



REPUBLIC OF SOUTH AFRICA

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

LC CASE NO.: JS695/07

LAC CASE NO.: JA51/11

In the matter between:-

**NATIONAL UNION OF METALWORKERS OF
SOUTH AFRICA (NUMSA)**

First Appellant

MOFOKENG J.R & 45 OTHERS

Second to Further Appellants

and

CBI ELECTRIC AFRICAN CABLES

Respondent

Heard : 27 November 2012

Delivered : 11 October 2013

Flynote : Strike related dismissal – unprotected strike – when does duty to consult with Union arise – sufficiency and propriety of ultimatum. Strike – unprotected strike – employer acting on

perceived reasons for the strike – failure to establish reasons for the strike.

Night shift employees abandoning their work places and leaving premises in solidarity with day shift employees who similarly left the premises before the end of the shift.

Whether the employer was consistent in applying discipline.

Remedy – Compensation to be awarded, must be fair and equitable in all the circumstances of the case.

CORAM : WAGLAY DJP, ZONDI AND MUSI AJJA

JUDGMENT

ZONDI, AJA

Introduction

[1] This appeal, which is with leave of this Court, is against the whole of the judgment and order handed down by Van Niekerk J on 23 March 2011, in which the learned Judge found that the dismissals of the individual appellants were only procedurally unfair and ordered the respondent to pay each of the individual appellants an amount equivalent to two weeks' remuneration, calculated at the rate of remuneration of each of them at the date of dismissal as well as 50% of the appellants' costs.

The Facts

[2] For the sake of convenience I shall refer to the first appellant as “the Union” and to the second and further appellants as “the employees”.

[3] The employees worked for the respondent at its plant in Vereeniging / Vanderbijlpark. At the time of their dismissal, on 26 June 2007 some of them had been in the respondent's employ for almost forty (40) years.

[4] It is common cause that in May 2007, following a process of protracted negotiations, the respondent and the Union agreed to introduce a continuous operation at the respondent's plant. It would seem that the new shift system was unpopular among some, if not the majority, of the employees as they felt that it was onerous. In May 2007, the respondent's employees threatened to embark on an unprotected strike and this threat forced the respondent to approach the Court a quo on 24 May 2007 for an interdict preventing them from doing so. Despite the interdict having been granted some of the employees carried out their threat and embarked on unprotected strike action. The respondent dismissed those employees. The Union got involved and negotiated with the respondent for the reinstatement of the dismissed workers. The respondent agreed to reinstate the dismissed employees subject to their being given final written warnings and with an undertaking from each that they would work the new shift system without further interruption or unprotected strike action.

[5] On Monday, 25 June 2007, the first pay day after the introduction of the new shift system, payslips were issued a day later than the norm. The normal practice was that the employees received their payslips at least a day before the actual payday. Not only were the pay slips late but they were also wrong- they failed accurately to reflect time worked, and reflected unexplained deductions for short time. The result was that the employees were paid less than they should have been. The respondent was aware of the problem and in an attempt to correct the situation it made additional payments either directly into the bank accounts of the affected employees or to the employees themselves at a later stage.

[6] The respondent's failure to pay them correctly coupled with the manner in which the respondent attempted to resolve the situation angered the employees. In the result the day shift, scheduled to end at 18h00 on 25 June, was disrupted when a number of employees left their workstations between 12h00 and 13h00, before the end of the shift. The night shift commenced their shift at 18h00 but abandoned their workstations at 22h00 and left the premises. Their shift was supposed to run from 18h00 to 24h00. The reason advanced by the employees for prematurely leaving their shift was that they were not prepared to work for an employer who "*was not paying*" them.

[7] In justifying the fairness of the employees' dismissal, Mr Grundling, the respondent's human resources manager at the time, testified that he had information from the factory floor that the employees would walk out when they

received their payslips irrespective of the correctness of payment; they were not happy with the new shift system. In explaining why the respondent dismissed the night shift employees who ignored the ultimatum but not the morning shift employees who walked off before 13h00 Grundling testified that the night shift employees received an ultimatum together with their payslips.

[8] With regard to the procedure followed by the respondent in dismissing the employees, Grundling conceded that there was no pre-dismissal hearing held but stated that the respondent's disciplinary code did not provide for it in the context of an illegal industrial action. But what he did before dismissing the employees he prepared an ultimatum on 25 June at about 18h00. He telephoned the union official who was handling the matter but did not get hold of him. Hence he decided to fax the ultimatum to the Union's offices. He made no attempt to contact any other union official.

[9] The ultimatum Grundling issued read as follows:

"NOTICE TO ALL EMPLOYEES

UNPROTECTED INDUSTRIAL ACTION

Today, 25 June 2007, between 12h00 and 13h00, employees clocked out and are therefore illegally withholding their labour.

This action is despite a court order compelling employees to work the new shift system.

Unless employees follow the new shift system and report for duty on their next scheduled shift, they will receive a letter of dismissal.

Please note that this is the final ultimatum for the current shift, as well as for the other two shifts.

I.P. Grundling

Human Resources Manager

Monday, 25 June 2007"

[10] It emerged from Grundling's evidence that on 26 June 2007 at about 10h00 the respondent's representatives met with the Union's representatives. Grundling testified that the discussion that took place concerned the new shift system and the nature of the disciplinary action to be taken against the employees who ignored the ultimatum and walked off the night shift. According to Grundling's evidence the respondent's representatives pointed out at the meeting that the discussions on the new shift system began in 2006 and an agreement was reached after approximately 30 meetings. It was also noted that the respondent obtained an interdict preventing some of the employees, who were opposed to the new shift system, from engaging in a strike action. Those who ignored the interdict were dismissed but their reinstatement was negotiated and they were taken back.

[11] In the light of these facts, the respondent took the view that the employees who took part in an illegal industrial action should be dismissed. The Union's response was that the industrial action had nothing to do with the shift pattern; its cause was the fact that the pay slips had not been issued in time and contained

deductions for which there was no explanation. The respondent rejected the Union's contention and decided that those employees who ignored the ultimatum and walked off the night shift should be dismissed. It prepared letters of dismissal which were issued to each of the individual employees.

[12] All the letters were similar and read as follows:

"We refer to our notice of the 23rd of June 2007, posted on the notice boards and also sent to your Union office.

Despite the Court Order and various warnings as well as Yesterday's ultimatum, you still failed to comply.

You have elected to ignore the ultimatum to follow the new shift system, absent yourself or only partially tender your service.

You are therefore dismissed and may appeal in writing within seven (7) days.

Yours faithfully

JA HALL

INDUSTRIAL RELATIONS MANAGER"

[13] The employees appealed against the respondent's decision to dismiss them contending that they had not been afforded an opportunity to be heard before they were dismissed. Grundling chaired the appeal hearings. According to Grundling's evidence none of the individual employees advanced payslip irregularity as a reason for participating in an illegal strike action. The appeal was

dismissed, four employees were found not to have participated in the industrial action and their dismissals were set aside.

[14] Mr Molefe, the only witness for the appellants, testified that prior to the commencement of his shift he became aware of a problem with his pay. He confirmed that this was the first pay in terms of the new shift system. Molefe went to the respondent's factory to find out why his pay was incorrect. He spoke to a shop steward who informed him that pay slips had not been issued and that workers had decided to leave the factory at noon. He then went to his bank to obtain a bank statement to ascertain if his correct salary had been paid into his bank account. On perusing the bank statement he noticed that he had been short-paid

[15] When he reported for his shift, shortly before 18h00, he saw some of the individual employees gathered together and were being addressed by Motsau. Following this address by Motsau the employees took a decision to leave at 22h00 before the conclusion of their shift at 24h00 in solidarity with the day shift. At 22h00 Molefe together with some of the employees left their workplaces. He blamed the walk out on the respondent's failure to explain why their payslips were wrong and what it was that the respondent was doing to rectify the incorrect payments. According to Molefe the employees expected "*somebody to come... clarify*" to them so that they could understand. Molefe contented that the dismissals would have been avoided if they had received a proper explanation from the respondent regarding the inadequate payment of their wages. Molefe

confirmed that he received and read the ultimatum, but claimed to have misunderstood its content. His understanding was that the ultimatum required of him and other employees to report for work at 06h00 the following morning. When he reported for work at 06h00 in accordance with his interpretation of the ultimatum he was denied access. He later received a letter informing him that he had been dismissed.

Proceedings in the Court a quo

[16] The Court a quo rejected the employees' contention that their dismissals were substantively unfair. Although it found that *"the respondent's conduct on 25 June, viewed from the perspective of good industrial relations was nothing less than woeful"*, it was, however, not persuaded that the incompetence of the respondent's human resources management in failing to ensure a proper run of the payroll necessarily led to the conclusion that the dismissal of the employees was substantively unfair. The basis for its finding is that the individual employees *"consciously elected, before the commencement of the night shift, to walk off at 22h00 before they had read or heard about any ultimatum, that the pay slip error had been addressed by the supervisory staff, and that they were told that they would be at risk of dismissal if they embarked on any action"*. The Court a quo further found that before the commencement of their shift, the night shift employees had been warned that should they not commence and complete the shift, they would be disciplined and that the dismissal was on the cards. They did not react to the ultimatum by pursuing any enquiries or grievances about the

payslips, nor did they demand that a representative from the human resources department attend at the factory in the absence of an acceptable explanation from the operational management.

[17] In relation to the procedural fairness the Court *a quo* rejected as disingenuous Molefe's claim that the ultimatum required of the night shift employees to report for work only on the next day and that they could leave the shift early with impunity. In my view the Court *a quo*'s rejection of Molefe's claim is correct having regard to the fact that the ultimatum was presented to the night shift workers at the commencement of their shift, and after the day shift employees, to the knowledge of the nightshift employees, had left their shift.

[18] Secondly, the Court *a quo* found that the obligation to provide an opportunity to be heard after the expiry of the ultimatum was discharged when the respondent's representatives met with the Union officials on 26 June 2007 before the respondent took the decision to dismiss the employees.

[19] Thirdly, the Court *a quo* found that the respondent's failure to engage with the Union before issuing the ultimatum rendered the dismissals procedurally unfair on a limited basis.

Parties' Submissions

[20] For the appellants Mr **Niehaus** contended that the Court *a quo* erred by finding firstly, that the dismissal of the employees was substantively fair and secondly, the limited basis on which a finding of procedural unfairness was predicated and the concomitant limited compensation awarded to the employees.

[21] In developing his argument on substantive unfairness of the dismissal, Mr **Niehaus** argued that the strike action was justified as it was in response to the utterly incompetent and grossly irresponsible manner in which the respondent dealt with the salary issue. Secondly, he argued that the respondent was not consistent in the manner in which it disciplined the employees who participated in the unprotected strike action. The day shift employees were issued with a final written warning whilst the night shift employees were dismissed.

[22] With regard to the procedure, Mr **Niehaus** argued that the meeting of Tuesday, 26 June 2007 was held at the request of the Union. It was not convened by the respondent for the purposes of affording the Union and the affected employees an opportunity to be heard before deciding on an appropriate sanction. He pointed out that Grundling, who represented the respondent at the meeting, had been given a mandate by the respondent's management to dismiss the night shift employees prior to this meeting, which conduct, he argued, undermined the *audi alterem partem* principle. In support of this proposition he referred to a

decision of the Supreme Court of Appeal in *Mamabolo v Rustenburg Regional Local Council* 2001 (1) SA 135 (SCA).

[23] To counter Mr **Niehaus**' arguments Mr **Van As** submitted for the respondent that the Court *a quo* did not err in finding that the short payment did not constitute sufficient justification for the employees to participate in an unprotected strike on 25 June 2007. He argued that the truth of the matter is that the employees took a conscious decision to leave at 22h00 on 25 June 2007 which decision was motivated by their intention to show solidarity with the day shift employees. This submission rested upon the evidence of Molefe that at the gathering which occurred shortly before 18h00 on 25 June 2007 the employees took a decision to stand in solidarity with the day shift.

[24] As to the procedural fairness, Mr **Van As** submitted that the ultimatum was sufficiently clear so as to warn the employees that they faced disciplinary censure should they not work the night shift on 25 June 2007. He also rejected the appellants' contention that the respondent failed to comply with the *audi alterem partem* principle. He submitted that the respondent afforded the Union an opportunity to make submissions on behalf of the employees as to why they should not be dismissed for participating in the unprotected strike on 25 June 2007.

Discussion

[25] It is common cause that the employees were dismissed for having engaged in an unprotected strike. The question which arises for determination is whether in the circumstances of the case their dismissal was fair.

[26] Section 68 (5) of the Labour Relations Act, 66 of 1995 ("the Act") is a statutory provision affording a right to the employer to dismiss employees who participate in a strike that fails to comply with the provisions of the Act. In determining the fairness of the dismissal effected as a consequence of the employees' participation in an unprotected strike the Act enjoins the judge who is called upon to determine the fairness of the dismissal to have regard to the Code of Good Practice: Dismissal in Schedule 8 ("the Code").

[27] Item 6 (1) and (2) of the Code deals with the substantive fairness of strike dismissals and provides as follows:

6. Dismissal and industrial action. – (1) *Participation in a strike that does not comply with the provisions of Chapter IV is misconduct. However, like any other act of misconduct, it does not always deserve dismissal. The substantive fairness of dismissal in these circumstances must be determined in the light of the facts of the case, including –*

- (a) *the seriousness of the contravention of this Act;*
- (b) *attempts made to comply with this Act; and*

(c) *whether or not the strike was in response to unjustified conduct by the employer.*

(2) *Prior to dismissal the employer should, at the earliest opportunity, contact a trade union official to discuss the course of action it intends to adopt. The employer should issue an ultimatum in clear and unambiguous terms that should state what is required of the employees and what sanction will be imposed if they do not comply with the ultimatum. The employees should be allowed sufficient time to reflect on the ultimatum and respond to it, either by complying with it or rejecting it. If the employer cannot reasonably be expected to extend these steps to the employees in question, the employer may dispense with them."*

[28] It is clear from the provisions of section 68 (5) that participation in a strike that does not comply with the provisions of Chapter IV (strikes & lock-outs) constitutes misconduct and that a judge who is called upon to determine the fairness of the dismissal effected on the ground of employees' participation in an illegal strike should consider not only item 6 of the Code but also item 7 which provides as follows:

"7. Guidelines in cases of dismissal for misconduct. –

Any person who is determining whether dismissal for misconduct is unfair should consider –

(a) *Whether or not the employee contravened a rule or standard*

regulating conduct in, or of relevance to, the workplace; and

(b) If a rule or standard was contravened, whether or not –

(i) the rule was a valid or reasonable rule or standard;

(ii) the employee was aware, or could reasonably be expected to have been aware, of the rule or standard;

(iii) the rule or standard has been consistently applied by the employer; and

(iv) dismissal was an appropriate sanction for the contravention of the rule or standard.”

[29] In my view the determination of substantive fairness of the strike-related dismissal must take place in two stages, first under item 6 when the strike related enquiry takes place and secondly, under item 7 when the nature of the rule which an employee is alleged to have contravened, is considered. It follows that a strike-related dismissal which passes muster under item 6 may nevertheless fail to pass substantive fairness requirements under item 7. This is so because the illegality of the strike is not “*a magic wand which when raised renders the dismissal of strikers fair*” (*National Union of Mineworkers of SA v VRN Steel* (1991) 12 ILJ 577 (LAC)). The employer still bears the *onus* to prove that the dismissal is fair.

[30] In his work Grogan¹ expresses the view that item 6 of the Code is not, and does not purport to be, exhaustive or rigid but merely identifies in general terms some factors that should be taken into account in evaluating the fairness of a strike dismissal. He therefore opines that in determining substantive fairness regard should also be had to other factors including the duration of the strike, the harm caused by the strike, the legitimacy of the strikers' demands, the timing of the strike, the conduct of the strikers and the parity principle. I agree with this view as the consideration of the further factors ensures that the enquiry that is conducted to determine the fairness of the strike-related dismissal is much broader and is not confined to the consideration of factors set out in item 6 of the Code.

[31] As the evidence and the probabilities were overwhelmingly in favour of the appellants' version the Court *a quo* found, correctly in my view, that the issue of the payslips and the short payment of wages, and not the introduction of the new shift system, was the cause of the strike on 25 June 2007. The introduction of the new shift system, it would seem to me, ceased to be an issue in May 2007 after the respondent had sought, and obtained, from the Court *a quo* an interdict against those employees who were still intent on opposing it. Those employees who ignored the interdict were disciplined and dismissed and their reinstatement had to be negotiated by the Union. Thereafter there was a realisation by the employees that in order to keep their jobs they had to accept and embrace the changes introduced by the respondent through the new shift system. That the

¹ Grogan: Dismissal, Discrimination and Unfair Labour Practices (2005) (Juta) at 451 – 454.

introduction of the new shift system was no longer an issue in June 2007 is borne out by the fact that the employees worked without any incident after May 2007. In fact it was Poee and Makube's understanding that the gist of the employees' complaint was that they had not been paid what they were supposed to get and it was for this reason that they had to assure the employees that the management was attending to it.

[32] For these reasons, I reject Grundling's evidence in so far as it seeks to suggest that the introduction of the new shift system was the cause of the strike of 25 June 2007. I find therefore that the issue of the payslips and incorrect deductions from the employees' wages was the cause of the strike on 25 June 2007.

[33] The question flowing from this finding involves the consideration of the propriety and adequacy of the approach adopted by the respondent in dealing with the unlawful strike action. A further question that is inherently relevant to this enquiry is whether in the light of this finding the respondent's decision to dismiss the employees can still remain sustainable.

[34] It emerged from the evidence that prior to issuing the ultimatum Grundling telephoned the Union offices and asked for a specific union official, Mr Maake. He was told that he was not available. Grundling says he then faxed a copy of the ultimatum to the Union offices. This must have been after 18h00 on Monday, 25 June 2007 because according to him he prepared the ultimatum shortly before

18h00 and issued it to the night shift employees at 18h00. He thereafter held a meeting with the union official on Tuesday, 26 June 2007 to discuss the employees' behaviour. Prior to this meeting he had obtained a mandate from the respondent to dismiss those employees who had walked off at 22h00 because the management believed that "*after 30 meetings plus the previous action, the relation is irreparable*".

[35] In my view the respondent did not follow a proper procedure in issuing the ultimatum. In terms of the Code and the Labour Court decision in *National Union of Mineworkers & Others v Billard Contractors CC and Another* (2006) 27 ILJ 1686 (LC) it was incumbent on the respondent to engage with the Union before issuing the ultimatum on 25 June 2007. This, the respondent failed to do. Item 6 (2) of the Code makes it clear that prior to dismissal the employer should, at the earliest opportunity, contact a trade union official to discuss the course of action it intends to adopt. This is necessary for two reasons. Firstly, it affords the union an opportunity to persuade the strikers to resume work and secondly, it provides a safeguard against possible rash action by the employer. In the event that the employer decides to issue an ultimatum, which should meet the requirements of the Code, the employer must ensure that it allows the employees sufficient time to reflect on the ultimatum and to respond thereto. In the present matter it is not the respondent's case that its failure to comply with these prescripts should be excused because it could not reasonably be expected to comply with these requirements.

[36] Contrary to the Court *a quo*'s finding, I am not satisfied that the respondent complied with its obligation to provide the employees with an opportunity to be heard before effecting the dismissals after the expiry of the ultimatum. Prior to the pre-dismissal meeting held on 26 June 2007, it is apparent that the respondent had already taken a decision that the employees who took part in "*illegal industrial action*" would be dismissed and that the day shift employees who walked off at between 12h00 and 13h00 would receive a final written warning. Therefore no amount of persuasion by the Union that the strike had nothing to do with the introduction of the new shift system but with the late and wrong payslips would have convinced the respondent to change its preconceived stance because the respondent believed that "*after 30 meetings plus the previous action, the relation [was] irreparable*". There was a duty on the respondent to afford the affected employees an opportunity to be heard before a decision to dismiss them was taken. The respondent's failure to do so rendered its decision to dismiss the affected employees procedurally unfair. (*Mamabolo v Rustenburg Regional Local Council supra* at 144 B – C). For these reasons I hold that the employees' dismissals were procedurally unfair.

[37] In relation to the substantive fairness of the dismissal the Court *a quo* correctly found that when Grundling telefaxed the ultimatum to the Union he laboured under the view that the reason for the strike was unhappiness about the new shift system. It also correctly found that while there was obviously some connection between the events of May 2007 and those of 25 June the catalyst for the strike on 25 June was not directly the introduction of the new shift system, but

the issue of the payslips and the short payment of wages which issue, in its view, was not properly addressed by the respondent's human resource management. It held, however, that it was not persuaded that the incompetence of the respondent's human resources management in failing to ensure a proper run of the payroll could necessarily lead to the conclusion that the dismissal of the employees was substantively unfair. This conclusion was based on its finding that the individual employees consciously elected, before the commencement of the night shift, to walk off at 22h00 before *"they had read or heard about any ultimatum, that their pay slips error had been addressed by the supervisory staff and that they were told that they would be at risk of dismissal if they embarked on strike action"*.

[38] The Court *a quo*'s reasoning for its finding cannot be faulted. The night shift employees' decision to leave their workstations at 22h00 and before the end of their shift constituted a misconduct for which they were liable to be disciplined. While I accept that the respondent's failure to pay the employees correctly for the hours they had worked triggered the employees' response, I do not, however, agree that the means they employed justified the end they sought to achieve. Abandoning their work stations and leaving the respondent's premises was not a conduct, which in all the circumstances of the case, could be said to have been a reasonable means by which to respond to the respondent failure to comply with its contractual obligations. Other less disruptive and non-belligerent ways to resolve the issue were available to the employees. There is no evidence that their abandonment of their workstations was coupled with any demand or grievance.

[39] Their conduct was deliberate and calculated. It undermined the process of collective bargaining as a tool to resolve industrial disputes. When they reported for their shift they were appraised of the nature of the problem regarding short payment of their wages and were told that it was being attended to by the respondent's management. They were told to report for their shift and warned that if they failed to do so they faced the risk of dismissal. They were given an ultimatum which they ignored. They decided to walk off at 22h00 to show solidarity with the day shift. Their collective decision to walk off at 22h00 was taken before they filed any grievance. There was no attempt at all on their part to comply with the provisions of the Act regarding the handling of grievances. The employees' contention that they were justified in leaving their shift early because of the respondent's failure to pay them correctly, is according rejected.

[40] The second ground on which the employees contended that their dismissal was substantively unfair was based on the allegation that the respondent had inconsistently applied discipline by dismissing them but not dismissing the day shift employees who had also abandoned their workstations on 25 June 2007 because they had also been short paid.

[41] It is correct that fairness generally requires that like cases should be treated alike (*Cape Town City Council v Masitho and Others* (2000) 21 ILJ 1957 (LAC) para 12). However, there may exist valid grounds in a particular case to distinguish one employee from another, albeit that they have engaged in the same conduct, on the basis of material factors.

[42] It is true that the day shift employees who similarly walked off their workstations on 25 June 2007 were not dismissed. They were each issued with a final written warning valid for 12 months. But in my view there existed valid reasons for differentiation. The dayshift employees did not get any ultimatum on 25 June 2007. When the ultimatum came to their attention on 26 June 2007 they heeded it and worked their shift. The affected employees in the present matter received the ultimatum before the resumption of their shift but ignored it. Their conduct was more reprehensible in that it was deliberate and calculated.

Remedy

[43] Section 194 (1) of the Act *inter alia* concerns the compensation to be awarded to an employee whose dismissal is found to have been procedurally unfair. Such an employee is entitled to be awarded compensation which must be just and equitable in all the circumstances, but which may not be more than the equivalent of 12 months' calculated at the employees' rate of remuneration on the date of dismissal.

[44] I have found in the instant case that the employees' dismissal was only procedurally unfair. The relief to which they are in terms of the Act entitled is compensation but not reinstatement or re-employment. In determining the amount of compensation to be awarded I shall be guided by the provisions of section 194 (1) and item 6 of the Code, and in particular that the strike was of short duration (it was a two hour strike), was in response to the respondent's failure to pay the

employees their correct wages and the fact that the respondent made no attempt to bring the ultimatum to the attention of the Union when it was clear to it that a union official directly dealing with the matter was not immediately available and could not be contacted. In my view the probability is that the strike would have been avoided had the respondent engaged with a union official before issuing an ultimatum. Taking all of the above factors into account I am of the view that 12 months' compensation will be just and equitable in all the circumstances.

[45] As far as costs are concerned the Court *a quo* ordered the respondent to pay 50% of the appellants' costs on the ground that the appellants were partially successful. The costs order was inappropriate. In the light of the fact that the relationship between the Union and respondent continues to exist, in my view, in terms of the law and equity there should be no order as to costs in the Court *a quo* and in this appeal.

The Order

[46] In the result an order in the following terms is made:

1. The appeal succeeds and the judgment and orders of the Court *a quo* are set aside and replaced with the following:

“(a) *the dismissal of the further appellants (employees) was only procedurally unfair;*

(b) *the respondent is ordered to pay to each employee compensation equivalent to 12 (twelve) months' remuneration calculated at the rate of the employee's salary on the date of dismissal ;*

(c) *No order is made as to costs"*

2. Each party is ordered to pay their own costs of the appeal.

ZONDI, AJA

WAGLAY DJP and MUSI AJA concurred in the judgment of ZONDI AJA.

APPEARANCES

For the appellants : Mr. Minnaar Niehaus

Instructed by : Minnaar Niehaus Attorneys

Port Elizabeth

For the respondent : Adv. M J Van As

Instructed by : H J Van Rensburg Incorporated

Vanderbijlpark