

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

**CASE NO JR 1212-08**

In the matter between

**MTIMKULU M N**

**1<sup>st</sup> Applicant**

and

**THE COMMISSION FOR  
CONCILIATION, MEDIATION AND  
ARBITRATION**

**1<sup>st</sup> Respondent**

**NTSOANE D S (N.O.)**

**2<sup>nd</sup> Respondent**

**SOUTH AFRICAN CIVIL AVIATION  
AUTHORITY**

**3<sup>rd</sup> Respondent**

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**JUDGMENT**

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**LAGRANGE, J**

**Introduction**

1. The applicant has applied to set aside an arbitration award in which the arbitrator found that he and another trainee's learnership contracts had not been unfairly terminated by the third respondent, the employer. The applicant's colleague was not a party to the review proceedings.

## **Background**

2. The applicant was engaged on a learnership contract by the employer from 5 April 2004 to 31 March 2006. When the contract came to an end on the latter date the applicant continued to be paid by the employer. According to the employer's only witness, an HR manager, it was only when she was investigating the payroll system in October 2007 that she realized they were still on the employer's payroll after their contracts had expired. She then took steps to notify them of the termination of their contracts during October 2007. The applicant was called in so that he could be personally advised of the termination. Ultimately, the applicant was effectively given more than a month's notice of the termination of the relationship which ended on 31 December 2007.
3. The applicant did not dispute that the learnership contract was due to run for two years. He and his co-complainant were registered at tertiary institutions for various courses, though the applicant complained that they were not provided with any relevant practical training or guidance. It seems it was the first time the employer had introduced a learnership scheme. The applicant testified that towards the end of 2005 he and his co-complainant had discussions with management where they raised their concerns with the inadequacy of the training programme. This led to a recommendation by the acting HR manager to the CEO to refinance their learnerships which the applicant alleged was agreed to. He testified that the employer gave them the impression they would be permanently employed and they were not treated like trainees.
4. The arbitrator found that the recommendation made by the acting HR manager had been to enable them to finish their studies as the employer felt it did not want to leave them in lurch having previously assisted them to register for tertiary courses. The employer had agreed to it to enable them to finish their studies. The applicant conceded that between 2007 and 2008 he had not registered for any course. The arbitrator expressed the view that in those circumstances the applicant should have reported back to the respondent for further assignment. The arbitrator was also satisfied that neither of the complainants could prove they were still studying nor that they were engaged in any form of employment relationship with the employer at the time their services were terminated.

5. The arbitrator found the termination of their learnerships was not an unfair dismissal.

### **The state of the record**

6. A transcript of the hearing was filed by the applicant which leaves much to be desired. It was the subject matter of an application by the employer to dismiss the review application on the basis that the applicant had failed to file a properly reconstructed record. The matter came before the learned judge Francis J who declined to grant the order and directed the third respondent to proceed with filing its answering affidavit. Costs of that application were reserved. It seems that the applicant had expressed the view that he was satisfied to proceed on the record as it was, believing that it was sufficient for the purposes of his application.
7. Both parties reiterated their respective stances on the state of the transcript in the proceedings before me. It must be said that it despite the applicant's confidence in it, it really cannot be said to be a reliable account of what the various witnesses said. For the most part it is very garbled, quite apart from frequent 'inaudible' or 'indistinct' portions of the record. Although there are a few relatively lucid intervals in the transcript, not only does it seem that much of the time the transcriber failed to record the actual words spoken but also managed to order them in a consistently ungrammatical fashion, irrespective of whose evidence was being transcribed. Two examples, of which there are many, will suffice to illustrate how difficult the transcript is to interpret.
8. One example from the evidence of Mrs Hofmeyer, the HR manager, under cross-examination reads:

“Mr Mthimkulu:

Which document A1?

Mrs Hofmeyer:

Basically document that he was written period actually CEO from the acting senior manager (indistinct) to making the concerning there learnerships of three managers. The

(indistinct) statement I stated in here and there is recommendation that is made there and the document and sign. Signature by the acting CEO does one indicated very (indistinct) through (indistinct) does not improve it to propose by Mr En Wesbee acting actually manager. That was direct to the acting CEO but I do not see what see to relation firstly and I do not see the name was proved on multiple. Again bascially this was looking at the date and the (indistinct) 2 October 2006. I do the draft cash this document it was I do not accepted or whatever might have be in this case or is it appearing was the (indistinct) even if it was implement I will refer time to different evidence when I looked into the learner ships. At this stage we not enquire this page which was basically more that a year after the date is not proved.” (sic)

9. Another extract taken from the applicant’s evidence in chief at page 163 of the record reads as follows:

“Not student into the fact that 2007 the CEO was moved I think on September 2006. can you made the report on the HR as to (indistinct) organization. And I believe the biggest (inaudible) that is where problem like because the people who were in charge was about the manager. The (indistinct) do not look before the (indistinct) at our (inaudible) in an attendance to cover up their short comings (inaudible). But I can highlight to (indistinct). So 2007 I was never any training, I only avoid myself did not sure this respective duties of which were not in (indistinct). However they did not dispend because you are of (indistinct) that organization is then prove the matter.” (sic)

10. Trying to make sense of a record of this nature, requires the reader to impose their own sense of coherence on the text which might well create further distortions of what was really said. Although one can detect strands of thought and narrative beneath the chaotic transcription, these are not always complete, and following these fragments is a bit like trying to follow the movement of fish beneath a surface of choppy waves. In the end, where the record is insufficiently comprehensible I am compelled to rely on the summary of evidence by the arbitrator. Where the arbitrator has not dealt with a particular aspect of evidence and it cannot be determined with any certainty from the record, I have simply not been able to draw any conclusions about that evidence. This may result in unfairness to both parties, but I feel

constrained to deal with the record as it is, in view of the previous ruling in which the court declined to compel reconstruction of the record.

## **Grounds of Review**

11. The applicant takes issue with the arbitrator's findings on a number of grounds, only some of which relate directly to her findings on the fairness of the applicant's termination. The applicant disputes both the substantive and procedural fairness of the termination of the learnership.
12. In this regard it must be mentioned that it is apparent from the applicant's evidence at the arbitration and some of the issues raised by him on review that he felt the learnership programme was completely inadequate and poorly managed. There might well have been some justification for his complaints, and his frustrations in that regard could have laid the basis for a substantial grievance. Such a grievance, if unresolved could ultimately have been referred as an unfair labour practice dispute under section 186(a) of the Labour Relations Act, 66 of 1995.<sup>1</sup> Nevertheless the applicant did not pursue that path at the time, which he should have.
13. As a result, even if there is substance to some of the applicant's complaints about the learnership programme, those issues are not all necessarily directly relevant to the question of whether or not his employment was fairly terminated. If there had been some binding obligation on the employer not to terminate his services before a particular training goal or identifiable outcome had been attained, or if he had been guaranteed employment on the achievement of a certain level of skill or qualification his complaints about the defects of the training might well have had a direct bearing on the fairness of the dismissal. The evidence before the arbitrator did not support such a conclusion. As it turns out, the only basis for the

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<sup>1</sup> In terms of section 186(a) an unfair labour practice includes any unfair act or omission which arises between and employer and employee involving unfair conduct by the employer relating, amongst other things, to the training of an employee.

ongoing relationship was to allow the applicant to complete his studies, which is discussed further below.

14. The applicant's grounds of review are essentially four fold. He contests that the commissioner committed reviewable conduct by:
  - 14.1. disregarding crucial evidence;
  - 14.2. misrepresented his evidence;
  - 14.3. not requiring proof of certain of the respondent's allegations, and
  - 14.4. in finding that his dismissal was unfair when there was no basis for it.
15. In his heads of argument the applicant appears to add further grounds, but I am confined to consider the grounds of review cited in the founding application as supplemented by anything additional in the applicant's supplementary affidavit which must set out the factual basis of an applicant's grounds of review.

### **Disregarding crucial evidence**

16. It is well established that an arbitrator commits a reviewable irregularity if the arbitrator fails to consider evidence critical to the determination of the matter before him or her.<sup>2</sup> It follows of course that it is not necessary for an arbitrator to consider evidence that does not have a significant bearing on the determination of the crucial issues.

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<sup>2</sup> See *Sidumo & Another v Rustenburg Platinum Mines Ltd & Others* (2007) 28 ILJ 2405 (CC) at 2491,[268] where Ngcobo, J (as he then was) stated: “It follows therefore that where a commissioner fails to have regard to material facts, the arbitration proceedings cannot in principle be said to be fair because the commissioner fails to perform his or her mandate. In so doing, in the words of Ellis, the commissioner's action prevents the aggrieved party from having its case fully and fairly determined.<sup>315</sup> This constitutes a gross irregularity in the conduct of the arbitration proceedings as contemplated in s 145(2)(a) (ii) of the LRA.”

17. The evidence the applicant claims the commissioner failed to have regard to was: the learnership contract identified as 'A2'; correspondence between the applicant and the employer which described what the applicant refers to as the 'status quo' between the contract identified as the memo 'A1' and the termination period; proof of the employer's fabrication of evidence of that the termination based on the expiry of the contracts was discriminatory; proof of the employer's intention to avoid its 'responsibility' to the applicant in terms of 'A1'. The applicant makes a further claim under this ground relating to cross-examination and the arbitrator's analysis of evidence, but does not provide any details of this in his founding affidavit.

18. The pertinent sub-clauses in clause 3 of A2 relating to the "Contract period" read as follows:

*"3.1 The learnership contract period shall commence on date 5 April 2004 and shall continue for a period of 24 Months ("the fixed period"), terminating automatically on 31 March 2006.*

*3.2 This contract of fixed term learnership programme should not be considered by the Learner, after the fixed period, in any circumstances, to give rise to any expectation of continued contract or to form any contract relationship between him /her and the CAA, other than on the basis expressly contained in the agreement.*

*3.3 In the event that the Learner continues to be in the employ of the CAA after the expiry of the fixed period in the absence of any agreement concerning contract for a further period, then the provisions of the Basic Conditions of Contract Act No 75 of 1997, shall apply and the CAA may terminate his/her contract upon giving him/her one month's written notice." (sic)*

19. The learnership contract A2 merely records that if a learner is not already employed the employer must conclude a contract of employment. It is common cause that there was such a contract but it was due to terminate on 31 March 2006. The applicant appealed in writing for its extension for another two years on 19 January 2006, thereby confirming his knowledge that the initial contract was coming to an end. A letter of motivation sent by the acting HR manager for the renewal of the contract was drawn up on 10 February 2006, which is referred

to as 'A1. The acting HR manager motivated an extension of the learnership on the basis that even though the original contract was silent on the question of the employer paying for the studies of learners, the employer had instructed them to register at various institutions and had paid for their studies. The courses they registered for ran for a period in excess of the contract periods. On the basis of a legal opinion, the HR manager concluded that the employer might have created an expectation that it would fund the learners' studies and morally it might be justified to continuing to do so. Accordingly, the refinancing of the learners 'to enable them to complete their studies' was recommended and further that their contracts be reviewed and overhauled.

20. There was no subsequent written contract concluded which sets out in any detail the terms governing the relationship after the expiry of the initial contracts on 31 March 2006. It is also noteworthy that the sole basis advanced in the memo for extending the relationship is related to the expectation that might have been created in relation to payment for the learner's studies: no mention is made of the need for them to still have more practical exposure to the work environment or to acquire some level of expertise in a particular area of work relating to their academic qualifications.
21. The applicant objects to the arbitrator's characterization of the reconsideration of the memo A1 as an 'extension' of the contract. He contends instead that it entailed a review, overhaul and redrafting of the contract in the light of what led to the recommendation. Indeed, this is what is recommended, but the difficulty is that there was no evidence this was done. It is difficult therefore to speculate what form such an overhauled contract might have taken. To the extent it was acted upon, the only reasonable inference that could be drawn from the recommendation in favour of the applicant is that the employer would have made a commitment to continue to employ the applicant so that he could complete his studies. A recommendation is merely evidence that such a route was contemplated, and certainly one cannot speculate on the particular detailed form it would assume if it was reduced to a written contract.
22. There is no basis in the motivation for assuming that the employer would have undertaken further commitments such as guaranteed employment on completion of the applicant's

studies. The applicant did not appear to have been able to lead any clear evidence on the agreed contractual nature of his relationship with the employer after 31 March 2006. All he could rely on was the memorandum which contained a motivation for extending the contract. There was another memorandum issued earlier in January by the same acting HR manager in which he motivated against the extension of the applicant's contract, but it appears this was superseded by the memo of 10 February 2006, after legal advice on the expectations created by the employer paying for learners' studies had been considered. If anything, the arbitrator was generous to the applicant's version in accepting that the relationship had been allowed to continue on the basis of the HR manager's recommendation.

23. In the absence of a fresh contract being concluded, it would seem that the continued relationship was terminable on a month's notice in terms of clause 3.3 of the original learnership agreement and was no longer subject to a fixed term of employment. Assuming, in the applicant's favour that the employer was also prepared to extend his engagement on the basis suggested in the memo, which the arbitrator implicitly did, then the continuation of the relationship would also have been contingent on him continuing to complete his studies with the tertiary institutions he was registered with. Once those were completed or if he ceased to pursue them, the condition for ending the relationship would be met. Unlike in the case of the fixed term contract that ends on a particular date, the duration of his extended employment was linked to the happening of an event, whenever it occurred.
24. The arbitrator did consider the applicant and his co-complainant's claim that they had been discriminated against in having their employment terminated. The applicant had tendered evidence in the form of a document to Hofmeyer under cross-examination. In that document a table appears listing the commencement and termination dates of fourteen learners. Three of the learners including the applicant and his co-complainant at the arbitration were on contracts which expired on 31 March 2006. All the others were due to end in June or October 2007. Hofmeyer was asked by the applicant why some persons might still be employed if they had not finished their courses whereas he and his co-complainant had also not finished their courses but had been dismissed. She reiterated that what determined if a person would remain on the payroll after their contract had terminated was either that they were still

completing their studies or they were working for the organization. In the applicant's case he was doing neither. The applicant then sought to challenge the assertion that he was not 'serving the organization at some level', without being specific as to what service he claimed to be rendering. He also asserted that he was "supposed to be continuing with his studies".

25. This seems to be the principal ground on which the applicant based his claim on discriminatory treatment. There was no tangible evidence to suggest that the third person whose fixed term contract had been due to end on the same date as the two complainants' contracts, had been treated any differently.
26. The applicant attacks the arbitrator's for ignoring proof of 'fabrication' of the employer's evidence that his termination was not discriminatory. He claims also that the arbitrator wrongly expected him to prove that his termination was discriminatory when the employer bore this onus. However, before an employer can be expected to prove that it has acted consistently, there must at least be a basis laid by the employee for making a claim of inconsistent treatment. When the applicant questioned Hofmeyer about the termination of other learners contracts he did not identify any specific instance in which he alleged someone else's employment had been prolonged despite the fact that they had not completed their studies and they were also not rendering services to the employer. Hofmeyer appears to have reiterated her evidence that the criteria applied were the same in the case of learners who were still on the payroll, namely if they were no longer studying or not rendering services then their employment would be terminated. The applicant did not put to her any instances in which these criteria did not appear to have been applied which she would then have had to disprove. Instead it seems he wanted the employer to prove that every other learner whose contract had expired had been similarly treated.
27. There is no question that the employer bears the onus of proving consistent treatment where this is an issue in a case as one of the elements of substantive fairness. But before it can truly said to be an issue in a case, there must at least be some evidence indicating apparent inconsistency, which the employer might then need to adduce evidence to rebut.<sup>3</sup> It cannot be

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<sup>3</sup> *SACCAWU & others v Irvin & Johnson Ltd* (1999) 20 ILJ 2302 at 2314, [30]

said that the applicant raised the issue of inconsistency in anything more than a speculative way. He did not place any prima facie evidence before the arbitrator that other learners had been treated more favourably than himself in terms of the criteria applied by the employer to discontinue the employment of learners whose contracts had expired.

28. On the issue of the correspondence the arbitrator allegedly ignored, it does not appear from what I can understand of the record, that any pertinent reference was made to subsequent correspondence after the expiry of the original contract. The correspondence that was attached to the bundle appears to indicate that there were other recommendations under consideration about whether or not to employ the learners, but there is no evidence that any decisions were taken in this regard and certainly no evidence of agreements being concluded which addressed this.

### **Misrepresentation of the applicant's evidence**

29. The applicant objects to the characterization of the reconsideration of A1 as an 'extension' of the contract. He contends instead that it entailed a review, overhaul and redrafting of the contract in the light of what led to the recommendation. This has been effectively dealt with in the discussion above and need not be reconsidered here.
30. He also objects to the arbitrator's portrayal of him 'knocking on the employer's door' as an attempt by him to obtain a placement when it was in fact an attempt to obtain engagement in departmental operations to acquire skills. This is a difference without significant distinction in the context in which the observation was made and in any event was simply part of the arbitrator's general narration of events which had no direct bearing on her reasoning on any of the important questions before her.
31. The applicant argues that in stating that he was under the impression from the beginning that the employer was going to employ them permanently, she should have considered this in the context of what was contained in A2 which stated, that if a learner was not already in the employment of the employer, the learner and the employer must conclude a contract of employment. She should also have considered that: there was no learnership programme as

envisaged in A2; approval of the application of training was to be based on the benefit of the department in which he was positioned, and three learners with whom he shared the same contract were subsequently employed. The context which the applicant alludes to is principally concerned with his deep-seated grievance about the inadequacies of the programme. But the context is only relevant to the extent that it has a direct bearing on the fairness of his termination. To the extent it is concerned with the inadequacies of the training programme that ought to have been the subject of an unfair labour practice complaint mentioned above. The only point he raises here which might have a bearing is the suggestion that there was some form of unequal treatment in the fact that he was not employed like other trainees were, but it appears even on his own account that this occurred in the case of only 3 out of 13 learners. It is difficult to see on this basis alone how that information would be sufficient to prove that he was no longer supposed to be employed on a learnership basis and that he had been permanently employed, without more substantial evidence of why his circumstances put him in the same category as the three who were employed.

### **Failing to require the respondent to prove certain allegations**

32. According to the applicant the arbitrator should have required the employer to verify its allegation that it had been consistent in the practice of terminating learner's services when their contracts expired. The arbitrator also failed to require the employer to prove that the object of the learnership contract had been achieved at the time it was terminated. The arbitrator ought also to have required proof of prior proceedings relating to the employer's allegation that he was not at work.
33. The first issue has already been discussed above.
34. In regard to the objects of the learnership contract, paragraph 1.2 of the contract states: "*The purpose of the learnership is to assist the learner in acquiring skills within the CAA and aviation industry.*" As mentioned above, the applicant may well be right that the CAA did not live up to what was expected of it under the contract. However, when it came to the life of the contract it was not linked in any way to whether or not the obligations had been met. While the contract was operative, the applicant could have lodged an unfair labour practice

claim relating to any of his entitlements to training under the contract or he could possibly have even sought an order compelling the employer to comply with terms of the contract. After the contract ended on 31 March 2006, the basis of his continued employment by the employer was precarious. At best for the applicant, based on his reliance on the memo of February 2006, it rested on him continuing to complete his course studies. It is apparent from his own evidence that he was last registered for a course in 2005, so even if his employment was extended in accordance with the memo that would not have helped him.

35. According to Hofmeyer, if the applicant had no longer been studying but was rendering services to the employer on a daily basis then his employment would also not have been terminated. The applicant did not challenge the claim that he was not rendering any services with any evidence of work he did render or to whom he reported, which ought to have been easy for him to do if he had in fact been working as an ordinary employee. It was not unreasonable of the arbitrator to conclude that he had not met either of the criteria for continued employment.
36. The criticism of the failure of the arbitrator to ask for evidence of prior proceedings where his absence from the workplace was dealt with is part of the applicant's attack on the procedural unfairness of his termination, in the context of the reason for his termination, is misplaced. The issue was whether or not he was actually engaged in rendering services to the employer on a daily basis, or whether he was still engaged in completing his studies. It was not about whether he was absent from the workplace as such. The only activity that he appeared to have been engaged in was a focus group which was a voluntary activity and which took place on an intermittent basis. It was not a question of whether he was absent from work on particular days but whether his main activity was rendering services to the employer on a regular basis of which there was no evidence.
37. However, it does appear that insofar as the arbitrator found that the termination was not automatic but was initiated by the employer either on account of him failing to pursue and complete his studies, which appears to be the arbitrator's essential finding, or that he had not been rendering any regular services to the employer, the reason for termination was essentially the non-performance of either of those tasks by the applicant. As such the

employer ought at least to have called upon the applicant to show cause why the contract should not be terminate on one month's notice in the manifest absence of him having either pursued his studies or rendered regular services over a considerable period. It is true that he was called in, but that was to explain why his learnership was being terminated rather than calling upon him to answer why it should not be. In this sense it seems the arbitrator erred in not giving proper consideration to the question of procedural fairness, and for this reason her finding of fairness to the extent it relates to procedural fairness stands to be set aside.

38. As the facts stated above are essentially based on the employer's version, this is not a matter which requires further evidence and given the delays in this matter it makes sense for the court to substitute its own finding and remedy in this regard. This is dealt with below.

#### **Unfounded basis for the termination**

39. The applicant identifies six reasons why the arbitrator found his dismissal was fair, namely:

- 39.1. He was absent from work;
- 39.2. He was not registered for any course nor was he studying;
- 39.3. The objective of the learnership had been achieved;
- 39.4. He was not learning any skill from the employer;
- 39.5. He was paid for doing nothing.

40. The applicant then attacks the basis of the arbitrator's reasoning for arriving at these supposed grounds for his termination. To consider the cogency of this ground of review, it is first necessary to be satisfied that the applicant has correctly construed the basis on which the arbitrator accepted his dismissal as fair.

41. It is clear that the arbitrator found that after the expiry of the initial contract the sole reason for the continued relationship between the applicant and the employer was that the employer had agreed to continue to fund his studies and keep him on the payroll so as to allow him to

complete his studies. In reaching this conclusion the arbitrator attached some credence to memo of February 2006 and accepted that the basis for retaining the applicant on the payroll was to enable him to continue and complete his studies, even though there might not have been a new contract concluded. At the time the relationship was terminated, it was common cause that the applicant was not engaged in any course of study and had not been since 2007. Accordingly, the basis on which the relationship had been provisionally extended had fallen away. This appears to be the central reason for the arbitrator concluding that the employer was entitled to terminate the employment relationship, because it was only the continuation of his studies which justified it.

42. Insofar as the arbitrator also considered the effect of the applicant not rendering services to the employer on a daily basis, based on Hofmeyer' evidence, she clearly saw this as further evidence that there was also no ordinary employment relationship in existence between the applicant and the employer.
43. In essence, the commissioner understood that the continued relationship was no longer one that would terminate on the expiry of the fixed term relationship but would only continue as long as the applicant was engaged in completing his studies. As this had not been the case for some time the employer was entitled to terminate the relationship when it became apparent the condition for its continuation was not being met. Moreover, it was not as if he was engaged in a relationship in terms of which he was rendering any services to the employer. It was not an absence from work which justified the termination, but rather this was evidence of the absence of any ongoing employment relationship between the applicant and the employer.
44. It is apparent that the arbitrator accepted that the employer terminated the applicant's service on notice in December 2007. As such, the arbitrator appears to have accepted that the learnership relationship was extended after 31 March 2006, but on a provisional basis: if that condition on which the extension rested no longer applied, the employer was entitled to bring the contract to an end.

45. I am satisfied that the arbitrator's conclusion was not unreasonable that there was a substantial reason for termination of the contract as the only basis on which it might plausibly have continued was so that the applicant's could continue and complete his studies. There is no evidence that was tendered by the applicant to justify his failure to continue with his studies. His failure to ensure that he concluded them entitled the employer to terminate the relationship.
46. The applicant did raise the question of the procedure followed in terminating the learnership, but he only raised this pertinently when he gave his own evidence and did not challenge Hofmeyer on its shortcomings when he cross-examined her. The employer then sought to lead evidence in rebuttal of his evidence on procedural unfairness, but the arbitrator refused finding no special circumstances allowing the employer to re-open its case.
47. However, as mentioned above, the arbitrator did fail to consider whether or not the employer should not have called the applicant in to at least give him an opportunity to justify why he had failed to pursue his studies, or to the extent it relied on the fact that he was performing no services on a regular basis why he had not being do so once he ceased studying. However the period of inactivity on the part of the applicant was extended and on the evidence before the arbitrator appears to have been not less than a year. In the circumstances I think that an award of two month's salary more than compensates for the unfairness of not convening a hearing on his non-performance.

### **Costs**

48. Although the third respondent asked for a punitive cost order in view of the state of the record, as the applicant has been to some extent successful I am disinclined to make a cost award.

### **Conclusion**

49. The application to review and set aside the arbitrator's award in so far as it affects her finding that that the applicant's dismissal was substantively unfair is dismissed.

50. The application to review and set aside the arbitrator's award in so far as it affects her finding that that the applicant's dismissal was procedurally unfair is upheld.
51. The arbitrator's finding that the termination of the applicant's learnership contract did not constitute an unfair dismissal is substituted with a finding that the termination of the applicant's learnership was substantively fair but procedurally unfair.
52. The third respondent is ordered to pay the applicant an amount equivalent to two months' remuneration calculated at his rate of remuneration at the time of dismissal. In the event the parties cannot agree on the monthly remuneration, they may remit the matter to this court for determination.
53. No order is made as to costs.

**ROBERT LAGRANGE**

**JUDGE OF THE LABOUR COURT**

**Date of hearing: 21 May 2010**

**Date of judgment: 2 November 2010**

**Appearances:**

**For the applicant: In person**

**For the third respondent: Mr F Boda instructed by Eversheds Inc.**