

IN THE LABOUR COURT OF SOUTH AFRICA
HELD IN JOHANNESBURG

Case No: JR 435/2008

In the matter between:

NORTHAM PLATINUM MINES

First Applicant

and

P SHAI (N.O.)

First Respondent

**COMMISSION FOR CONCILIATION, MEDIATION
AND ARBITRATION**

Second Respondent

NUM obo P SENYATSI

Third Respondent

JUDGMENT

LAGRANGE, J

Introduction

Full written reasons for the judgment and the order below will be filed by 7 November 2011. Below is a summary of my findings and the order in the matter.

Summary of findings

- [1] The arbitrator committed a number of reviewable irregularities in his evaluation of the evidence, leading him to fail to consider certain evidence or to consider the weight to be attached to it.
- [2] He also committed misconduct in relation to his duties as an arbitrator to determine a dispute of fact which was highly material to the central findings he had to make.
- [3] Further, his evaluation of the evidence was influenced by entertaining an impermissible inference which no reasonable arbitrator would have considered.
- [4] For these reasons the award stands to be reviewed and set aside.

[5] In substituting the arbitrator's findings and award, an evaluation of the evidence before the arbitrator leads me to conclude that, on a balance of probabilities the applicant did prove that the third respondent decanted a sample and committed serious misconduct by doing so because of the implications of inaccurate sampling.

[6] On the question of the appropriate sanction, although I am mindful of the third respondent's considerable service, the fact that he was fully aware of his duties and responsibilities as a sampler and the fact that he must have been aware of the serious light in which such misconduct was viewed, also having been previously charged with the offence, it appears these factors had no impact on his conduct and there is no reason to believe he would rectify his behaviour if he had merely been issued with a final warning.

[7] Consequently, I cannot find that the third respondent's dismissal was unfair.

Order

[8] In the circumstances,

- a. The arbitration award of the first respondent issued on 17 March 2008 under CCMA case number LP 2308-04 is reviewed and set aside.

- b. The findings of the arbitrator are substituted with a finding that the third respondent's dismissal was substantively fair.
- c. No order is made as to costs



ROBERT LAGRANGE

JUDGE OF THE LABOUR COURT

Date of hearing: 25 October 2011

Date of judgment: 3 November 2011