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Author: SINENHLANHLA
MASILELA

HEARING

Labour court halts Public Works department from disciplining whistleblower

SINENHLANHLA MASILELA
sinenhlanhla.masilela@iol.co.za

A SENIOR engineer claiming to be a whistleblower won an interim court order stopping a disciplinary hearing against him after the Labour Court in Johannesburg found he made a prima facie case that the charges against him may be linked to protected disclosures he made about alleged irregularities in the North West Department of Public Works and Roads.

The judgment, delivered by Judge Tapiwa Cecilia Gandidze followed an urgent application brought by Tebogo Jonker who approached the court after being served with a disciplinary notice in January on charges that included making defamatory allegations against the Head of Department (HoD).

Jonker consistently maintained that the charges were a retaliation mechanism arising from protected disclosures he made regarding alleged corruption and commercial irregularities within the department.

The roots of the dispute trace back to September 2022, shortly after the HoD appointment. According to court papers, Jonker alleged that the HoD instructed him to allegedly alter technical reports to facilitate state business with Reakgona Petroleum, a diesel supply company run by a personal friend of the HoD.

Jonker claimed that after refusing to comply with directives to cancel existing transversal contracts in favour of the preferred supplier and subsequently raising concerns over the quality of diesel damaging state vehicles, he was systematically sidelined, stripped of his core duties, and subjected to repeated suspension attempts.

Jonker escalated his concerns to the Director of Legal Services, the MEC, the Directorate for Priority Crime Investigation (the Hawks), and the Special Investigating Unit.

In response to the department's latest attempt to hold an internal disciplinary hearing, Jonker invoked Section 188A(11) of the Labor Relations Act. This specific provision allows an employee who

alleges in good faith that a disciplinary action breaches the Protected Disclosures Act to demand an independent inquiry conducted by an arbitrator rather than an internal chairperson appointed by the employer.

In response, the department opposed the application, aggressively disputing Jonker's status as a whistleblower. The department countered that Jonker's claims were driven by malice and bad faith to evade accountability, arguing that his functions were stripped due to budgetary mismanagement regarding the provincial "Yellow Fleet" and that he was facing legitimate charges arising from an independent forensic investigation into leaked information.

However, Judge Gandidze ruled that the department's arguments regarding whether Jonker was a genuine whistleblower were premature and missed the legal threshold required for interim relief.

The judge clarified that to trigger Section 188A(11), an employee does not need to definitively prove a breach of the Protected Disclosures Act at this stage but must simply demonstrate that their allegation is made in good faith. Given the extensive timeline of Jonker's reports to law enforcement predating the current charges, the court found his bona fides sufficient to intervene.

The court further established that Jonker faced irreparable harm if the internal hearing proceeded, noting that an internal process could yield irreversible outcomes before an independent body could review the matter.

Judge Gandidze emphasised that allowing the General Public Service Sector Bargaining Council to determine the matter through an independent arbitrator would not prejudice the department's ability to maintain discipline, as the allegations of misconduct would still be fully ventilated.

Ultimately, the court ordered that the internal disciplinary inquiry against Jonker be immediately suspended pending a decision by an arbitrator from the Bargaining Council. | IOL News