

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

CASE NO: JA 15/2003
REPORTABLE

In the matter between:

BIFAWU

First Appellant
(First Applicant in the Court *a quo*)

and

MFUNDO NHLAPO

Second Appellant
(Second Applicant in the Court *a quo*)

and

**MUTUAL and FEDERAL INSURANCE COMPANY
LIMITED**

Respondent

JUDGMENT

WILLIS JA:

[1] The second appellant, who had been employed by the respondent as an underwriting clerk, had represented a fellow employee, one Pepsi Munyai, at a disciplinary enquiry and subsequent arbitration proceedings before the Commission for Conciliation Mediation and Arbitration (“the CCMA”). Munyai, a clerk, had been dismissed by the respondent for misconduct relating to the dishonest processing of insurance claims. The respondent, as its name suggests, is an insurer. The CCMA commissioner confirmed the dismissal and rejected Munyai’s claim that his dismissal had been substantively unfair. He found that there had been procedural unfairness in the manner of Munyai’s dismissal and ordered the respondent to pay R39 369,00, which sum was calculated in relation to Munyai’s earnings.

[2] In his arbitration award, the CCMA commissioner found that during Munyai’s disciplinary enquiry “a request for a postponement was rejected by the chairperson thereof after an objection was raised by the prosecutor, Mr Slater who played the role of the prosecutor and witness and the chairperson interrupted the cross-examination of Ms Van Greunen and Ms Meintjies with questions of their own.” The commissioner was critical of the conduct of Mr Slater and, by implication, Mr Jansen, the chairperson, for not exercising greater control. The commissioner’s arbitration award was not taken on review. A reading of the record of the disciplinary proceedings indicates that the manner in which the enquiry was held was not above reproach. Whether or not this would justify a finding that Munyai did not receive a fair hearing is, for the purposes of this case, irrelevant. What is clear is that the commissioner found, for mixed reasons, that there had been procedural unfairness. It seems unlikely that, had his award been taken on review, there would have been any basis, as a matter of law, upon which to interfere therewith.

[3] The merits of Munyai’s dismissal, his disciplinary enquiry and the arbitration proceedings relating thereto are, essentially, irrelevant to this case. They do, however, form a background against which the instant case has been and is to be determined. I shall deal with the judgment of the Court which dealt with the dismissal of the

second appellant (the Court *a quo*) in more detail later on. Although the Court *a quo* found, upon a careful reading of the record, that at one stage the chairperson had refused a request for a postponement, it also found that he very soon thereafter reconsidered his position and then granted a postponement. Munyai suffered no prejudice. A less critical eye being cast over the record could be forgiven for not discerning the corrective behaviour of the chairperson. In other words, the CCMA commissioner erred in this regard. The error is, however, a comprehensible one. Moreover, as I have already said, the CCMA commissioner decided the question of procedural fairness for mixed reasons and did not rely on the refusal of a postponement alone. The Court *a quo* found that there had been no other incidents of a refusal of a postponement during the disciplinary enquiry of Munyai.

[4] The CCMA commissioner's award in the Munyai case was dated 9 January 2000. It seems to have been received by the parties some time later. Consequent thereupon the second appellant received a notice on 24 March 2000 notifying him that he should attend a disciplinary enquiry on 29 March 2000. In that notice the following allegations were made against him:

“Serious misconduct, arising out of dishonest statements made by you, both in the arbitration hearing and written argument in the CCMA case GA 42003, Mr P. Munyai and Mutual & Federal. You alleged falsely that Mr Munyai had requested a postponement of his disciplinary hearing but was unreasonably turned down and that therefore the disciplinary hearing was procedurally unfair. Mutual &

Federal contends that you made these false statements with the intention of harming the company and that the company was indeed harmed. Mutual & Federal also contends that your dishonesty is inconsistent with your employment as an underwriting clerk in a position of trust and that your continued employment is intolerable."

[5] Of particular concern to the respondent was the following which appeared in the heads which the second appellant prepared in the arbitration at the CCMA concerning Munyai:

"(D)uring the hearing the applicant (i.e. Munyai) requested a postponement of the hearing at least for 4 days and also requested the respondent to provide copies of all documentation upon which he intended to rely for evidence during the investigation, as well as the identity of all (if any) of its witnesses. The request was unfairly denied by the respondent. We contend that it is an important element of natural justice that the accused be given a fair and proper opportunity to prepare for his case. We regard the 30 minutes given was too short and unreasonable on the part of the respondent, taking into account the complexity of the matter."

[6] Mr Franklin, who prepared the heads of argument for the respondent, correctly and fairly submitted that: *"In making the finding of procedural unfairness, the CCMA appears at least to have placed some reliance on the contention in the applicant's heads*

quoted above that a request for a four day postponement had been made but unreasonably refused by the Chairman of Munyai's disciplinary enquiry." In other words, Mr Franklin appears to have accepted that the CCMA commissioner decided the question of procedural fairness for mixed reasons. It is clear from the record, as well as the respondent's heads of argument that the respondent was peeved, to say the least, not only with the result of the arbitration at the CCMA but also the second appellant's conduct relating thereto.

[7] The respondent held a disciplinary enquiry into the second appellant's alleged misconduct as referred to in paragraph [4] above. The second appellant was found guilty and dismissed on 29 July 2000. The reason given by the chairperson of the second appellant's disciplinary enquiry was that the second appellant was "guilty of serious misconduct arising out of dishonest statements you had made in CCMA case 42003 P Munyai v Mutual & Federal."

[8] The appellants referred a dispute concerning the respondent's alleged unfair dismissal of the second appellant to the CCMA for conciliation. This was unsuccessful. The appellants then referred the dispute directly to the Labour Court in terms of s 191 (5) (b) (i) of the Labour Relations Act No 66 of 1995 as amended ("the LRA"). The appellants alleged that the dismissal was "automatically unfair" in terms of s 187 of the LRA. The appellants relied on the provisions of section 187(1) (d) of the LRA which provides that a dismissal is automatically unfair if the reason for the dismissal is that "*the employee took action, or indicated an intention to take action, against the employer by-*

- i) *exercising any right conferred by this Act; or*
- ii) *participating in any proceedings in terms of this Act "*

The appellants alleged that the dismissal was automatically unfair because he was "dismissed for exercising his right of representing a fellow employee", because he participated in "arbitration proceedings in terms of the Act" and "actually amounts to victimization." The appellants also alleged that the dismissal was procedurally unfair "in that his (i.e. the second appellant's) union was not consulted prior to him being charged." The second appellant claimed reinstatement.

[9] The Court *a quo* (*per* Waglay J) found not only that although at a certain stage the chairperson of Munyai's disciplinary enquiry had refused a request for a postponement, he very soon thereafter reconsidered his position and thereupon granted a postponement, but also that no other requests for a postponement had been sought, let alone refused. The Court *a quo* found that during Munyai's arbitration hearing, the second appellant in making submissions to the CCMA commissioner had been deliberately deceitful and had intentionally misled the CCMA commissioner in regard to the question of postponements. The following facts are relevant:

- (i) The record of Munyai's disciplinary enquiry clearly demonstrates that second appellant's claims in respect of the alleged refusal of the postponement were

incorrect;

(ii) The second appellant did not admit error but persisted with his claim that this was the truth;

iii) The second appellant was evasive when pressed to show where, in the record of Munyai's disciplinary proceedings, requests for postponements had been unreasonably refused;

iv) Ultimately, after rigorous questioning, he relied on only four pages in the transcript, where he said the record showed requests for postponements had been unreasonably refused;

v) When confronted with the fact that the transcript on these four pages plainly did not support his contentions, he resorted to ridiculous explanations.

The Court *a quo* found that the second appellant had been guilty of serious misconduct which justified his dismissal.

[10] On the question of the alleged procedural unfairness, the Court *a quo* held that as the first appellant was not a union recognized by the respondent there was no obligation upon it to notify the first appellant of the second appellant's disciplinary enquiry and, in any event, the provisions of item 4 (2) of schedule 8 to the LRA were guidelines only. The Court *a quo* dismissed the appellants' application with costs and ordered that the first and second appellants were jointly and severally liable, the one paying the other

to be absolved, to pay the respondent's costs.

[11] The Court *a quo* delivered an *ex tempore* judgment on 14 February 2002. It would appear that the typed copy of this judgment was given to the parties on 10 May 2002. Although the appellants had filed a notice of application for leave to appeal on 26 February 2002, they filed an application for leave to appeal supported by grounds thereof on 26 June 2002 only. This was some 78 days out of time. Some five months later, on 2 December 2002, the appellants filed an application for condonation for the late filing of their grounds of appeal. The application for condonation was dismissed by the Court *a quo* on 11 March 2003. The appellants petitioned this Court on 26 May 2003 for leave to appeal. Such leave was granted on 8 August 2003. The respondent has not taken the point that perhaps it would have been correct for the appellants first to seek leave to appeal against the Court *a quo*'s decision to refuse condonation. In any event, the parties agreed at the hearing before us that the appeal should be disposed of now. By agreement between the parties this Court made an order that, to the extent that it was necessary to do so, condonation was given in respect of any step which may have been taken by the appellants and which was out of time.

[12] In my opinion, one cannot fault the Court *a quo*'s findings not only that although at a certain stage the chairperson of Munyai's

disciplinary enquiry had refused a request for a postponement, he very soon thereafter reconsidered his position and thereupon granted a postponement, but also that no other requests for a postponement had been sought, let alone refused. The evidence, including unchallenged *viva voce* evidence by several of the respondent's witnesses, as well as the transcripts themselves, is overwhelming.

[13] It is clear from the voluminous record consisting of 1274 pages, spread out over 13 volumes, as well as the appellants' heads to which the second appellant has personally been a party (consisting of 178 pages of single space typing in a small font), that the second appellant, when it comes to disputes over disciplinary matters, whether he is acting for others or himself, has been difficult, indeed obstreperous. He has been a point-taker *par excellence*. No one can accuse him of being a slouch in such matters. He concedes little, if anything. The proceedings have been inordinately lengthy for such a matter. In his heads of argument, *Mr Franklin* has specifically complained that there were numerous pre-trial conferences and a number of attempts at agreeing a pre-trial minute, all of which were unsuccessful. Attempts to agree on the status and correctness of the transcripts also met with a lack of co-operation. An example of the difficulties which the respondent experienced is the following response which appears in the record: "*We (i.e. the appellants) received the transcript of the disciplinary enquiry for Munyai, but*

are unable to confirm that what is contained therein is a true reflection of what transpired at the disciplinary hearing since the transcript has many flaws in terms of the sentence construction, the spelling and the grammar."

[14] Eventually, the respondent was able to secure from the appellants a "schedule of discrepancies" in the transcript. The appellants contended that there were errors in the transcription. During the trial, however, it was contended by the appellants that a request for a four day postponement had been omitted from the transcript. The Court *a quo* correctly rejected this version.

[15] The second appellant persisted with his false claims throughout both his own disciplinary enquiry and the hearing before the Court *a quo*. He not only denied that he had made false statements concerning the postponements but also offered nothing by way of mitigation. This attitude continued even in the appeal hearing before us. We are, however, mindful of the fact that it is the second appellant's conduct *before* his dismissal which is relevant in determining whether or not his dismissal was fair.

[16] Upon reading the record it is difficult to determine whether the second appellant's attitude to the conduct of proceedings arises from immaturity, inexperience, over-zealousness, exuberance, an inability to maintain a certain detachment or something else. It has

been clear, even during the appeal hearing, that the second appellant is prone to use hyperbole as a rhetorical flourish. For example, when pressed by us to point to a single instance in the transcript of Munyai's disciplinary hearing where a request for a postponement had been unreasonably refused, the second appellant retorted that "99% of the transcript is missing." Not only is this inconsistent with the admissions which the appellants have made in regard to the transcript, not only does the transcript betray no sign of being an expurgated version, not only were the transcripts prepared a long time before the point about postponements being unreasonably refused was ever raised by the appellants, but also if the voluminous transcript record constitutes a mere 1%, Munyai would have had one of the most exhaustive hearings for misconduct of the kind in question in the annals of South African labour practice. It is understandable that the respondent would have found the second appellant exasperating. The point should not, however, be pressed too far.

[17] Nevertheless, the record of arbitration hearing of Munyai, and the disciplinary enquiry of the second appellant has the cumulative effect of compelling the conclusion that the second appellant did not merely have a momentary lapse of candour but was downright devious, unscrupulous and deceitful. Moreover, this pattern repeated itself in the trial before the Court *a quo*.

[18] Even if one accepts, as I do, that the Court *a quo* was correct in finding that the second appellant, in making submissions to the CCMA commissioner, had been deliberately deceitful and had intentionally mislead the CCMA commissioner in regard to the question of postponements, that would not necessarily dispose of the matter. Although acts of dishonesty by an employee will normally justify dismissal, this is not an invariable rule.¹ *Per se*, the dishonest statements relating to the question of postponements of which the respondent complains are in a different league from that, for example, perpetrated by Munyai. They are also different from the case where an employee deliberately falsifies the evidence, or interferes with a witness in a disciplinary case.

[19] That an employee, even when he or she is representing a fellow employee at a disciplinary enquiry or arbitration hearing, owes certain duties to the employer cannot be doubted. Among these is the duty to act honestly. The second appellant himself conceded this. After all, when an employee represents a fellow employee at a disciplinary enquiry or arbitration hearing, he or she does so precisely in that capacity of being a fellow *employee*. The fellowship does not transubstantiate the continuing employment relationship between the employer and the representing employee.

¹ See, for example, *Boardman Brothers v CWIU* 198 (3) SA 53 (SCA) at 59G; (1998) 19 ILJ 517 (SCA); *Toyota SA Motors (Pty) Ltd v Radebe & Others* (200) 21 ILJ 340 (LAC) at para [44].

[20] In *Mondi Paper Co Ltd v Paper Printing & Allied Workers Union & Another*², Nugent J, as he then was, said in a slightly different context:

“No doubt a shop steward should fearlessly pursue the interests of the members he represents and he ought to be protected against being victimized for doing so. However, this is no licence to resort to defiance and needless confrontation. I do not agree with the view of the court a quo that the fact that he was acting in his capacity as a shop steward serves to ‘mitigate’ conduct which objectively is unacceptable. Notwithstanding the position to which he has been elected, a shop steward remains an employee, from whom his employer is entitled to expect conduct appropriate to that relationship.”

[21] Of course, a Court should be slow to confirm the dismissal of an employee whose conduct at a disciplinary enquiry or arbitration has, as a result of immaturity, inexperience, over-zealousness, exuberance, or an inability to maintain a certain detachment, fallen short of the standard that could reasonably have been expected. An employee representing a fellow employee has the right, and indeed the duty, to do so fearlessly to the best of his or her ability. The following was said in *Ngubo & Others v Hermes Laundry Works CC*³:

“It is contrary to the interest of other employees and counter-

² (1994) 15 ILJ 778 (LAC) at 780F

³ (1990) 11 ILJ 591 (IC)

productive as far as sound labour relations are concerned, to discipline in the severest possible manner, namely, by dismissal, a shop steward who makes himself guilty of an infraction because he is performing his functions as a shop steward.”⁴

Nevertheless the right and duty to represent a fellow employee to the best of one’s ability is not an unbridled licence: it is constrained by the duty to do so honestly. Without honesty on the part of representatives of the parties, the system would be unviable.

[22] The questions that have to be answered in this case are these:

- (i) did the second appellant, when he represented Munyai, exercise a right conferred by the LRA; and
- (ii) was the second appellant dismissed for exercising that right?

[23] In this case, sight cannot be lost of the fact that it was the outcome of the arbitration in the Munyai case which triggered the respondent’s disciplinary action against the second appellant. It is also not irrelevant that the second appellant’s claims about the issue of postponement were not the only reasons for the CCMA commissioner coming to the conclusion that the disciplinary enquiry in the case of Munyai was procedurally unfair. Although due allowance must be made for the fact that the same standards cannot be expected at an employer’s disciplinary enquiry as would

⁴ at 594F-G

be expected of a Court or even a tribunal like an arbitration, the proceedings were, as I have already indicated, not above reproach. Furthermore, as I have also already noted, had the CCMA commissioner's award been taken on review, it would seem there would have been no basis, as a matter of law, upon which to interfere therewith. The second appellant's claims about the issue of postponement were not, therefore, of critical importance in determining the result that the respondent was ordered to pay Munyai R39 369,00.

[24] As noted above, section 187(1) (d) of the LRA proscribes an employer from dismissing an employee by reason of the employee exercising any right conferred by the LRA or participating in any proceedings in terms of the LRA.

[25] Section 23(1) of our Constitution gives every person "the right to fair labour practices". Section 1 of the LRA provides that the purpose of that Act is, *inter alia*, to give effect to the fundamental rights conferred by the Constitution. Section 3 of the LRA requires that any person applying this Act must interpret its provisions to give effect to its primary objects and in compliance with the Constitution. Section 39 (2) of the Constitution, in turn, provides that when interpreting any legislation, every Court must promote the spirit, purport and objects of the Bill of Rights. Section 27 of the Constitution falls within Chapter 2, The Bill of Rights.

[26] Item 4 (1) of Schedule 8 to the LRA, the *Code of Good Practice: Dismissal* provides that every employee should be entitled at any investigation to determine whether there are grounds for dismissal to “the assistance of a trade union representative or a fellow employee”. Although item 1 of the schedule provides that “departures from the norms established by this Code may be justified in proper circumstances,” the general principle is clear and has been part of our labour law and practice for quite a while.⁵ And although item (4) Schedule 8 relates to disciplinary investigations at the behest of the employer, it seems that this principle must *a fortiori* apply at arbitrations convened under the auspices of the CCMA. Moreover, section 138 (5) of the LRA expressly refers to a person being “represented at the arbitration proceedings” in the context of this being a self-evident right. In the context of labour law, the most basic right of representation must be that by a fellow employee or a ‘friend’.⁶ The right of an employee at a disciplinary enquiry (which must include an arbitration under the auspices of the CCMA) to be represented by a fellow employee is meaningless unless a fellow employee has the right, without fear of recrimination or reprisal, to represent an employee at such an enquiry. The respective rights, inverse and complementary to one another, are inextricably linked: the one follows from the other. Even if the right

⁵ See, for example, *National Union of Mineworkers & Another v Kloof Gold Mining Co Ltd* (1986) 7 ILJ 375 (IC) at 382B –383H; *Ibhayi City Council v Yantolo* 1991 (3) SA 656 (ECD) at 671G-H

⁶ See, on ‘friend’, John Grogan, Workplace Law, 8th ed, Juta’s at p195

to represent a fellow employee at a disciplinary enquiry has not been expressly conferred by the LRA, it necessarily arises from it, read together with section 23 (1) of the Constitution.

[27] In the as yet unreported case of *Kroukam v SA Airlink (Pty) Ltd* decided in the Labour Appeal Court (Case No. JA3/2003), Zondo JP found that the principal or dominant reason for the appellant's dismissal "was that the respondent was not happy with the role that he was playing in seeking to represent the interests of the union"⁷ He found that this rendered the dismissal automatically unfair.⁸ In the same case, Davis AJA came to this conclusion as well.⁹ I, who was one of the judges in that appeal, also reached this conclusion.¹⁰ In other words, the Court was unanimous that if the principal or dominant or primary reason for a dismissal was an employee's dismissal was the activities undertaken by the dismissed employee on behalf of a union, this rendered the dismissal automatically unfair. This is the case even if there are other reasons which may have played a lesser role. By parity of reasoning, if participation in activities on behalf of a union is the dominant reason for a dismissal and this renders the dismissal automatically unfair, it follows that if the dominant reason for dismissing is that employee's representation of a fellow employee at a disciplinary enquiry, this

⁷ See, at para [90]

⁸ See, at para [91]

⁹ See, at para [38] of Davis AJA's judgment.

¹⁰ See, at para [67]

would render the dismissal automatically unfair. The dismissal in such circumstances would be a dismissal by reason of that employee exercising a right conferred by the LRA or participating in any proceedings in terms of the LRA. This would constitute an automatically unfair dismissal in terms of 187(1) (d) of the LRA.

[28] The second appellant is not a trained lawyer. The ethical standard that would have been expected of a lawyer in the same situation as this is not necessarily the appropriate yardstick by which to measure the second appellant's conduct. Less than perfect ethical standards which might have come to the fore in a surfeit of enthusiasm to defend a fellow employee, could conceivably have cried out for a generous dose of forgiveness which would have included a lesser sanction than dismissal.

[29] As noted above, however, the record of arbitration hearing of Munyai, and the disciplinary enquiry of the second appellant have the cumulative effect of compelling the conclusion that the second appellant was downright devious, unscrupulous and deceitful. The compounding effect of all this is to compel the further conclusion that, as alleged by the respondent in its notice of the disciplinary enquiry, the second appellant's "dishonesty is inconsistent with (his) employment as an underwriting clerk in a position of trust and that (his) continued employment is intolerable"¹¹ The conclusion of the

¹¹ See para. [5] above

respondent was genuine. It is supported upon a full *conspectus* of all the relevant facts. Herein lies the dominant reason for the second appellant's dismissal. Although the facts which gave rise to the second appellant's dismissal occurred while he was representing a fellow employee, he was not dismissed for representing a fellow employee but for his dishonesty. Put differently, and to use the test of Nugent J in the *Mondi Paper* case¹², the respondent cannot "fairly be expected to continue the employment relationship."

[30] I therefore conclude, for reasons which are slightly different from those of the Court *a quo*, that the dismissal of the second appellant was substantively fair.

[31] It is necessary to deal briefly with the question of procedural fairness. The second appellant claims that he was a duly elected shop steward. It is common cause that the respondent did not consult with the second appellant's union before instituting disciplinary proceedings against the second appellant. The second appellant has invoked the provisions of item 4 (2) of Schedule 8 to the LRA which reads as follows:

"Discipline against a trade union representative or an employee who is an office bearer or official should not be instituted without first informing and consulting the trade union."

The respondent has contended that no such obligation exists in the

¹² See the citation in footnote 2 above; at 781A-C

present case because the union in question is not recognized by it. The respondent says it has minority representation among its workforce and has dwindling support.

[32] The trade union in question may not be a *representative* trade union in terms of the LRA and, therefore, not entitled to various of the organisational rights set out in Chapter III. Item 4 (2) of Schedule 8 does not, however, confine itself to a trade union which is *representative*. Nevertheless, item 1 of the Schedule makes it clear that that the Schedule serves as a guideline only. There seems to have been no prejudice to the second appellant as a result of the respondent's failure to consult the trade union. The second appellant was ably represented during his disciplinary enquiry by a representative of his own choice, Mr Baardt. Moreover, account must be taken of the fact that the error on the part of the respondent was *bona fide*. There was no mischief on the part of the employer. The mischief which the item seems designed to prevent is the perception that a trade union representative may not have been dismissed for a fair reason and/or after the following of a fair procedure. Such mischief cannot be perceived here. It also seems most unlikely that the failure to visit an award of compensation in this case for a lack of full compliance with the requirements of procedural fairness, will result either in this employer or others being indifferent to the guideline in item 4 (2) of Schedule 8 of the LRA in future.

[33] Although, in regard to the failure to comply with the requirements of procedural fairness, the 'no difference' principle seems to have been applied in *Farmec (Edms) Bpk t/a Northern Transvaal Toyota v Els*¹³, it has been expressly rejected in a series of authoritative decisions.¹⁴ Nevertheless, in this case the relevant issues touching upon the question of procedural fairness go well beyond the question of 'no difference'. Moreover, in a somewhat different context, this Court expressed an aversion to a mechanical, 'checklist' approach.¹⁵ It is important to take a holistic view of such matters. If one takes the overall circumstances of this case into account, one is compelled to conclude that such procedural unfairness as there may have been may be largely ignored. I do not think it is appropriate to exercise a discretion to make an award of compensation.

[34] The first appellant has pressed on with this appeal even to the

¹³ (1993) 14 ILJ 137 (LAC) at 143D-I

¹⁴ See, for example, *Mohamedy's v Commercial Catering & Allied Workers Union of SA* (1992) 13 ILJ 1174 (LAC) at 1181A-D; *National Union of Metalworkers of SA v Atlantis Diesel Engines (Pty) Ltd* (1993) 14 ILJ 642 (LAC) at 650F-651D; *Yichicho Plastics (Pty) Ltd v Muller* (1994) 15 ILJ (LAC) at 603H-I; *Concorde Plastics (Pty) Ltd v NUMSA & Others* [1998] 2 BLLR 107 (LAC) at 115B-F.

¹⁵ See, for example, *Johnson & Johnson (Pty) Ltd v Chemical Workers Industrial Union* (1999) 20 ILJ 89 (LAC); [1998] 12 BLLR 1209 (LAC) at para [29] which has been referred to with approval in numerous subsequent cases. See, for example, *Foodgro (A Division of Leisurennet Ltd) v Keil* (1999) 20 ILJ 2521 (LAC); [1999] 9 BLLR 875 (LAC); *SACWU & Others v Afrox Ltd* (1999) 20 ILJ 1718 (LAC); [1999] 10 BLLR 1005 (LAC) *Alpha Plant and Services (Pty) Ltd v Simmonds & Others* (2001) 22 ILJ 352 (LAC); [2001] 3 BLLR 261 (LAC); *Num & Others v Crown Mines Ltd* [2001] 7 BLLR 716 (LAC); *B.M.D. Knitting Mills (Pty) Ltd v SACTWU* (2001) 22 ILJ 2264 (LAC) [2001] 7 BLLR 751 (LAC); *Wanda & Others v Toyota Marketing, A Division of Toyota SA Motors Ltd* [2003] 2 BLLR 224 (L); *Highveld Steel & Vanadium Corporation Ltd v NUM & Others* [2004] 1 BLLR 11 (LAC).

conclusion of the appeal hearing. The respondent has asked that the first appellant be made jointly and severally liable with the second appellant to pay the costs of the appeal. We can see no reason, in the circumstances, not to make such an order.

[35] The following is the order of the Court:

- (a) The appeal is dismissed with costs;
- (b) The one paying, the other to be absolved, the first and second appellants are jointly and severally liable to pay the respondent's costs in this appeal.

**DATED AT JOHANNESBURG THIS NINTH DAY OF
DECEMBER 2005**

N.P. WILLIS

JUDGE OF THE LABOUR APPEAL COURT

I agree.

C. R. NICHOLSON

JUDGE OF THE LABOUR APPEAL COURT

I agree.

R.G. COMRIE

ACTING JUDGE OF THE LABOUR APPEAL COURT

For the First and the Second Appellant: The Second Appellant in person

Counsel for the Respondent: *Mr A.I.S. Redding SC* (Heads of Argument prepared by *A. E. Franklin SC*)

Attorney for Respondent: P.G. Bam

Date of hearing: 25 November, 2005

Date of Judgment: 9 December, 2005