



IN THE LABOUR APPEAL COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JA 67/2015

In the matter between:

BLINKWATER MILLS (PTY) LTD

Appellant

and

PATRICK KGALEGI

Respondent

Heard: 23 August 2016

Delivered: 22 November 2016

Summary: Respondent's dismissal on grounds of operational requirements found by the Labour Court to be procedurally and substantively unfair. Retrospective reinstatement ordered into previous position, alternatively into position of Area Controller. On appeal judgment of Labour Court upheld save for amendment to reinstatement order. Respondent reinstated with retrospective effect into previous position of human resources clerk based at appellant's head office. No order as to costs.

Coram: Landman JA, Savage et Phatshoane AJJA

JUDGMENT

SAVAGE AJA

- [1] This is an appeal against the judgment and orders of the Labour Court (Nkutha-Nkontwana AJ) in terms of which the dismissal of the respondent, Mr Patrick Kgalegi, on grounds of operational requirements was found to be procedurally and substantively unfair and the respondent was retrospectively reinstated into his employment with the appellant. The appeal is with the leave of the Court *a quo*.

Reinstatement of appeal and condonation

- [2] At the outset of the hearing of the matter, the appellant, Blinkwater Mills (Pty) Ltd, sought the reinstatement of the appeal following its failure to file the appeal record within 60 days of leave to appeal having been granted as required by the Rules of this Court.¹ There is no dispute that the appeal record was filed 11 days late. The respondent refused to consent to an extension of time within which to file the record and that the appellant failed to apply to the Judge President of this Court for an extension of time to file its record in the manner required.² It is trite that in the absence of an extension either consented to by the respondent or granted by the Judge President and where the time period within which the appellant is obliged to file its record has lapsed then, in terms of the Rules, the appeal is deemed to be withdrawn.³ The appellant is nonetheless entitled to file its record after the prescribed period, as it did in this matter, and apply for the reinstatement of the appeal.
- [3] It was submitted for the appellant that the limited delay in filing the appeal record was caused by the receipt by the transcribers of the audio recording of proceedings before the Labour Court only four days before the appeal record was to have been filed. Given the limited extent of this delay, it was submitted

¹ Rule 5(8) of the Labour Appeal Court Rules reads that: "The record must be delivered within 60 days of the date of the order granting leave to appeal, unless the appeal is noted after a successful petition for leave to appeal, in which case the record must be delivered within the period fixed by the court under rule 4(9)."

² Rule 5(17) of the Rules reads that: "If the appellant fails to lodge the record within the prescribed period, the appellant will be deemed to have withdrawn the appeal, unless the appellant has within that period applied to the respondent or the respondent's representative for consent to an extension of time and consent has been given. If consent is refused the appellant may, after delivery to the respondent of the notice of motion supported by affidavit, apply to the Judge President in chambers for an extension of time. The application must be accompanied by proof of service on all other parties. Any party wishing to oppose the grant of an extension of time may deliver an answering affidavit within 10 days of service on such party of a copy of the application."

³ Rule 5(17) of the Rules.

that no prejudice had been suffered by the respondent. As a result, having regards to the merits of the appeal, the appellant sought an order reinstating the appeal. The respondent, while acknowledging that he had not suffered any prejudice in the limited delay which had arisen, persisted in his opposition to the application on the basis that the Rules of the Court provided for time periods to be adhered to and that the appellant failed to do so at its own peril.

- [4] Having regard to the limited delay, the reasons for it and the merits of the matter, there is in my mind no reason as to why, given the limited delay and the reasons for it, the appeal should not be reinstated and the late filing of the appeal record condoned.
- [5] The appellant also sought condonation for the late delivery of the notice of appeal in this matter. While this notice was to have been delivered before Friday, 11 September 2015 in terms of the Rules, it was filed with the Registrar on 10 September 2015 but only served on the respondent on Monday, 14 September 2015. Having regard to the limited delay of one day, the merits of the matter and the absence of any prejudice caused to the respondent, condonation is granted for the late filing of the notice.

Factual background

- [6] On 1 June 2009, the respondent was employed by the appellant in the position of Human Resources Clerk based in Stoffberg. Some 12 years after the appellant moved its head office from Stoffberg to Middelberg, it was decided to move the human resources function based in Stoffberg to head office. The respondent was the only person affected by this move.
- [7] On 17 January 2011 the respondent was provided with a notice of the contemplated restructuring of the Admin/Finance department, under which his position fell, and of his possible retrenchment. He was then invited to a consultation meeting on 21 January 2011. He was informed that a change in the focus of the department had culminated in a decision to move from a decentralised personnel office at Stoffberg Mill to a centralised corporate model and that his was the only position likely to be affected.

- [8] At the consultation meeting held on 21 January 2011, the reasons for the restructuring were stated as communication problems between head office and Stoffberg which caused delays in decision-making and control; possible future restructuring; and that the workload of the respondent's position did not justify full-time employment. Alternatives to retrenchment were considered, including that of Depot Auditor. Having worked as a wage clerk many years before, the respondent agreed to take a short test to determine whether he was suitable for an accounting-related post. He scored very poorly on the test. Nevertheless, by agreement, he was given the opportunity to work in the Depot Auditor position so as to assess his on-the-job suitability for the post. The respondent indicated that as a last option he would be willing to move to Burgersfort in the position of Area Controller. During the course of this meeting, the retrenchment of other employees and the "bumping" of the respondent into another position, together with the application of the LIFO principle, were discussed.
- [9] At a second consultation meeting held on 3 March 2011 the respondent was informed that he lacked the requisite knowledge and experience required for appointment to the Depot Auditor post. In addition, he was informed that given his lack of accounting experience, a financial appointment into a position such as Cashbook Clerk was not an option. The respondent indicated that he would consider the Area Controller post in Burgersfort, the salary for which post was approximately two-thirds of that which he received as Human Resources Clerk. The minutes of this consultation meeting recorded that Mr Raymond Le Roux, the appellant's financial manager, stated at the meeting that the person currently employed as Area Controller *"...indicated that he wanted to keep being employed by the employer despite his medical condition. The employer is waiting on the final medical report"*. It was further recorded that the incumbent of the Area Controller post had told the respondent that the appellant wanted to keep him on. The minutes indicated that the consultation stood down until the result of the Area Controller's medical examination had been received and considered.

- [10] One week later, on 10 March 2011, the respondent's services were terminated on the basis of the appellant's operational requirements. At the time of the termination of his employment, he earned a gross salary of R7 560.00 per month. In the letter of termination, the respondent was informed that the appellant was unable to indicate whether the Area Controller position would become available in that feedback from the provident fund was awaited.
- [11] Aggrieved with his dismissal the respondent referred an unfair dismissal dispute to the Commission for Conciliation, Mediation and Arbitration (CCMA) for conciliation. When the matter was not resolved, the dispute was referred on 27 July 2011 to the Labour Court for determination.

Proceedings before the Labour Court

- [12] In his statement of case the respondent took issue with the substantive and procedural fairness of his dismissal and sought his retrospective reinstatement into the same or similar position without any loss of benefits. In addition, compensation in an amount equivalent to 12 months' salary was sought and costs.
- [13] The appellant opposed the respondent's claim, stating that the dismissal of the respondent was both procedurally and substantively fair. The appellant recorded that the respondent lacked financial experience and/or qualifications to occupy the position of Depot Auditor which was therefore not a reasonable alternative; and that the Area Controller position was not suitable as the respondent would have to move to Burgersfort and that such position remained vacant in that the appellant had decided not to fill it due to its further operational requirements.
- [14] In his evidence, Mr Le Roux stated that the respondent's position did not warrant a full-time post and that he was found to have spent some time while at work socialising and viewing pornographic internet sites. Although Mr Le Roux stated that the respondent's tasks following his retrenchment were given to Ms Cindy du Plessis at head office, he also stated in evidence that her role in undertaking cashbook functions as well as daily transfers "*was taken away*

from her when [the respondent's] filing was given to her" and the cash book function "was moved to head office and it was given to the new appointment".

[15] In cross-examination, Mr Le Roux indicated that the services of Mr Mogoani, the Area Controller, were terminated on 24 November 2010 in spite of the recordal in the minutes of the meeting of 3 March 2011 that *"the person currently employed in that position indicated that he wants to keep being employed by the employer despite his medical condition. The employer is waiting on the final medical report."* Mr Le Roux could not explain the discrepancy between his evidence and the appellant's pleaded case. His evidence was that the appellant could not employ the respondent in the post of Area Controller in that the outcome of the medical report from the provident fund was awaited to determine whether Mr Mogoani could be placed back into the position. The appellant's pleaded case was that the post had not been filled because of further operational requirements. It was not disputed that following his dismissal in 2010, Mr Mogoani was ultimately medically boarded during 2013.

[16] The respondent testified as to the procedural and substantive unfairness of his dismissal, stating that his position was not redundant in that his duties were given to another employee at head office. Furthermore, alternatives to retrenchment were not offered to him, which included his appointment into the Area Controller post, which post was suitable, remained vacant and was a position in which he was prepared to work. The respondent's evidence was that following his dismissal he remains unemployed, although he undertook some private work for the South African Police Services (SAPS) from July 2012 to July 2013.

[17] The delay of more than three years before the matter was finalised by the Labour Court was, according to the respondent, caused by difficulties which had arisen with the signature of the pre-trial minute. In this regard, the respondent expressed the view that being unrepresented the appellant had tried to bully him and that the appellant's attorneys had undertaken to secure the assistance of a judge to finalise the minute but appeared to have delayed doing so. In addition, the matter did not proceed on 22 August 2013 as the

notice of set down was not received by both parties causing the matter to be removed from the roll and postponed by agreement.

Judgment of Labour Court

- [18] On 26 March 2015, the Labour Court found that the restructuring of the department in which the respondent worked should ordinarily have resulted in the respondent relocating with the department; and that the evidence showed that the respondent's job was not redundant but "*was given to someone else unduly*". The attempt by the appellant to justify the termination of the respondent's employment by reference to allegations of his misconduct ought to have resulted in a disciplinary hearing instead of retrenchment as a no-fault termination. The appellant was found not to have afforded the respondent an opportunity to work part-time or in a manner which would avoid retrenchment. While accepting that the retaining of the appellant into a position which required a financial qualification would have been burdensome, the Area Controller position was found to be suitable with no reason provided for not appointing the respondent into the position which was vacant at the time. The appellant was found to have acted unfairly in exiting the consultation process without consensus having been achieved and to have frustrated every available opportunity to avoid the respondent's retrenchment.
- [19] Turning to the procedural fairness of the respondent's dismissal, the Labour Court found no evidence that the appellant had complied with the provisions of section 189(2) of the Labour Relations Act 66 of 1995 (LRA). The appellant was found to have not engaged in a meaningful joint consensus-seeking process when it bailed out of the consultation process. The dismissal of the respondent was accordingly found to be procedurally and substantively unfair and the appellant was ordered to reinstate the respondent into his former post retrospective to 10 March 2011 on the same terms and conditions of employment and with no loss of remuneration or benefits. In addition, the appellant was ordered to offer the respondent the position of Area Controller as an alternative to retrenchment. No order of costs was made.

Grounds of appeal

[20] The numerous and wide-ranging grounds of appeal raised by the appellant in its notice of appeal can be condensed to a complaint that the Labour Court erred in the following respects:

- 20.1 in finding that the retrenchment of the respondent was substantively unfair while accepting that there existed an acceptable operational imperative to restructure the department in which the respondent was employed;
- 20.2 in finding that the respondent's job functions were "unduly" taken over by another employee based at head office while the operational imperative to restructure the department had been established;
- 20.3 in finding that the retrenchment of the respondent was procedurally unfair when available alternatives had been appropriately considered and rejected; and
- 20.4 in ordering the retrospective reinstatement of the respondent into his former position in spite of the extensive period of time which had elapsed since his retrenchment, the fact that the post no longer existed and when it was also ordered that he be reinstated into the distinct position of Area Controller.

Submissions of the parties

[21] Both parties filed extensive heads of argument in this appeal. In argument counsel for the appellant placed reliance on the Labour Court's acceptance of the decision to restructure. This, it was submitted, permitted the respondent to move the limited job functions of the respondent to another employee at its head office. The appellant, having consulted with the respondent on three alternative positions as possible alternatives to retrenchment, was not obliged to place the respondent in a position he could not perform; nor could the appellant be forced to fill a position which has remained vacant for more than four years when there is no operational need to fill the post.

- [22] In spite of this, Mr *Grundlingh* accepted that the appellant had acted with undue haste in terminating the respondent's employment before reverting on whether the Area Controller post would be offered to him as an alternative. It was recognised that the Area Controller post should properly have been offered to the respondent given that the employment of the previous incumbent had been terminated in 2010. The appellant relied on the offer of 12 months' compensation made to the respondent "with prejudice" by the appellant. The appellant contended that given the delay which had arisen in the prosecution of the matter, the order of retrospective reinstatement made was not appropriate, nor was the order that the respondent be employed in a post which the appellant does not require operationally.
- [23] The respondent, who ably represented himself both in the Labour Court and this Court, opposed the appeal on the basis that his dismissal was premature in that the alternative position of Area Controller was on the table and it had not been resolved whether such position provided a suitable alternative to retrenchment. Furthermore, the respondent took issue with the appellant's pleaded case that the Area Controller position was not filled following the dismissal of Mr Mogoani due to its further operational requirements when at the time of his retrenchment this was not the reason why he was not offered the post.
- [24] The respondent refused the offer of compensation on the basis that he seeks to be reinstated into his employment in the position of the Area Controller. With regards to the delay in the prosecution of the matter, the respondent stated that this was caused by a dispute as to the terms of the pre-trial minute; and by an error on the part of the Court in notifying the parties of the set down of the matter as a result of which the parties agreed to its postponement. Furthermore, the appellant's attorney failed to seek the assistance of a judge to aid the parties to achieve signature of the pre-trial minute after having undertaken to do so.

Evaluation

- [25] The term “operational requirements” is defined in s213 to mean “requirements based on the economic, technological, structural or similar needs of an employer”. For a dismissal on grounds of operational requirements to be substantively fair, the rationale underlying the dismissal must be founded on the *bona fide* operational needs of the business, or put differently, its economic, technological, structural or similar needs.⁴ To be fair, an employer must prove on a balance of probabilities the cause or reason for the dismissal; the defined operational requirements that the dismissal was based on; the facts upon which a finding that the dismissal was substantively fair can be made; and that a fair procedure in accordance with s189 had been complied with.⁵
- [26] Section 188 read with s189 recognises the employer’s right to dismiss on grounds of its operational requirements where there is a fair reason for the dismissal and the dismissal is undertaken in accordance with a fair procedure. A fair reason is one that is *bona fide* and rationally justified,⁶ informed by a proper and valid commercial or business rationale.⁷ The enquiry is not whether the reason put up is one which would have been chosen by the court but whether the reason advanced considered objectively is fair.⁸
- [27] The appellant put up evidence of a *bona fide* commercial rationale which justified restructuring its operation so as to locate the respondent’s job function at its head office. In issue was what was to become of the respondent’s post as a consequence of such restructure. Mr Le Roux’s evidence was that the respondent’s job functions were not of such a nature as to warrant a full-time post and that his functions were as a result given to another employee, Ms Du Plessis, to perform. However, this evidence was contradicted by Mr Le Roux when he testified that Ms Du Plessis’ cashbook functions and work with daily transfers “*was taken away from her when [the*

⁴ Section 213 of the LRA.

⁵ *SACWU and Others v Afrox Ltd* [1999] 10 BLLR 1005 (LAC) at para 38.

⁶ *Johnson & Johnson (Pty) Ltd v CWIU* [1998] 12 BLLR 1209 (LAC).

⁷ *CWIU and Others v Algorax (Pty) Ltd* [2003] 11 BLLR 1081 (LAC); *Kotze v Rebel Discount Liquor Group (Pty) Ltd* (2000) 21 ILJ 129 (LAC) at para 36.

⁸ *BMD Knitting Mills (Pty) Ltd v SACTWU* [2001] 7 BLLR 705 (LAC) at para 19.

respondent's] *filing was given to her*" and the cash book function "*was moved to head office and it was given to the new appointment*". What is apparent from this evidence is that when the respondent's job functions were added to another employee's role this required not only a further restructuring of job functions but led to the appointment of a new employee. The result was that the respondent's job functions were not of such a nature that they could be tagged on to another employee's tasks without causing further restructuring and a new appointment.

- [28] It follows that the Labour Court cannot be faulted for its finding that the respondent's functions were "*given to someone else unduly*" without the respondent being offered a transfer to head office in order to perform his tasks.
- [29] Having contemplated retrenchment the appellant gave notice in writing to the respondent in terms of section 189(3) inviting him to a consultation as the only employee in his department likely to be affected by restructuring. In this notice, the information provided to him included the reason for his proposed dismissal and alternatives to be considered before proposing dismissal. During the course of the ensuing consultations with the respondent, three alternative positions were discussed and considered.
- [30] Section 189(2) requires that the consultation process takes the form of a "meaningful joint consensus-seeking process" *inter alia* to avoid dismissal or seek alternatives to it where these are available. To be meaningful, the consultation must be genuine and may not be a sham with the purpose of seeking alternatives to dismissal being to avoid dismissal if reasonably possible.⁹ Counsel for the appellant correctly accepted at the hearing of this appeal that the consultation process had been concluded prematurely when the respondent's employment was terminated on 10 March 2011. The respondent was not consulted as to the option of moving to the appellant's head office in Middelburg into his position as human resources clerk in which

⁹ *SA Clothing and Textile Workers Union and Others v Discreto A Division of Trump and Springbok Holdings* (1998) 19 ILJ 1451 (LAC) at para 8; *Supergroup Trading (Pty) Ltd v Janse van Rensburg* [2012] ZALAC 7 (25 April 2012) at para 20.

he could continue to perform his job functions, when the evidence showed that the appellant continued to require the respondent's job functions to be performed at head office. Furthermore, having discussed the Area Controller position, and with the position vacant, the failure to offer the vacant position to the respondent as an alternative to retrenchment was unfair. It follows that the Labour Court correctly found that the dismissal of the respondent was substantively unfair.

- [31] The finding of procedural unfairness can equally not be faulted given the evidence that the appellant failed to comply with the provisions of section 189(2) of the LRA in not engaging in a meaningful joint consensus-seeking process when it bailed out of the consultation process.
- [32] Turning to the relief granted by the Labour Court, the appellant takes issue with the order of retrospective reinstatement on the basis that the respondent's job functions are performed by other employees at the head office and it does not operationally require the alternative position of Area Controller to be filled. For this reason, the appellant stated that it made an offer of twelve months' compensation to the appellant.
- [33] Section 193(1) confers a discretion on a court or arbitrator to order reinstatement "from any date not earlier than the date of dismissal". Section 193(2) provides that the court or arbitrator "must require the employer to reinstate or re-employ the employee unless-
- '(a) the employee does not wish to be reinstated or re-employed;
 - (b) the circumstances surrounding the dismissal are such that a continued employment relationship would be intolerable;
 - (c) it is not reasonably practicable for the employer to reinstate or re-employ the employee; or
 - (d) the dismissal is unfair only because the employer did not follow a fair procedure.'

- [34] Where a dismissal for operational requirements is found to be unfair, the Court in terms of s 193(3) "...in addition may make any other order that it considers appropriate in the circumstances."
- [35] It was emphasised in *Equity Aviation Services (Pty) Ltd v CCMA and Others (Equity Aviation)*¹⁰ that the use of the word "must" in s 193 "clearly intended that upon the finding in a given case that the employee concerned was substantively unfairly dismissed, such employee *must* be reinstated, if the employee so wished, unless either or both of the conditions referred to in paragraphs (b) and (c) of subsection (2)" existed.¹¹ The underlying enquiry is that of fairness between the parties which "...ought to be assessed objectively on the facts of each case bearing in mind that the core value of the LRA is security of employment."¹²
- [36] In *Elliot International (Pty) Ltd v Veloo and Another*,¹³ this Court found that a factual finding was to be made as to whether any of the conditions referred to in paragraphs (b) and (c) of subsection (2) existed such as would render an order for the reinstatement inappropriate. It is trite that this Court may not lightly interfere with the Labour Court's discretion as the trial court on a factual finding unless such finding is based on a misdirection or is clearly wrong.
- [37] The respondent sought reinstatement into his position or an alternative position with the appellant. With retrenchment a no-fault dismissal founded on the employer's operational requirements and not on the conduct or capacity of the employee, there was no evidence before the Court *a quo* which allowed a finding that a continued employment relationship would be intolerable between the parties. Furthermore, no evidence was placed before the Court indicating that it was not reasonably practicable for the appellant to reinstate the respondent. It followed that the conditions referred to in s193(2)(b) and (c) did not exist. With evidence that the job functions of the respondent's position as Human Resources Clerk remained in existence following the appellant's

¹⁰ [2008] 12 BLLR 1129 (CC).

¹¹ At para 28.

¹² *Equity Aviation* at para 39.

¹³ (2015) 36 ILJ 422 (LAC) at para 53.

restructure, the Court *a quo* did not err in ordering the respondent's reinstatement into the Human Resources position.

- [38] I take no issue with the Court *a quo*'s finding that the order of reinstatement should be made retrospective to the date of dismissal, more so when the long delay in the prosecution of the matter was not attributable to the unrepresented respondent. The appellant failed to obtain assistance in reaching agreement regarding the pre-trial minute in the manner it is undertaken to do. Furthermore, the required notice of set down of the matter was not served in the manner required due to no fault of either of the parties.
- [39] The Court *a quo* exercised its discretion on the retrospective reinstatement of the respondent taking into account relevant factors and having regard to consideration of fairness to both parties. Having regard to the date and circumstances of the respondent's dismissal, the date of his reinstatement by the Labour Court, the reasons for the delay in the hearing of the matter by the Labour Court, the respondent's failure to secure alternative employment and having had regard to the offer of twelve months' compensation made to the respondent, I am satisfied that the order of retrospective reinstatement in this matter was fair.¹⁴
- [40] As was made clear in *Performing Arts Council of the Transvaal v Paper Printing Wood and Allied Workers Union and Others*¹⁵ under the previous Labour Relations Act, but applicable as much to the current statute, the appropriateness of reinstatement is to be judged at the time the matter was adjudicated by the trial court and it would be "unjust and illogical" to allow delays caused by an appeal to render an order of reinstatement inappropriate on appeal.

- [41] In *Equity Aviation*, it was made clear that:

"The ordinary meaning of the word "reinstate" is to put the employee back into the same job or position he or she occupied before the dismissal, on the same terms and conditions. Reinstatement is the primary statutory remedy in

¹⁴ See *DB Contracting North CC v National Union of Mineworkers and Others* [2015] 10 BLLR 973 (LAC); (2015) 36 ILJ 2773 (LAC) at para 52.

¹⁵ 1994 (2) SA 204 (A) at 219H-I.

unfair dismissal disputes. It is aimed at placing an employee in the position he or she would have been but for the unfair dismissal. It safeguards workers' employment by restoring the employment contract.¹⁶ (footnotes omitted)

- [42] In ordering the restoration of the employment contract, the Labour Court was entitled in terms of s193(1)(a) to order reinstatement "from any date not earlier than the date of dismissal".¹⁷ With an order of retrospective reinstatement not compensation as contemplated in s193(1)(c) or s194, the period of retrospectivity of the reinstatement order is not limited to the maximum 12 months compensation provided in the LRA.¹⁸
- [43] It follows for these reasons that the respondent was not obliged to compromise his claim to retrospective reinstatement in circumstances in which reinstatement is the primary remedy for unfair dismissal. The fact that the offer of compensation was both genuine and made in good faith placed no obligation on the respondent to accept the offer and compromise his rights.¹⁹
- [44] Having regard to considerations of law and fairness, with the respondent unrepresented both in this Court and in the Court *a quo* there exists no reason to justify a costs order being made against the appellant in this matter.

Order

- [45] In the result, the following order is made:
1. The appeal is dismissed, with no order as to costs, subject to the substitution of the order of the Court *a quo* as follows:
 - (1) The dismissal of the applicant is procedurally and substantively unfair.
 - (2) The respondent is to reinstate the applicant, with retrospective effect and no loss of benefits, into its employment in the position of human

¹⁶ At para 36.

¹⁷ See too *NUMSA and Others v Fibre Flair CC t/a Kango Canopies* [2000] 6 BLLR 631 (LAC); *Kroukam v SA Airlink (Pty) Ltd* [2005] 12 BLLR 1172 (LAC) at paras 61-64.

¹⁸ *Coca Cola Sabco (Pty) Ltd v Van Wyk* [2015] 8 BLLR 774 (LAC) at para 17; *Equity Aviation* at para 42; *Billiton A; Republican Press (Pty) Ltd v CEPPWAWU and Others* [2007] 1001 (SCA); 2008 (1) SA 404 (SCA) at para 19.

¹⁹ *VLC Properties v Olwyn* [1998] 12 BLLR 1234 (LAC) at para 7.

resources clerk located at its head office in Middelburg, or into such similar position as is available on the same or similar terms and conditions of employment.

- (3) The respondent is to pay back pay to the applicant from the date of his dismissal until the date of his reinstatement to be paid to the applicant within ten (10) days of this order.
- (4) There is no order as to costs.'

Savage AJA

Landman JA and Phatshoane AJA concur in the judgment of Savage AJA.

APPEARANCES:

FOR THE APPELLANT:

Mr R Grundlingh

FOR THE RESPONDENT:

In person