of R200,000 of which R100,000 was suspended for 3 years provided the respondent did not contravene any of the said provisions of the EEA within such period.

LINK TO FULL DECISION: <http://www.saflii.org/za/cases/ZALC/2006/100.html>

LABELS: