

IN THE LABOUR APPEAL COURT OF SOUTH AFRICA

HELD IN JOHANNESBURG

CASE NO: JA17/02

In the matter between:

RUSTENBURG PLATINUM MINES LTD Appellant
(RUSTENBURG SECTION)

and

COMMISSION FOR CONCILIATION First Respondent
MEDIATION AND ARBITRATION

MAFALO, ER, N.O Second Respondent

TLAPU, BS Third Respondent

JOLIVABA, A Fourth Respondent

MASEKO, D Fifth Respondent

J U D G M E N T

GOLDSTEIN AJA:

[1] This is an appeal, from a judgment of the Labour Court in which **Gering AJ** dismissed an application by the appellant for the review of the second respondent's award relating to a dispute about the fairness of the dismissal by the appellant of the third, fourth and fifth respondents, to whom I shall collectively refer as "the employees".

[2] The dismissal occurred in late November 1998. The resultant dispute proceeded to arbitration before the second respondent. He found the sanction of dismissal too harsh and by implication substantively unfair, and ordered that the employees be issued with final warnings, and that each be compensated in an amount equal to six months' salary. He did not expressly order reinstatement but it is clear that he intended that consequence and the parties have so approached the matter.

[3] The incident which gave rise to the dismissals occurred during a soccer tournament on 24 October 1998. The third, fourth and fifth respondents were appointed respectively as team manager, coach and assistant coach of a soccer team, known as Amplats. This was a composite team made up of players from the various mines within the Amplats group including that owned and controlled by the appellant. The tournament was known as the Mining News Soccer Tournament. It was being held for the 24th time during the period 21 - 25 October 1998 at West Driefontein Gold Mine which is not part of Amplats.

[4] During the arbitration before the second respondent the appellant commenced adducing evidence and called five witnesses. The following four of such witnesses gave evidence relevant to this appeal: Mr van Moerkerken, the chairman of the Mining News Sports Committee and the tournament chairman, Mr Illott, an employee of West Driefontein who acted as the host of the tournament, Mr Combrinck, a senior security officer of West Driefontein, and Mr Saayman, the Amplats group representative at the tournament and a sports organiser in the employ of the appellant.

[5] The preliminary rounds of the competition were completed on Friday 23 October 1998. According to Van Moerkerken, Anglo Vaal River Operations, Iscor, Goldfields and East Driefontein made it through to the semi-finals. Although Amplats and Iscor each had 6 league points, according to Van Moerkerken and Saayman, in terms of the tournament rules, Iscor and not Amplats advanced to the semi-finals because Iscor had beaten Amplats when they had met during the tournament. Both the fourth and the fifth respondents expressly testified that the Amplats team had qualified to play in the semi-finals, and in effect the third respondent gave the same evidence. The fourth respondent explained that what he referred to as the SAFA

rules applied, and that these provided for the team with the higher goal average to succeed to the semi-finals. Amplats' goal average was higher, he said, than that of Iscor.

[6] The programme, based on the tournament rules, for Saturday 24 October 1998 included the two semi-finals, Anglo Vaal River Operations versus Iscor starting at 9h00 on the A-field and Goldfields versus East Driefontein on the B-field starting at the same time, a play-off for 5th and 6th positions between Amplats and Anglo Gold Free State on the A-field starting at 11h00, and play-offs for 7th and 8th and 9th and 10th positions. All the teams that attended the tournament would be in action on the Saturday.

[7] In the event, the Amplats team took up their position at about 8h30 on the A-field in advance of the semi-final. They continued to occupy the field in one or other degree for approximately 3 hours from the time of the scheduled kick-off. The management team comprising the three employees refused to obey the instructions of numerous tournament officials to get the team off the field, eventually relenting only at the stage when a crowd of approximately 3000, which had moved to the A-field, threatened to evict the team. Security guards were mobilised and the South African Police Services Dog Unit, in order to escort the team and the three employees onto a bus in which they departed. Their exit is described in the evidence of Combrinck who said that the situation was one which could have developed into a riot situation. The Amplat's players lives were in danger, said Combrinck.

[8] The impasse resulting from their refusal to leave the field was only resolved after the semi-final on the adjacent B-field had been completed, when the bulk of the crowd, who had been watching the teams there in action, moved their attention to the events taking place on the A-field. According to Ilott the mood of the spectators was on the "*verge of becoming explosive*"; they were starting to chant that if the security force did not remove the players they would do so themselves; he was

concerned that things could "*turn ugly*" and was "*extremely concerned for (the players') safety*"; it was becoming increasingly apparent that the crowd "*wanted to take the law into their own hands*" and "*this was the main factor why (the players) left the field*". Combrinck corroborated this version. He testified that the crowd was "*getting really annoyed*"; people were shouting, leaving their seats and moving towards the rails; his concern was to get the team off the field and, to that end, he set about mobilizing more security guards and left the field to give instructions to the SAPS dog handlers he had called in. Van Moerkerken also confirmed what had transpired. He testified that the spectators threatened to take the team off themselves, that they had to be restrained by the security guards, and that it was only at this stage that the team realised that they better leave the field.

[9] Combrinck corroborated Ilott's version about there being a large security presence at that stage. He testified that security guards were positioned in such a way as to prevent the crowd in the pavilion from getting to the players. He also explained that the Amplats bus was moved into position so that the team members could move directly on to it as they came off the field. As far as Combrinck was concerned, the scene bordered on a "*riot situation*".

[10] The consequences and repercussions of these events were severe. On the day in question, the semi-final scheduled for the A-field was delayed by at least three hours and the three matches for minor places, involving all of the teams that took part in the tournament except for the semi-finalists, had to be cancelled. This meant

that the sponsors did not get the exposure they had bargained for. This, taken together with the fact that the sponsors did not want to be associated with the behaviour displayed by the Amplats team, resulted in them reconsidering their sponsorship of the event and threatening to withdraw. The matter was ultimately resolved between Van Moerkerken and the sponsors after a couple of meetings on condition that *"should any occurrence of this nature happen again they will immediately stop the sponsorship"*. Iscor also threatened to pull out of the tournament.

[11] The tournament disciplinary committee was convened to consider the incident on the same day that it took place. The committee resolved to impose a lifetime ban on the three employees from participating in the tournament. No such action had ever taken place in the 23 previous tournaments. Amplats also banned all the team members from ever representing Amplats again.

[12] The host mine, West Driefontein, was embarrassed by the events. The host official, Ilott, described the consequences of the incident as follows:

"It caused a tremendous stir amongst the mine officials, not only on that day but for months to come thereafter, so much so that we actually requested that the Mining News do not have Amplats ever involved in any Mining News tournaments in the future ... that was the recommendation from the managers of the mine ... yes I would say that it was a great embarrassment to management of Amplats and certainly to the tournament, it was a tremendous embarrassment to us as well."

[13] The events also caused Amplats much disquiet. As Saayman put it: *"It left*

me very very embarrass(ed) and I was ashamed that the world leader in platinum, Amplats ..., behaved like that ... It knocked a big dent in the image of Amplats We (have) always been referred to as a well-dressed team, a well-behaved squad, a well-organised squad. After that ... we are now being labelled as hooligans".

[14] Attempts were also made to protect the sponsors by ensuring that the incident was not published in the press. Van Moerkerken explained that the chairman of the Mineworkers' Investment Company expressly requested him not to report the incident in the *Mining News*, and that he agreed in order to protect the integrity of the tournament and those associated with it.

[15] At least 10 officials spent much time during the morning attempting to convince the team to leave the field. The employees did not dispute that they remained on the field for a substantial period. Thus the fourth respondent said that he did not notice how long they spent there but that "it could be close to three or two and a half hours". The third and fifth respondents gave substantially the same evidence as to time. The employees all testified that they waited on the field as long as it was necessary to get an explanation as to why they had not qualified for the semi-final.

[16] There is a fundamental difference between evidence and submissions, within the context of litigation or arbitration. Witnesses give evidence of their observations and parties or their representatives make submissions in regard to the inferences or findings justified by the evidence. Evidence conveys that a witness honestly believes in the accuracy of what is testified and so, if a witness gives dishonest evidence, such evidence does not correctly reflect the witnesses's state of mind in relation to the event in question. A submission, on the other hand, does not necessarily convey the state of mind or view of its author, except that the latter represents that in his view the submission is reasonably arguable on the available evidence. The difference between evidence and submissions is central to our adversarial procedure. It frees legal representatives to present all reasonable arguments which may be advanced on behalf of their clients without impugning their integrity. Thus, save in exceptional circumstances, it is anathema for a legal representative to express a view during argument. The function of a judicial officer, on the other hand, is to make findings, and therefore, necessarily, to express views

on competing submissions. It is quite wrong for a judicial officer to make submissions. The second respondent's award does not recognise these distinctions at all, confusing submissions with evidence. This may well have resulted in his failure to analyse the probabilities and give reasons for his conclusions.

[17] The second respondent's findings appear from the following passages in his award¹:

- a) "The tournament in which the Amplats team participated had been played during the week and also during the weekend, obviously meaning it was sanctioned by the employer and the employees were remunerated at their normal scales. Therefore it was related to matters of the workplace."
- b) "Mr Saayman, who impressed me as being an honest witness, reiterated that the team officials had been aware of the rules and had persistently ignored the advise of other tournament officials to tell their players to leave the field. The three dismissed employees, who also impressed me as being articulate in the presentations, were quite literate to read the signs and could have averted the incident due to their seniority and having total control over their players. Their word, as manager, coach and assistant would have been supreme and a key determinant of the deadlock. I therefore, on a balance of probabilities, concur that the dismissed officials were responsible for the incident of disruption of the game by players from the Amplats team who refused to evacuate the field of play."
- c) "Every employer expect the highest form of discipline from its

1 I refrain from using the word "sic" in respect of errors in the passages to which I have appended the letters (a) – (d) for ease of reference.

employees whether during or outside the working environment. The employee's conduct had not been one of the best during the tournament on the 24th October 1998. Accordingly it did disappoint the employer, which was answerable to the sponsors, other participants and its employees."

d) "As to the appropriateness of the sanction, it is my honest submission that –

It was too harsh for the kind of misconduct committed.

- (i) – Although exaggerated by the employer's witnesses, there had been no major disruptions of the tournament.
- (ii) – The employees and their team had left the field of play after receiving a proper reply to their concerns.
- (iii) – There was no conclusive proof of assault or abusive language being exchanged.
- (iv) – The press had given the thumbs-up for the event and never reported the incident.
- (v) – There was no damage or injury committed on the day."

I have added roman numerals to certain of the sub-paragraphs of paragraph (d) for ease of reference.

[18] Despite the inappropriate use of the word "submission" in paragraph (d) it is clear that the second respondent was expressing his views and findings as to the appropriateness of the sanction.

[19] It is, with respect to the second respondent, abundantly clear to me that there

is no factual basis whatever for at least the findings in sub-paragraphs (i), (ii) and (iv) of paragraph (d) of his award. I can find no suggestion of appellant's witnesses having exaggerated the extent of disruption of the tournament. There is no question that what occurred was a major disruption. The employees' version that they left the field of play after receiving a proper reply to their concerns is, overwhelmingly on the probabilities, false. It is common cause that they were on the field for about three hours. Saayman testified that he arrived on the field at about 8h30. After having spoken briefly to the fourth respondent and the third respondent, who were insisting that the team play in the semi-finals, Saayman said that he went to Van Moerkerken, obtained a copy of the rules from him and showed the third respondent the specific rule concerned. There is no reason to doubt this evidence; the rule was part of the fixture list which must have been available. It follows that it could hardly have taken three hours to convey to the employees the fact that the Amplats team had not qualified for the semi-finals in terms of the applicable rule and to show them the written rule concerned. It is clear too, that the press had not given any approval to what had occurred and that its failure to report the incident was the result of Van Moerkerken's intervention in this regard. In my view all three of the findings are irrational and not justifiable in relation to the reasons given for such findings.

Carephone (Pty) Ltd v Marcus NO and Others (1998) 19 ILJ 1425 (LAC) at para [31] and [37], **Crown Chickens Ltd t/a Rocklands Poultry v Kapp and Others** [2002] 6 BLLR 493 (LAC) at para [58]. What about the second respondent's finding that the dismissal was unfair because it was too harsh a penalty? What about the relief that the second respondent granted? Although the reasons that the second

respondent gave for that result were unsustainable, there are, in my view, ample reasons within the material that was properly before the second respondent which render that finding and result justifiable. I proceed to give such reasons.

[20] Counsel for the appellant stressed the finding by the second respondent that the employees were responsible for the disruption of the game since they had total control over the members of the team and could have effected their leaving the field. I did not understand counsel for the employees to contest this finding.

[21] In determining whether dismissal was an appropriate sanction, a central question which arises is whether the employees acted in good faith in occupying the field. This issue turns on whether they were apprised in advance of the rule applicable during the tournament to a situation where two teams, in relation to qualifying for the semi-finals, scored the same points. The employees say that they were not apprised of the applicable rule until officials of the appellant explained it to them on the field. There is little of substance to gainsay this version. Of course, the very fact that the team took to the field for the semi-finals on the fateful day is consistent with their believing they were entitled to do so.

[22] The tournament rules were handed in during the arbitration. During Saayman's cross-examination he was asked whether the copy of the rules before the arbitrator constituted the tournament rules of which he had been speaking and he said yes. Asked to indicate the rule which had been contravened he said: "I see here is one page missing, that is the rules that will determine who is going through to the semi-finals and finals". Van Moerkerken testified that during August 1998 a meeting was held of group representatives at which the tournament rules were agreed, where Saayman represented Amplats, and that about two weeks after the meeting the tournament rules and the fixture list were circulated to the group representatives. In this regard his exact evidence is somewhat vague: "(T)hey were provided with a set of rules as well as with the fixtures where there was, where there was certain rules applicable to but we decided on the format and we also decided on specific rules which was applicable to the format. Mr Saayman was supplied with that approximately two weeks after the meeting." Saayman at one stage said that he and the third respondent were at a meeting where the rule had been finalised. This evidence, at variance with that of Van Moerkerken, is not relied upon by the appellant's counsel. And Saayman later said that he was the only person present at the meeting in August 1998 representing Amplats since the other members of the management team – the employees – had not been selected yet. About one or two days before leaving for the competition he gave a copy of the minutes of the meeting and the rules to the third respondent, he said. It is significant that he speaks of having given the third respondent a copy of the "minutes and the rules". The applicable rule was in the fixture list, as I have indicated, according to Van Moerkerken.

[23] Counsel for the appellant relies on an exchange between Saayman and the third respondent, and on another between Saayman and the fourth respondent on the morning in question. Saayman said that, when he arrived at the field in the morning, greeted the fourth respondent, and commented that it was a pity that they "did not make it to the semi-finals", the fourth respondent said to him "that the Amplats team will play" and that he (fourth respondent) was "not prepared to argue with" Saayman. Saayman says he then approached the third respondent and told him to get the Amplats team off the field since they were not playing. The third respondent replied: "(T)his rules is not football rules and we will play". Counsel for the appellant submits that the response of the fourth respondent evidences not confusion but outright defiance and aggression. Similarly that of the third respondent, it was submitted, constituted flat defiance and truculence. In this regard counsel refers to the fact that Saayman said that the third respondent was angry. In my view, the evidence relied upon constitutes no more than a makeweight. Furthermore, counsel's argument depends on Saayman being able to recall and recount in exact terms what was said, and the order of the statements made – something he could hardly be expected reliably to do. It is interesting to note, against the appellant's argument, that Saayman said that after the exchange with the third respondent, he went to van Moerkerken to ask him for an extra copy of the tournament rules, took it to the third respondent and showed him the specific rule. If Saayman had already given the rule concerned to the third respondent he would, arguably, have immediately said so to the latter.

[24] There is no reason to doubt Saayman's evidence that the third respondent told him that he would not order the players off the field because "(t)hat (was) why people (were) being .. killed in the hostels", and that his attitude towards Saayman was very poor and uncooperative. Counsel for the appellant points also to van Moerkerken's evidence that any problems about the selection of the semi-finalists ought to have been raised with the tournament disciplinary committee and that the management team would have known about this.

[25] Counsel for the appellant relies also on the fact that Van Moerkerken, a pensioner who had served as the tournament chairman for the past 13 years, went onto the field on another two occasions on the last of which he was "sworn at and ... told to F-off because (he does) not know soccer and (does) not know the rules of soccer and ... must get off the field". Van Moerkerken also testified that Danie Mulder, a member of the executive and vice-chairman, Johan Steyn, also a member of the executive, and security staff all sought to convince the team to leave. According to Van Moerkerken the three employees "were very aggressive, not only towards me but also towards the executive committee and the other people that approached them". He went on to say "that Maseko at one stage pointed his finger right in my face". Counsel also points to the fact that at about 10h30, after the team had been on the field for some two hours, Ilott says he went onto the field together with Charles Schwartz, who he says, is a hostel manager, where he found "the chief security officer", Ben De Klerk "pleading with the officials to please come off the field and he gave them the assurance that he would personally see that there was an

investigation to this whole case". The three employees made no attempt to co-operate and adopted a "very arrogant approach towards Ben de Klerk".

[26] At one stage the team and management moved to the side of the field but as soon as the two semi-finalists were ready to take to the field they "ran back on the field and invaded the field again", said Saayman.

[27] The appellant's counsel relies too, on further incidents which occurred in the process of the team leaving the field. According to Ilott, the fifth and fourth respondents "*converged on ... Schwartz and became very abusive and threatening towards him*", which resulted in the crowd becoming even "*rowdier than before when it appeared that [he] perhaps was being threatened.... tempers flared and the chantings were louder than before.*" When Ilott intervened, he was "*abused verbally*". He then walked with the fifth and fourth respondents towards the team bus, in the process of which the fifth respondent hit Ilott with his tog bag – "*a blow was swung at me deliberately hitting me in the stomach and it was done with force*". (It was put to Ilott under cross-examination that the fifth respondent may have hit him inadvertently, to which he replied: "No, *definitely not*". The fifth respondent's version in his evidence was that he assaulted no-one and that he only met Saayman for the first time at his disciplinary enquiry). At the time, "*there was a large security presence ... and immediately the ... security of the mine ... intervene(d) and took the two gentlemen and escorted him immediately to the bus*".

[28] Counsel for the appellant also refers us to the fact that van Moerkerken also fell victim to the Amplats team at the stage when he went to fetch something from his car which was parked close to the bus. As he put it, "*I was then threatened by Amplats people that they are going to chop of my car, they are going to damage my*

car and that they are going to kill my wife and myself". Saayman was also threatened. He testified that the Amplats goalkeeper had threatened his life.

[29] I regard the threatening conduct of the fourth and fifth respondents towards Schwartz in a very serious light. In the light of the fifth respondent's denial that he hit Ilott with his tog bag it is difficult to make a finding on the probabilities that this incident occurred. However, even if it did, the assault, whilst of course constituting deplorable conduct, is nevertheless, a relatively minor one. It is significant in this regard that Ilott did not lay a charge against the fifth respondent and apparently suffered no injury as a result thereof. The threat Van Moerkerken unfortunately endured cannot in my view, be safely ascribed to the employees and neither can the threat of the Amplats goal keeper which was directed against Saayman. Cf **Fawu & Others v Amalgamated Beverage Industries Ltd** [1994] 12 BLLR 25 (LAC).

[30] As counsel for the appellant correctly points out the conduct of the employees in remaining on the field after they had been apprised of the applicable rule was serious and in fact deplorable. Their evidence that they left once the position had been explained to them is at variance with the probabilities and the admitted fact that they spent a number of hours on the field. Clearly, they left only at the stage when it was dangerous for them to continue remaining on the field. By this conduct they placed their own safety at risk and the safety of members of the crowd who might have become physically involved with attempting to remove them,. I remain committed to the view to which we were referred and which I expressed in **Scaw Metals Ltd v Vermeulen** (1993) 14 ILJ 672 (LAC) at 675:

"A further consideration, stressed by Scaw's counsel, weighs with me.

We live in a society wracked by violence. Where an employer seeks to combat that evil, even by harsh measures, this court ought not to be astute to find unfairness."

However, in **Scaw Metals Ltd** the employee made his direct threat of serious violence with a firearm, albeit an unloaded one. In the present case the employees did not directly threaten violence. What they did was to create a situation in which violence may well have occurred.

[31] Counsel for the appellant stressed as aggravating too the fact that none of the employees expressed any remorse for the incident. On the other hand there are a number of substantially extenuating factors. The whole incident was, it would seem, the result of Saayman's failure adequately to communicate the applicable rule to the third respondent. Counsel for the appellant contended that the hostel at which the employees and the team spent the Friday night must have been agog with the news of which teams had reached the semi-finals; he referred also in this regard to the fact that the public address system on Friday was reported to have announced the semi-finalists. There is, however, no evidence of the sleeping arrangements of the employees and the team, and of what they must have heard at the hostel during Friday night, and it is also not clear that they heard the public announcement. Clearly, on the probabilities, the team was fully prepared and psyched up to play in the semi-finals. Their disappointment at not being able to do so because of a rule of which they were ignorant must have been immense. Then there is the fact that the three employees were severely punished by the tournament committee's decision to ban them for life from future tournaments. The award of the second respondent had the effect of depriving the employees of approximately 7 months of salary. This is a severe punishment.

[32] Although it is true that the appellant remunerated the employees in full for their time spent at the tournament where they were representing the appellant and were in fact its ambassadors, it is of significance that they were involved with duties which were different from their normal ones. The fourth respondent had been employed by the appellant since 7 March 1977 and at the time of his dismissal was chief clerk at its Phula hostel. There does not appear to be any connection between his normal duties and those he was responsible for on the fateful day. The same applies to the fifth respondent who was in the employ of the appellant since 16 April 1990 as a clerk at the appellant's B-hostel. The fact that they will not participate in

the tournament again of course also renders a repetition of their misconduct most unlikely.

[33] The third respondent's position is different. The nature of his work does appear to be related to his duties on the fateful day. The third respondent had held the position of senior welfare assistant at the Appellant's B-Hostel since 11 March 1991. Saayman, who, it will be recalled, was a sports organiser in the employ of the appellant, said that his own duties were "to organise sport and tournaments for the employees and the company". This included representing the company at sports tournaments. Saayman testified that the third respondent's duties as senior welfare assistant were "(b)asically to organise sport and in fact to be my ... second in charge". This included the third respondent representing "the company Amplats at various tournaments including provincial and national tournaments ..." Saayman said that it was the third respondent's duty as team manager to look after the welfare of the team and to see that they behaved well and that they observed the tournament rules. If there were any matters of concern to the players, he was obliged to communicate with Saayman in regard thereto.

[34] Counsel for the employees argued that the appellant had not clearly indicated the extent to which the third respondent's normal duties differed from those he undertook as team manager. This submission has some merit, but it does seem to me clear that the third respondent's normal job was that of a sports organiser who organised sports and tournaments but did not deal directly with players as a team manager was required to do. As sports organiser the third respondent's normal duties may notionally bring him into a situation where a team involved in a sports event or tournament he has organised has a dispute with the authorities concerned. The question is whether the employer is entitled to be reasonably afraid that the third respondent may not act responsibly and that he may join those wrongly acting in defiance of legitimate authority. The third respondent's misconduct, all the relevant circumstances, and the fact that, according to Saayman, he was a very experienced organiser and knew his responsibilities, support the view that the answer is yes. So does the consideration that the employer was entitled to expect far better conduct from so senior an employee. It is also relevant to note that Saayman was understandably very embarrassed and ashamed that the world leader in platinum, Amplats was seen to have behaved as it had, and that Saayman expressed pride in the Amplats team which was always referred to as well-dressed, well-behaved and well-organised, but now was labelled as hooligans.

[35] A relevant consideration is whether we ought to distinguish between the third respondent and the other two employees. I think not, for the following reasons: Counsel for the appellant did not suggest that we do so. Possibly this was because differentiation would have to contend with a principle on which we were not addressed – the "parity principle", which "comprehends the concept that employees

who behave in much the same way should have meted out to them much the same punishment". **Post Office v Fennel** (1981) IRLR 221 at 223 – quoted with approval in **National Union of Metalworkers of South Africa and Others v Henred Fruehauf Trailers (Pty) Ltd** 1995 (4) SA 456 (A) at 463G-J. I refrain from deciding whether it may have been fair to differentiate between the third respondent and the other two employees given the particular circumstances of this case. Cf. **Cape Town City Council v Masitho and Others** (2000) 21 ILJ 1957 (LAC) at para [13]. Then there is the utter singularity of the event – requiring the confluence of a substantial number of occurrences, including a tie on points and a misunderstanding on the applicable rule – which makes a repetition of the misconduct highly unlikely. It follows that realistically the answer to the question I have posed in para [35] above is no. Furthermore having been part of the body of players and management team, who believed they had made it to the semi-finals, the third respondent may well have found it extremely difficult emotionally to break ranks with his companions, and to change his stance and back down.

[36] The sanction of dismissal often amounts to a death knell in respect of an employee's employment not only with the employer concerned but also in the open labour market. In all the circumstances, in my judgment, the penalties imposed by the appellant on the employees were too harsh and it seems to me that the penalties effectively imposed in the second respondent's award, and the lifetime bans imposed by the tournament disciplinary committee punished them sufficiently. The compensatory aspect of the award was not attacked in the review application or in argument before us. Counsel on both sides argued the matter on the basis that, if we found that the reasons given by the second respondent were unsustainable but we were of the view that the result is correct or justifiable, we should not interfere with the award. I have found that the result of the arbitration is justifiable. Accordingly there is no basis to interfere with the award and the appeal must fail.

[37] I record our indebtedness to counsel on both sides for their able, helpful and

full arguments.

[38] In the result, the appeal is dismissed with costs.

E L GOLDSTEIN
Acting Judge of Appeal

I agree

R M M ZONDO
Judge President

I agree

A N JAPPIE
Acting Judge of Appeal

For Appellant:

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Date of Hearing:
Date of Judgment:
2003

26 February 2003
23 May 2003

May