

**IN THE LABOUR APPEAL COURT OF SOUTH AFRICA
HELD IN JOHANNESBURG**

Caseno: PA1/02

In the matter between:

TRANSPORT FLEET MAINTENANCE (PTY) LTD 1st Appellant

TFM CAPE (PTY) LTD 2nd Appellant

and

**NATIONAL UNION OF METAL WORKERS
OF SOUTH AFRICA 1st Respondent**

ZITSHU AND 25 OTHERS 2nd and Further Respondents

JUDGEMENT

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- [1] The first respondent is a registered trade union. The second to the twenty seventh respondents are members of the union who were employed by the second appellant, namely, TFM Cape (Pty) Ltd, until the 5th August 1998 on which date the second appellant dismissed

them from its employ. A dispute then arose between the second appellant, on the one hand, and the union and the second and further respondent's, on the other, on whether that dismissal was fair and, if it was unfair, what relief the second and further respondent's should be granted.

- [2] On the 15th September 1998 the dispute was referred to the Commission for Conciliation, Mediation and Arbitration (CCMA) for conciliation. Ordinarily it would have had to be referred to the Labour Court for adjudication but the parties agreed that the CCMA arbitrate it. On the 4th June 1999 the first appellant and the second appellant concluded and signed a sale agreement in terms of which the second appellant effectively sold and transferred its business as a going concern to the first appellant. In terms of the agreement, the first and second appellants agreed that the sale and transfer of the second appellant's business to the first appellant would be with effect from the 1st November 1998.
- [3] The arbitration proceedings took place on the 22nd June and 3rd August 1999. The second appellant's management did not inform the respondents and the commissioner of the sale and transfer of the second appellant's business to the first appellant. On the 18th August 1999 the commissioner handed down his arbitration award. The

arbitration award was to the effect that the second and further respondents' dismissal by the second appellant was unfair and that the second appellant reinstate those of the second and further respondents who reported for duty within 14 days of the award. The commissioner decided not to make the reinstatement order retrospective.

- [4] The second and further respondents reported for duty on the 24th August at the premises where the second appellant had conducted business at the time of their dismissal. Mr Gordon Thompson, who had been the second appellant's general manager in the same premises prior to the second and further respondents' dismissal, informed them that the second appellant was no longer in business. According to the second and further respondents it was apparent on the 24th August that the undertaking that had been there at the time of their dismissal was continuing with the normal business operations in which the second appellant had been engaged prior to their dismissal and that substantially the same workforce, including the managers, had been retained.
- [5] In due course the respondents learnt of the sale and transfer of the second appellant's business to the first appellant. A dispute then arose between them and the appellants on which of the two appellants had the obligation to give effect to the arbitration award that had been made against the second appellant. The respondents brought an

application in the Labour Court for, among others, an order that the first appellant give effect to the award which meant that it should reinstate them with effect from the date when they had reported for duty.

- [6] The respondents' case before the Labour Court was that, when the second appellant's business was transferred to the first appellant as a going concern, all the rights that they had against the second appellant at the time of such transfer and all the obligations which the second appellant had towards them were transferred by operation of law to the first appellant. This, they contended, was because of the application of sec 197(2)(a) of the Labour Relations Act, 1995 (Act NO 66 of 1995) (**"the Act"**). The first appellant's defence was that, although the transfer of the second appellant's business to the first appellant was a transfer of such business as a going concern to which sec 197 applied, the rights and obligations which existed between the second appellant and the individual respondents, if any, were not transferred to it because at the time of the transfer of the business, the second and further respondents were not employees of the second appellant as contemplated by sec 197(2)(a) as they had been dismissed prior to such transfer and their reinstatement by the CCMA was not so retrospective as to cover the date of the transfer. Waglay J, who heard the matter, held that sec 197 applied to the second and further respondents even though they had been dismissed prior to the transfer

of the business and despite the fact that the award of reinstatement that the CCMA had made was not sufficiently retrospective to cover the date of the transfer of the business. Accordingly, he granted an order to the effect, in regard to this issue, that the arbitration award could be made an order of the Labour Court. Subsequently the appellants sought leave to appeal to this Court against that judgement and order. The application for leave to appeal was refused. The appellants then petitioned this Court for leave to appeal. This Court granted such leave; hence this appeal.

The Appeal

- [7] On appeal the only issue for determination is whether sec 197(2)(a) applied to the second and further respondents at the time of the transfer of the business of the second appellant to the first appellant. If it applied, the appeal must fail. If it did not apply, the appeal must succeed. Whether or not sec 197(2)(a) applied depends on whether or not the second and further respondents can be said to have been employees of the second appellant as contemplated by sec 197(2)(a) at the time of the transfer of the business. It is the provisions of sec 197(2)(a) as they stood in 1999 that fall to be considered. It is convenient to quote not only sec 197 (2)(a) but also sec 197 (1) and the whole of ss(2). Sec 197(1) and (2) read thus at the time:-

“197TRANSFER OF CONTRACT OF EMPLOYMENT.

(1) A contract of employment may not be transferred from one employer (referred to as the old employer) to another employer (referred to as the new employer) without the employee's consent, unless-

(a) the whole or any part of a business, trade or undertaking is transferred by the old employer as a going concern; or

(b) the whole or a part of a business, trade or undertaking is transferred as a going concern-

(i) if the old employer is insolvent and being wound up or is being sequestered; or

(ii) because a scheme of arrangement or compromise is being entered into to avoid winding up or sequestration for reasons of insolvency.

(2)(a) If a business, trade or undertaking is transferred in the circumstances referred to in subsection (1) (a), unless otherwise agreed, all the rights and obligations between the old employer and each employee at the time of the transfer continue in force as if they had been

rights and obligations between the new employer and each employee and, anything done before the transfer by or in relation to the old employer will be considered to have been done by or in relation to the new employer.

(b) If a business is transferred in the circumstances envisaged by subsection (1) (b), unless otherwise agreed, the contracts of all **employees that were in existence immediately before the old employer's winding up or sequestration transfer automatically to the new employer, but all the rights and obligations between the old employer and each employee at the time of the transfer remain rights and obligations between the old employer and each employee and anything done before the transfer by the old employer in respect of each employee will be considered to have been done by the old employer".**

[8] Counsel for the appellants contended that the provisions of sec 197(2) (a) require that the second and further respondents should have been employees of the business transferor at the time of the transfer of the business before the provisions could be triggered. He submitted that these second and further respondents were not employees of the business transferor at the time of the transfer of the business because they had been dismissed from the business transferor's employ prior to the transfer of the business. Section 213 of the Act defined the word **"employee"** thus at time:

"(a) any person, excluding an independent contractor, who works for another person or for the State and who

receives, or is entitled to receive, any remuneration;

(b) any other person who in any manner assists in carrying on or conducting the business of an employer”.

[9] Counsel for the appellants conceded, however, that the principle established in the decision of the then Appellate Division in *National Automobile and Allied Workers Union (now known as the National Union of Metal Workers of SA) v Borg-Warner SA (Pty) (1994) 15 ILJ 509 (A)*, which was decided under the now repealed Labour Relations Act, 1956 (Act No 28 of 1956) (**‘the old Act’**), applied with equal force to the current Act. In Borg-Warner’s case a trade union had concluded an agreement with an employer to the effect that, when suitable vacancies arose in the future, the employer would fill such vacancies by employing from a pool of employees who had previously been dismissed by the employer. A dispute arose later between the parties when the employer failed to appoint from the pool in filling certain vacancies that had arisen. The trade union brought an unfair labour practice claim in the Industrial Court alleging that the employer’s conduct in not hiring from the pool constituted a breach of the earlier agreement and constituted an unfair labour practice as defined in sec 1 of the old Act.

[10] The employer took the point that the Industrial Court had no jurisdiction in the matter as the persons who formed the pool of employees for whose benefit the agreement had been concluded were

not employees within the meaning of that term in the old Act because they had been dismissed. The Appellate Division rejected this contention. The Court referred to the City Council of Cape Town v Union Government 1931 CPD 366 at 380 where, in relation to the Industrial Conciliation Act 11 of 1924, Gardiner JP had said that **“(i)t does not follow that [a] man dismissed may not be an employee in terms of the Act. It seems to me that to hold that once a man is dismissed he ceases to be an employee would defeat the whole object of the Act, because anyone with knowledge of labour history knows that such disputes constantly arise and that serious strikes often take place owing to the fact that a person has been dismissed”**. At 518B in Borg-Warner the Court said in relation to the old Act:- **“The relationship envisaged by the Act between employer and employee is therefore clearly not one that terminates as it would at common law”**. At 516A in Borg-Warner’s case the Appellate Division said:

“The Labour Appeal Court recognized that a termination of the relationship which would be unassailable under the common law, does not terminate the applicability of the definitions ‘employer’ and ‘employee’ to the parties to the relationship **for purposes of the Act**”. (My underlining).

At 518F-H it went on to say that:

“..... (t)he legislature clearly had in mind that once a particular employment relationship is established, the parties to it remain ‘employee’

and 'employer' as defined , beyond the point of time at which the relationship would have terminated under the common law. Where it includes also former employees seeking re-employment or reinstatement, it has placed no limitation suggesting when - or why - a former employee no longer falls within the definition. **What is clear, is that when both parties so agree or when equity permits, the relationship does come to an end"**. (My underlining).

- [11] The principle established in Borg-Warner is, therefore, that an employment relationship could continue between an employer and an employee beyond the termination of the contract of employment by the employer and, where such a relationship existed, the dismissed person was an employee as defined in the old Act. It was said that such an employment relationship comes to an end when parties have so agreed or when equity so demands. That certainly was the case under the old Act and that remains the position under the current Act. The employment relationship was found to have continued to exist in the Borg-Warner case beyond the termination of the contract of employment despite the fact that the employees forming part of the pool no longer had any contracts of employment with the company. The employment relationship certainly continues to exist where the dismissed person challenges the fairness of the dismissal and seeks relief through procedures provided for by the Act.

- [12] To construe the provisions of sec 197(2)(a) on the basis that the word

“employee” includes a person who has been dismissed but still has an employment relationship with his former employer because he is still pursuing legal remedies in relation to such dismissal would, it seems to me, accord with the purpose of EC Council Directive 77/187 of 14 February 1977 of the Council of European Communities. I say this because, in **P Bork International A/S (in liq) v Foreningen af Arbejdsledere i Danmark Case 101/87 [1989] IRLR 41** at 44, the Court of Justice of the European Communities had the following to say in respect of who may invoke the EC Council Directive 77/187:-

“..... the only workers who may invoke Directive 77/187 are those who have **current employment relations or a contract of employment at the date of the transfer.**” (my underlining)

Later, on the same page, the Court said:

“It follows that the workers employed by the undertaking whose contracts of employment or **employment relationship has been terminated with effect on a date before that of the transfer, in breach of Article 4(1) of the Directive must be considered as still employed by the undertaking on the date of the transfer with the consequence, in particular, that the obligations of an employer towards them are fully transferred from the transferor to the transferee, in accordance with article 3(1) of the Directive....**” (my underlining)

[13] In **Wendelboev LJ MusicAps (in liq) Caseno 19/83[1985]E CR 457** at par 16 of the judgementthe Court, inter alia, said that: **“The existence or otherwise of a contract of employment or an employmentrelationship on the date of the transfer within the meaningof Article3(1)of thedirectivemustbe establishedon the basisof therulesof nationallaw,subjecthowevertobservanceof themandatoryprovisions of thedirectiveand, moreparticularly, Article 4(1) thereof, concerning the protection of employees againstdismissalby thetransferor or the transfereeby reasonof thetransfer”**.The Courtthensaid that**“(i)tis for thenationalcourt to decide,on thebasisof thosefactors,whetheror not,on thedate of the transfer, the employeesin question were linked to the undertakingby virtueof a contractof employmentor employment relationship”**. In **Foreningen af Arbejdsledere i Danmark v DaddysDanceHall A/S Case324/86[1988] IRLR 315at317**par14 theCourt said, amongotherthings, that**“.....Directive77/187aims at ensuringfor workersaffectedby a transferof undertakingthe safeguardingof theirrightsarisingfromtheemploymentcontract or relationship”**.(my underlining).

[14] It is, therefore, clear from the decision of the European Court of Justice in **P Bork International A/S (in liq) v Foreningen af**

Arbejdslederei Danmark (above) that the existence of a contract of employment or of an employment relationship qualifies an employee to claim protection under the EC Council Directive 77/187. In other words the absence of a contract of employment does not disqualify a person from such protection and a person who has no contract of employment at the time of the transfer of the business can seek such protection if he can show the existence of an employment relationship. It is clear also from the decision in *Wendelboe's case* referred to above that it is left to the domestic courts to decide whether in a particular case there is an employment relationship or a contract of employment or not. It is made clear in **Foreningen af Arbejdsledere i Danmark v Daddys Dance Hall** that the Directive “**aims at ensuring for workers affected by a transfer of undertaking the safeguarding of their rights arising from the employment contract or relationship**”.

- [15] Against the above background it is appropriate to observe that in *Borg-Warner* it was decided that the termination of a contract of employment does not terminate the applicability of the definitions of “**employer**” and “**employee**” to the relationship of the parties for purposes of the old Act and that the definition of “**employee**” in the old Act included a former employee seeking re-employment or reinstatement. It was also said in *Borg-Warner* that what was clear was that the employment relationship comes to an end when the parties

have so agreed or if **“equity permits”**. If equity is applied to this case, it seems to me that it cannot be said that it permits that the matter be dealt with on the basis that the employment relationship came to an end when the individual respondents were dismissed despite the fact that they did not accept the dismissal but instead set the statutory machinery in motion to have their dismissal reversed. On the contrary it seems to me that the employment relationship continued beyond the termination of their contract of employment.

- [16] Counsel for the appellants further submitted that, where, as in this case, an employee's dismissal from the business transferor's employ occurred before the transfer of the business and the employee is still pursuing his legal remedies at the time of such transfer, the dismissed employee can only be said to be an employee as contemplated in sec 197(2)(a) if he subsequently obtains an order of reinstatement which is so retrospective that it covers the date of the transfer of the business. He submitted that, if the employee does obtain a reinstatement order or award but such reinstatement is either not retrospective at all or is retrospective but not sufficiently retrospective to cover the date of the transfer of the business, the dismissed employee cannot be said to have been an employee within the contemplation of sec 197(2)(a) at the time of the transfer. Counsel submitted that in a case where the dismissed employee is still pursuing his remedies when the business is transferred, the question whether or not he is or was an employee as

contemplated by sec 197(2)(a) at the time of the transfer of the business is determined by the terms of the award or order that he obtains.

[17] Counsel for the appellant submitted that, if the result of litigation or arbitration about a dismissal dispute is a finding that the dismissal was fair, this has the result that for purposes of sec 197(2)(a) the dismissed employee is not to be regarded as having been an employee of the business transferor at the time of the transfer of the business. If, however, submitted Counsel for the appellants, the dismissal of the employee is found to have been substantively unfair and sufficiently retrospective reinstatement is ordered, the employment relationship is confirmed to have been present at the time of the transfer of the business and the dismissed employee is to be regarded as having been an employee as contemplated by sec 197(2)(a) at the time of the transfer of the business.

[18] I am unable to uphold Mr Pretorius' argument that whether an employee who has been dismissed before the transfer of his former employer's business to another as going concern is an employee for the purposes of sec 197(2)(a) depends on the terms of the award or order that is ultimately issued or made at the end of the arbitration or adjudication of his unfair dismissal claim. If that argument were upheld, it would introduce too much uncertainty. I think it is

untenable. In my judgement a person is either an employee as contemplated by sec 197(2)(a) at the time of the transfer of the business or he is not. One should avoid a construction of the section that results in a situation where such a person is not regarded as an employee as contemplated by sec 197(2)(a) at the time the business is transferred but is subsequently so regarded.

- [19] On the basis of the decision in Borg-Warner a person who had been dismissed from an employer's employ and who pursued his legal remedies to seeking re-employment or reinstatement by utilising the statutory mechanism fell within the definition of **"employee"** in the old Act for purposes of that Act. Mr Pretorius has correctly conceded that that principle finds application in the current Act. In my judgement once this is accepted to be the case, there can be no doubt that the second and further respondents must be regarded as having been **"employees"** as contemplated by sec 197(2)(a) of the current Act and were such employees **"at the time of the transfer"** of the business as required by sec 197(2)(a). I, therefore, conclude that at the time of the transfer of the business the second and further respondents were **"employees"** of the second appellant, the business transferor, within the meaning of that word in sec 197(2)(a). In my view, that is the end of the case save that it must still be determined what rights and obligations subsisted at the time between the second and further respondents and the business transferor which the business transferee took over. I turn to deal with

that issue shortly.

[20] Mr Pretorius' submission also seems to be based on the assumption that whether or not the first appellant had an obligation to give effect to the reinstatement award that was issued by the CCMA against the second appellant depends on whether the right which the second and further respondents had against the second appellant at the time of the transfer of the business was the right to employment.

[21] Mr Pretorius' submission also raises the question of what the rights and obligations are which exist between an employee who has been dismissed (but is still pursuing his legal remedies about such a dismissal) and the business transferor which would continue after the transfer of the business as if they were rights and obligations between him and the business transferee. This is important to establish because only those rights which existed at that time of the transfer of the business continue beyond such transfer as if they were rights and obligations between the employee and the business transferee. Any rights and obligations between the dismissed employee and the business transferor which may have existed at some stage but no longer existed at the time of the transfer do not continue after the transfer of the business.

[22] In my judgement, that assumption is not justified by the provisions of

sec 197. Sec 197 envisages both the transfer of contracts of employment as well as the transfer of rights and obligations existing between the business transferor and its employees at the time of the transfer of the business. Subsection 1 precludes the transfer of an employee's contract of employment without his consent except in circumstances specified therein. Subsection 2(a) makes no specific reference to the transfer of contracts of employment when a business is transferred as a going concern but it refers to **“all the rights and obligations between the old employer and each employee at the time of the transfer”**. It says that those rights and obligations **“continue in force as if they had been rights and obligations between the new employer and each employee”**. It further goes on to say that: **“anything done before the transfer by or in relation to the old employer will be considered to have been done by or in relation to the new employer”**. Subsection 2(b) makes a specific reference both to **“the contracts of all employees that were in existence immediately before the old employer's winding up or sequestration”** being transferred automatically to the new employer as well as to **“all the rights and obligations between the old employer and each employee at the time of the transfer”** remaining as **“rights and obligations between the old employer and each employee.....”**

[23] In my view the phrase **“all the rights and obligations”** in subsection (2)(a) is not limited to the right to employment. The phrase is wide enough to include the right provided for in sec 34 of the Constitution of the Republic of South Africa NO 108 of 1996 and the right provided for in sec 191(1) and (5) of the Act. Sec 34 of the Constitution provides the **“(e)very one has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court, or, where appropriate, another independent and impartial tribunal or forum”**. The CCMA is, on the face of it, such an independent and impartial tribunal or forum. Sec 191(1) read with ss(5) of the Act provide in effect that an employee who has a dispute with his employer about the fairness of his dismissal has a right to refer such dispute to conciliation and, if conciliation fails, to the CCMA or a council with jurisdiction for arbitration or to the Labour Court for adjudication.

[24] Where a person has been dismissed by his employer and resorts to the Act to challenge the fairness of that dismissal with a view to securing his reinstatement but, before the finalisation of the litigation or arbitration, the business of his former employer is transferred as a going concern to another person or entity, one of the rights which the dismissed employee has at the time of the transfer of the business is the right to utilise the provisions of the Act against the business transferor to obtain an award or order of reinstatement or

compensation or other relief in relation to the dispute about the fairness of his dismissal. A dispute about the fairness of the dismissal is a dispute that can be resolved by the application of law as contemplated by sec 34 of the Constitution. If it is accepted that the word **“employee”** in sec 197(2)(a) includes a dismissed employee who is pursuing his legal remedies about such a dismissal, then the right of a dismissed employee to utilise the Act to challenge the fairness of his dismissal in order to resolve the dismissal dispute between himself and the business transferor is one of the rights which he has against the business transferor which, in the words of sec 197(2)(a), **“continue(s) in force as if (it) (was a right) between the new employer and each employee...”**.¹ I, therefore, conclude that the right which such a dismissed employee has in terms of sec 34 of the Constitution read with sec 191 of the Act to have such a dispute arbitrated or adjudicated continues after the transfer of the business and it becomes a right between the dismissed employee and the business transferee. In this case the dismissal dispute appears to have been pending before the CCMA when the business was transferred. The award was actually delivered a few weeks after the signing of the sale agreement which was then made retrospective.

[25] It can also be said that, because sec 197(2)(a) provides that anything done by the business transferor in relation to an employee before the transfer of the business must be regarded as having been done by the business transferee, the business transferee is regarded, after the transfer of the business, as the one who dismissed the employee and, is, therefore, the

person against whom the employee is entitled to pursue arbitration or legal proceedings to enforce his right not to be dismissed unfairly.

[26] Mr Pretorius referred us to the case of **Lister and others v Forth Dry Dock and Engineering Co Ltd [1989] 1 ALL ER 1134 (HL)** and that of **Thompson v SCS Consulting Ltd [2001] IRLR 801**. In Lister's case employees had been dismissed one hour before the transfer of the business. The question arose whether it could be said that they had been employed by the business transferor "**immediately before the transfer**" as required by English regulations since they had already been dismissed at the time of the transfer of the business. The House of Lords held that, where an employee was unfairly dismissed prior to the transfer of the business for a reason connected with the transfer, the employee should be regarded as having been in the employ of the business transferor immediately before the transfer. It did not go on to say the same in respect of an employee whose dismissal was not because of the transfer but was, for example, for operational reasons. Lord Templeman put it thus at 1139J: "**Regulation 5(3) must be construed on the footing that it applies to a person employed immediately before the transfer or who would have been so employed if he had not been unfairly dismissed before the transfer for a reason connected with the transfer. It would, of course, still be open for new owners to show that the employee had been dismissed for an economic, technical or organisational reason entailing changes in the workforce**". In

Thompson's case the Court held that liability did not transfer to the business transferee in respect of an employee who is dismissed before the transfer of business if the dismissal was not because of the transfer of the business or if the transfer was not the principle reason for the dismissal. In that case it had been found that Mr Thompson's dismissal was for an economic, technical and organisational reason and was not connected with the transfer. The Court held that, because of that, the business transferee was not liable.

- [27] For two reasons I do not find the decisions in *Lister* and *Thompson* helpful to the appellants' case. The one reason is that the distinction the two cases sought to make between a case where the reason for dismissal is the transfer of the business and where the reason for dismissal is not the transfer of the business but is, for example, an **"economic, technical or organisational"** reason is based on specific provisions of the English regulations which have no equivalent in sec 197. Reg 8(1) provides that **"(w)here either before or after a relevant transfer, any employee of the transferor or transferee is dismissed, that employee shall be treated as unfairly dismissed if the transfer or a reason connected with it is reason or principal reason for his dismissal"**. Reg 8(2) provides that **"(w)here an economic, technical or organisational reason entailing changes in the workforce of either the transferor or the transferee before or after a relevant transfer is the reason or principal reason for**

dismissing an employee (a) paragraph (1) above shall not apply to his dismissal”. The paragraph (1) referred to is, of course, Reg 8 (1) referred to above. Sec 197 has no similar provision that draws a distinction between the two situations.

- [28] Mr Myburgh, who appeared for the respondents, relied heavily on the decision of this Court in **Success Panel Beaters & Service CC v NUMSA & Another [2000] 6 BLLR 635 (LAC)** in contending that the respondents were employees for purposes of sec 197 when the business was transferred. In that case the employee was employed by a company known simply as Score but was dismissed on 7 March 1996 – which was before the Act came into operation. The employee then referred a dispute relating to the fairness of his dismissal to the Industrial Court under sec 46(9) of the old Act. The current Act including sec 197 came into operation on 11 November 1996. In January or early February 1997 Score’s business was transferred as a going concern to Success Panel Beaters and Service Centre CC, (hereinafter referred to as “**Success**”), the appellant in that case, on 19 February 1997. The Industrial Court found that the dismissal of the employee was unfair and ordered Score to reinstate the employee and pay him compensation.

- [29] The employee and his union subsequently brought an application in the Labour Court for the order of the Industrial Court against Score to

be made effective against Success. The Labour Court granted the application. An appeal to this Court ensued. This Court held that sec 197 applied to the case and referred at 637G-H to that part of sec 197 (2)(a) which says that “...**anything done before the transfer by..... the old employer will be considered to have been done by..... the new employer**” and said that “**(i)n other words, the unfair dismissal of the second respondent by Score will be considered to have been effected by the appellant**”.

[30] Mr Pretorius argued that the point that he raised in this matter was not argued in the Success Panel Beater’s matter. It may be so that the point was not argued but it is clear from the statement I have quoted at the end of the preceding paragraph that one of the reasons given by this Court for upholding the decision of the Labour Court making the order of the Industrial Court effective against Success was that the dismissal of the employee which Score had effected prior to the transfer of the business was considered to have been effected by Success.

[31] In the result I conclude that the appeal must fail. The appeal is dismissed with costs.

I agree.

Goldstein AJA

I agree.

Comrie AJA

Appearances:

For the Appellants:

Adv. P.J. Pretorius SC

Instructed by:

G.B. Liebmann, Behrmann & Co

For the respondents:

Adv A.T. Myburgh

Instructed by:

Wesley Pretorius & Associates

Dated of Judgement:

6 August 2003