



REPUBLIC OF SOUTH AFRICA

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Of interest to other judges

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Case no: J 3156/1998

In the matter between:

NUMSA OBO MAIFO AND 16 OTHERS

Applicants

and

ULRICH SEATS (PTY) LTD

Respondent

Heard: 14, 15 and 16 November 2011 and 18 April 2012

Delivered: 24 May 2012

Summary: Claim of automatically unfair dismissal and operational reasons. Appropriate relief – delay in prosecuting the matter- Compensation appropriate relief even where dismissal substantively unfair.

JUDGMENT

Molahlehi J

Introduction

1] There are two questions which this Court has to determine in this matter which has taken a considerable time, of over 12 years, before reaching trial. The applicants have contributed significantly, as would appear latter in this judgment, to the delay. They firstly filed their statement of claim late and secondly delayed the prosecution of the claim. The two main questions to consider are:

i. Was the dismissal of the applicants automatically unfair?

ii. Was the dismissal of the applicants for operation reasons both procedurally and substantively fair?

2] The relief sought by the applicants is reinstatement. Some of the applicants were reemployed after their dismissal and others have passed away since the launching of these proceedings.

Background facts

3] The respondent is involved in the business manufacturing seats in the transportation industry, in particular the bus industry.

4] It is common cause that the industry in which the respondent operates in was, like other employers in the industry, faced with a protected strike by members of NUMSA during September 1998. In this respect and towards the end of August 1998, the NUMSA shop-stewards addressed a letter to the respondent informing it of the commencement of the national strike.

5] On 31 August 1998 which may have been two days before the commencement of the strike, the respondent convened a meeting with the entire workforce where Mr Britz, the marketing manager sought to persuade the employee not to participate in the strike because of the consequences that that would have on the business. There is some

indication that Mr Britz offered a 6% increase provisionally pending the outcome of the negotiations at the bargaining council. The version of the respondent is that the employees were informed at this meeting that a consultation process would be arranged with the shop steward regarding the financial situation of the respondent.

- 6] The national strike commenced on 1 September 1998. On 3 September 1998, the respondent addressed a notice to all the employees informing them amongst others that:

‘Due to the extremely poor economic conditions in the bus industry this year the company has reached the stage where it has no option but to reduce its operating costs in line with its current workload in order to maintain financial viability. This means a reduction of 30% in the hourly paid workforce through retrenchment, effective from 7 September 1988.’

- 7] The following day the respondent addressed a letter to NUMSA informing them about the above notice. The employees were dismissed on 4 September 1988.

Automatically unfair dismissal

- 8] The issue concerning the alleged automatically unfair dismissal has to do with whether the dismissal of the applicants falls within the ambit of section 187 (1) (a) alternatively section 187 (1) (d) (i) for (1) of the Labour Relations Act of 1995 (the LRA).¹
- 9] It is trite that in the case of an alleged automatically unfair dismissal the onus rests on the employees to prove that their dismissal was automatically unfairly. This was the reason why at the beginning of the trial the court ruled that the applicant had the duty to begin.

¹Section 187 (a) and (d) of the LRA provides: ‘Automatically unfair dismissals (1) A dismissal is automatically unfair if the employer, in dismissing the employee, acts contrary to section 5 or, if the reason for the dismissal is- (a) that the employee participated in or supported, or indicated an intention to participate in or support, a strike or protest action that complies with the provisions of Chapter IV; (d) that the employee took action, or indicated an intention to take action, against the employer by- (i) exercising any right conferred by this Act; or (ii) participating in any proceedings in terms of this Act.’

10]The enquiry to conduct when dealing with the issue of an alleged automatically unfair dismissal was set out in *Kroukam v SA Link (Pty) Ltd*,² where the Court at paragraph 102 of the judgment held that:

‘Having regard to the reason(s) that I have found to have been the dominant or principle reason(s) for the appellant’s dismissal and the provisions of the Act that I have referred to above which I have found the respondent to have breached in dismissing the appellant, I am satisfied that the appellant’s dismissal was automatically unfair.’

11]In *SACAWU and Others v Afrox Ltd*³, the Court held that:

‘The enquiry into the reason for the dismissal is an objective one, where the employer’s motive for the dismissal will merely be one of a number of factors to be considered. This issue (the reason for the dismissal) is essentially one of causation and I can see no reason why the usual twofold approach to causation, applied in other fields of law, should not also be utilised here...The first step is to determine *factual* causation: was participation or support, or intended participation or support, of the protected strike a *sine qua non* (or prerequisite) for the dismissal? Put another way, would the dismissal have occurred if there was no participation or support of the strike? If the answer is yes, then the dismissal was not automatically unfairly. If the answer is no, that does not immediately render the dismissal automatically unfair, the next issue is one of *legal* causation, namely whether such participation or conduct was “main” or “dominant”, or “proximate”, or “most likely” cause of dismissal.’

12]The applicants in support of their allegations that their dismissal was automatically unfair rely on the evidence of two witnesses. The applicants called only two witnesses after it was agreed that all the other witnesses will not be necessary because they would be repeating what the two would have already said.

13]The first witness of the applicants, Mr Mashaba, who at the time of the

2 [2005] 12 BLLR 1172 (LAC) at para 102.

3 [1999] 10 BLLR 1005 (LAC) at para 32.

dismissal was a shop-steward, testified that the first time they heard about the possible retrenchment was at the beginning of the national strike. He also stated that he was not retrenched and that he remained as shop- steward. He also testified that some people were re-employment after the retrenchment.

14]Initially at the beginning of the cross-examination, Mr Mashaba contended that it was only NUMSA members who participated in the strike. He did not however dispute that the respondent employed 100 employees and 20 of whom did not participate in strike. He later conceded during cross-examination that even SEAWUSA members were dismissed. He also conceded that some of the NUMSA members were re-employee.

15]Mr Mashaba further conceded that it was not only NUMSA members who were dismissed. In answering the question that it was not only NUMSA members that were dismissed, Mr Mashaba stated that their complaint was about the manner in which the employees were dismissed.

16]The second witness of the applicants was Mr Marabe who testified that during July 1998, the respondent indicated that it intended to increase wages by 6%. This was apparently during the national wage negotiations.

17]During evidence in chief when asked as to why he thought he was dismissed Mr Marabe stated that he thought it was dismissed because he was vigorously active during the strike and therefore the assumption by the respondent was that he was the one influencing the strike. When asked further as to why these proceedings were instituted he stated that: 'my complaint is that the employer dismissed me without consultation whilst on strike.'

18]The respondent's only witness was Mr Britz, the director and the chairperson of the respondent, testified that because of structural changes in the public/private partnership in the industry, its business was

negatively affected. As a result of this challenge a meeting was held with the shop-stewards on 24 February 1998 where a host of other issues were discussed including the depressed business situation. It is recorded in the minutes of that meeting that:

‘8 WORKLOAD AND ORDERS

Management and project that the level of orders received for the year has declined dramatically. This was due to a large extent because the main bus body builders are not achieving the applicant output targets, to the extent that we have been unable to do deliveries (sic) of some orders. If this situation does not improve, it may be necessary to work short-time in March to allow the body builders to clear the backlog of behind schedule production.’

19]Mr Britz further testified that the respondent addressed a letter to NUMSA on 6 March 1998 where it is stated that:

‘NOTICE: SHORT TIME

1. You are hereby notified that due **to extremely poor market conditions** in the bus industry, the company will be working short-time days during the month of March 1998...’

20]The On 24 March 1998, the respondent issued a general notice to the employees, informing them that the short-time arrangement would end on 27 March 1998.

21]Another meeting was held on 11 June 1998 where the issue of the workload was discussed. The minutes of the meeting are also not signed. It is however recorded under the heading; and “Workload” that:

‘The workload and new orders for April and May has been satisfactory but sufficient workload for July and August may be a problem due to market conditions and slow production, at our customers. This situation will you review at the end of the month for possible reduced work hours (short-time).’

22] Mr Britz further testified that the meeting of 31 August 1998 was to inform employees about the impending strike and its implication on the respondent's business. Another meeting was according to him held on 2 September 1998 where the respondent made an interim offer to grant the employees an increase of 6% which was to be effective pending the outcome of the national negotiations.

23] As concerning the reasons for the dismissal, Mr Britz testified that the approach was adopted in order to minimise the economic depression of the respondent and cut costs which included human resources. The total number of employees who were retrenched was according to him 30; comprising 11 non-unionised employees, 2 SEAWUSA members and the rest were NUMSA members. It was on this basis that he contended that the dismissal was not intended or directed at NUMSA members only.

Evaluation of automatically unfair dismissal

24] There can be no doubt when consideration is had to the evidence summarised above that the applicant failed to make out a case that the dismissal was automatically unfair. There is insufficient or put the other way, there is no evidence that connects the reason for the dismissal to the motive or strategy of intending to get rid of the NUMSA members by the respondent by reason of them being members or being affiliated to NUMSA. In other words, it cannot be said that the dominant impression or the main reason why the applicants were dismissed was because of the membership of NUMSA.

25] Mr Lengane, for the applicants challenged the testimony of Mr Britz regarding the assertion that 78 people participated in the strike on the basis that that information was not pleaded by the respondent. This does not seem to me to advance the case of the applicants in any manner.

The material facts relevant to the determination of the issue of an alleged automatically unfair dismissal are the following:

- a. A number of employees were retrenched some of them are NUMSA members, others are SEAWUSA and the rest of them was non-unionised.
- b. Some of the retrenched employees were re-employed after the retrenchment including NUMSA members.
- c. After the strike, NUMSA members also went back to work and were not prevented from resuming their duties.
- d. The essence of the testimony of the two witnesses who testified in favour of the applicants is that their complaint is essentially that the respondent in retrenching them failed to follow a fair procedure.

26]It is also important to note that the two witnesses did not submit any evidence that the retrenchment was used as a smokescreen and that the motive for the retrenchment was to get rid of NUMSA members. The other important factor to note is the fact that the issue of automatically unfair dismissal was only raised in the amended statement of case.

27]As indicated earlier, Mr Mashaba in his testimony initially said that he was only aware of NUMSA members who participated in the strike. This does not advance the case of an automatically unfair dismissal if regard is had to the totality of the facts of the case and in particular the facts are stated above – being the total number of employees retrenched, the re-employment of NUMSA members after the retrenchment and the return of NUMSA members after the strike.

28]It is thus my view that there is no basis upon which it can be concluded that the respondent dismissed the applicants because they were NUMSA members or that they participated in the strike.

Substantive unfair dismissal

29] In terms of section 188⁴ read with section 192⁵ of the LRA the employer bears the onus of showing that the dismissal was for a fair reason.

30] It is trite that employers are entitled to dismiss employees for “operational requirements” based on economic, technological or structural needs.⁶ However, as a general principle, the law discourages the employers from a quick resort to retrenchment if it can be avoided.⁷ The essential criterion is whether the retrenchment was *bona fide* and economically rationale. The other principle is that in addition to showing the existence of economy rationality for the retrenchment, the employer has to show that the retrenchment was unavoidable.

31] In *SACWU v Afrox Ltd*,⁸ the court held that:

‘If an employer wishes to show that it considered appropriate options other than dismissal it must present evidence to that effect and explain why it chose a particular course and not another. If an employee wishes to challenge that evidence it must do so by proper cross-examination on the relevant issues and, if considered necessary, by leading rebutting evidence. If this shows up the untenability of the employer's position, it will have a material effect in the final assessment of fairness... As assessment on "moral" considerations not based on evidence led at the trial will be impermissible.’

32] The evidence that the respondent was faced with economic difficulties from the beginning of the year in 1998 up to towards the end thereof has not been seriously challenged. During March 1998, the respondent

4 Section 188 of the LRA provides as follows: ‘188. Other unfair dismissals (1) A dismissal that is not automatically unfair, is unfair if the employer fails to prove- (a) that the reason for dismissal is a fair reason- (i) related to the employee's conduct or capacity; or (ii) based on the employer's operational requirements; and (b) that the dismissal was effected in accordance with a fair procedure.’

5 Section 192 of the LRA provides: ‘Onus in dismissal disputes (1) In any proceedings concerning any dismissal, the employee must establish the existence of the dismissal. (2) If the existence of the dismissal is established, the employer must prove that the dismissal is fair.’

6 Section 213 of the LRA provides: "operational requirements" means requirements based on the economic, technological, structural or similar needs of an employer.’

7 See Chapter 16 of John Grogan *Workplace Law* 10th ed (Juta 2010) page 271.

8 (1999) 10 BLLR 1005 (LAC) at para 43.

introduced short-time as part of addressing its economic difficulties. Again during June 1988, the respondent communicated to the employees and informed them that there has been some improvement in its business and that it further predicts that the same would apply during July and August.

33] It is apparent from the above analysis that the respondent was faced with economy difficulty as a result of the depression in the market. Although it appears from the analysis that there was a valid reason to anticipate retrenchment, that is not the end of the investigation in as far as the determination of the fairness or otherwise of the dismissal is concerned.

34] A further enquiry as indicated in the *Afrox's* case is whether there is evidence that shows that the respondent considered other options to dismissal and that none of them were viable.

35] In the present instance except for the minutes of the meetings which were held with the shop-stewards and the notices given to them about the retrenchment there is no evidence as to the rationality of the retrenchment. There is no evidence that the respondent considered any alternatives before resorting to dismissal. There is in particular no evidence as to why short-time was not implementing as was the case earlier. The respondent rushed to retrench the applicant without applying its mind to reasonable and possible alternatives to dismissal.

36] There was also no evidence led by the respondent as to the fairness of the selection criteria. The law requires that where the parties cannot agree to selection criteria the employer has to apply a fair selection criterion. In the present instance, there was no consultation on the selection criteria and therefore there was no agreement in that regard. In the absence of an agreed criterion, the respondent had a duty apply a criterion that is fair and objective. There is no evidence to this effect. The dismissal is thus unfair due to both failure by the respondent to consider other alternatives to dismissal and proof that the selection criteria was fair.

Procedural unfairness of the dismissal

37] The respondent conceded that the dismissal was procedurally unfair. It is for this reason that I do not deem it necessary in this judgment to discuss or analyse the issue of procedural fairness of the dismissal in light of the concession by the respondent.

The relief

38] The issue that remains for determination after concluding that the dismissal was substantively unfair, concerns the determination of the relief. The issue of relief to be made at the end of a case is governed by section 193 (1) and (2) of the LRA which provides: 'Remedies for unfair dismissal and unfair labour practice (1) If the Labour Court or an arbitrator appointed in terms of this Act finds that a dismissal is unfair, the Court or the arbitrator may –

(a) order the employer to re-instate the employee from any date not earlier than the date of dismissal;

(b) order the employer to re-employ the employee, either in the work in which the employee was employed before the dismissal or in other reasonably suitable work on any terms and from any date not earlier than the date of dismissals; or

(c) order the employer to pay compensation to the employee.

(2) The Labour Court or the 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.'

39] It is clear from the above that in the absence of the factors listed in (a) to (c) above, the Court or the arbitrator as the case may be must require the employer to reinstate or re-employ the employee where the dismissal has been shown to be substantively unfair. It is for this reason that the courts have interpreted section 193 of the LRA to be saying that the primary remedy in an unfair dismissal case is reinstatement or re-employment.⁹ The underlying consideration for this approach is set out in the case of *Kylie v Commission for Conciliation, Mediation and Arbitration and Others* as follows:¹⁰

'The central purpose of dismissal legislation is to provide work security ... [and] reinstatement or re-employment is the primary remedy.

40] In the present matter, the applicants prayed for reinstatement. The issue that then arises is whether any of the factors listed in section 193 (1) of the LRA exists, which may in terms of the principles of fairness require the court to make an order that is less than reinstatement.

41] It was submitted on behalf of the respondent that because of the period it has taken to finalise this matter reinstatement would not be the appropriate remedy more particularly because other people have been employed and that if reinstatement was to be ordered it would mean having to retrench them. The submission accordingly as I understand it is that consideration should be given to whether it would be reasonably practicable for the respondent to reinstate or re-employ the applicants.

42] In weighing the appropriate relief, in this matter it would seem to me that the most important factor to consider in this regard is the delay in

⁹ See *National Union of Mineworkers and Others v Chrober Slate (Pty) Ltd* (2008) 29 ILJ 388 (LC).

¹⁰ (2008) 29 ILJ 1918 (LC) at para 68.

finalising the matter. There has been a significant delay from the time of the dismissal to the time this matter was served before this Court.

43]The issue of the appropriate remedy received attention under the previous LRA of 1956 in *Performing Arts Council of the Transvaal v Paper Printing Wood and Allied Workers Union and Others*,¹¹ case quoted with approval by the Constitutional Court in the matter of *Billinton Aluminium SA Ltd t/a Hillside Aluminium v Khanyile*.¹² In that case (*Performing Arts*) the court in dealing with the issue of the appropriate relief held that:

‘Whether or not reinstatement is the appropriate relief, in my opinion, must be judged as at the time the matter came before the industrial court.’

44]The key issue which the court had to deal with in that case was the contention of the employer that reinstatement was not appropriate in light of the delay in finalising the matter. The delay was on the main caused by the late filing of the appeal. The court held that it would be unjust and illogical to allow delays caused by unsuccessful appeals, to the various levels of appeal processes, to render reinstatement inappropriate.

45]In *Equity Aviation Services (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration*¹³, the employer contended that reinstatement was inappropriate where the employees had failed to mitigate their losses after their dismissal. The principle finding of the court, which has now become trite law, is that reinstatement is a primary remedy in cases where the dismissal has been found to have been unfair. In that case in dealing with this issue the court held:

‘It is trite law that the power to grant a remedy in s 193 is by its nature discretionary and that discretion must be exercised judicially by a court that enjoys that unfettered discretion.’

¹¹ 1994 (2) SA 204 (A) at 219 H.

¹² 2010 (5) BCLR 422 (CC).

¹³ 2009 (1) SA 390 (CC) at para 48.

46] In *Billinton Aluminium SA* the Constitutional Court held that the approach to be adopted in awarding remedies in terms of section 193 of the LRA was that which had been inunciated in *Equity*. The court further held that:

‘After *Equity Aviation* there, can be no doubt that reinstatement is the primary remedy in unfair dismissal disputes and that section 193 (one) (A) of the LRA confers a discretion on the Commissioner or court to determine the extent of retrospectivity of the reinstatement.’¹⁴

47] In *Equity Aviation*, the Court held that:

‘On the contrary, the context, supports the view that the ordinary meaning of s 193(1)(a) does not offend the right to fair labour practices. Fairness 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. In this regard, it is important to bear in mind that where a court or Commissioner has decided that reinstatement is the appropriate remedy, it will also have to be decided that the worker has been unfairly dismissed. The worker will thus have been deprived of wages, unfairly, as a result of the conduct of the employer.’¹⁵ [Footnote omitted]

48] It would seem to me that in considering whether the remedy of reinstatement is just and equitable, account should be taken of the following:

- a) the outcome of the enquiry into the fairness or otherwise for the dismissal
- b) the core value of the LRA being security of employment.¹⁶

¹⁴ *Billinton Aluminium SA* at para 26

¹⁵ *Equity Aviation* at para 39.

¹⁶ See *National Education Health and Allied Workers Union v University of Cape Town and Others* 2003 (3) SA 1 (CC) where the Court in dealing with the values of the LRA had the following to say: “Security of employment is a core value of the LRA and is dealt with in chap[ter] VIII. The chapter is headed ‘Unfair Dismissals’. The opening section, section 185, provides that ‘[e]very employee has the right not to be unfairly dismissed’. This right is essential to the constitutional right to fair labour practices [I]t seeks to ensure the continuation of the relationship between the worker and the employer on terms that are fair to both. Section 185 is ‘a foundation upon which the ensuing sections are erected.’

- c) the period between the dismissal and trial or the arbitration hearing.
- d) the impact that the delays between the date of the dismissal and the date of the hearing may have on the fairness of the relief to be made.
- e) that the employees were without income during the period of dismissal.

49]In the present matter, there can be no doubt that there has been considerable delay between the date of the dismissal and the matter reaching trial. In light of that and having found the dismissal to have been unfair, the question is whether reinstatement is a just and equitable relief in those circumstances.

50]The delays in processing and prosecuting Labour dispute before the relevant dispute resolution bodies have received attention in a number of cases both before the Supreme Court of appeal and the Constitutional Court.¹⁷

51]Froneman J in *Billinton Aluminium* referred to the delays that occur in the processing and prosecuting of the Labour disputes under the L RA as “systematic delays.” The court in that case identified the players in “system delays,” as being ‘employers and employees, their representatives (legal or otherwise) of the officials tasked with conciliation, and arbitration in CCMA and last but not least, the judges in the Labour court Labour appeal court the supreme court of appeal and this court.’ (para 45)

52]At paragraph [21] of the judgment Froneman J observed that:

¹⁷ *Strategic Liquor Services v Mvumbi NO and Others* (2009) 30 ILJ 1526 (CC); *Zwane and Others v Alert Fencing Contractors CC* (2010) 31 ILJ 2825 (CC); *Netherburn Engineering CC t/a Netherburn Ceramics v Mudau NO and Others* [2009] 6 BLLR 517 (CC); and *Shoprite Checkers (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and Others* (2009) 30 ILJ 829 (SCA).

‘The constitutional issues raised in this Court are no doubt important in the context of the remedies available under the LRA. They concern what impact, if any, systemic delay should have on the appropriateness or otherwise of reinstatement as a remedy for unfair dismissal.’

53]And at paragraph [46] of the judgment the Learned judge held:

‘There is no magic in relying on “systemic delay” in order to justify the development of the law. What is needed is to scrutinise the role of each of the actors in the system to determine how and to what extent each may have contributed to the problem that is said to have been caused by the delay...’

54]As stated earlier, the delay in this matter is excessive. The brief background to the delay is as follows: The application for a case number was made on 6 October 1998. The Registrar issued the case number according to the applicant on 27 October 1998. The matter was referred to the Court on 6 February 1999 outside the prescribed timeframe required by the law. This necessitated an application for condonation for the late filing of the statement of case which was done on 27 October 2000. The condonation application was granted on 6 March 2001.

55]It would seem nothing happened between 6 March 2001, after the condonation was granted until 21 August 2006 when the respondent launched an application in terms of rule 11 of the Rules of the Court seeking to have the applicants’ claim dismissed for want of prosecution.

56]It further would appear from the cover file that the Rule 11 application was set down for March 2008 and on that day the matter was removed from the roll. It appears that the parties would not agree on convening or finalising a pre-trial minute and thus the matter had to be enrolled for a pre-trial conference in February 2010. On that day the pre-trial minutes were finalised and the presiding judge directed that the matter be enrolled for trial.

57]The matter was enrolled for 9 May 2011, but was postponed with no

indication as to the reason. The matter was postponed to 14, 15 and 16 November 2011.

58] It is apparent from the above that the applicants significantly contributed to the delay in bringing the matter to finality. It would in those circumstances be unfair to impose the primary relief envisaged in section 193 of the LRA. The most appropriate relief in light of the unfair dismissal of the applicants is the maximum compensation envisaged in section 194 of the LRA.

59] The remaining issue to consider is costs. In terms of section 162 of the LRA, the Court may make an order as to costs in accordance with the requirements of the law and fairness.¹⁸ In considering the issue, I have in addition to taking into account the facts and circumstances of this case taken into account the offer which the respondent had made in terms of rule 22A of the Rules of the Labour Court.¹⁹

Conclusion

60] In conclusion, I find that the applicants have failed to make out a case for automatically unfair dismissal and accordingly their claim in as far as that is concerned stands to fail. The respondent has however failed to show that the dismissal of the applicants for operation reasons was both procedurally and substantively fair. The applicants' claim in this respect stands to succeed. However taking into account the facts and the circumstances of this case, I do not believe costs should be allowed to

¹⁸ Section 162 provides:

- (1) 'The Labour Court may make an order for the payment of costs, according to the requirements of the law and fairness.
- (2) When deciding whether or not to order payment of costs, the Labour court may take into account –
 - (a) whether the matter referred to the court ought to have been referred to arbitration in terms of this Act and, if so, the extra cost incurred in referring the matter to the court; and
 - (b) the conduct of the parties –
 - (i) in proceeding with or defending the matter before the Court; and
 - (ii) during the proceedings before the court.'

¹⁹ Rule 22A (7) of the Rules of the Labour Court provides that an offer may be taken into account when making an order as to costs.

follow the results.

Order

61] In the premises, the following order is made:

1. The claim for the alleged automatically unfair dismissal is dismissed with no order as to costs.
 2. The respondent is ordered pay those of the applicants who were not reemployed 12 months compensation calculated at the salary they received at the time of their dismissal,
 3. The respondent is ordered to pay the estates of the deceased applicants 12 months compensation calculated at the salary they received at the date of the dismissal and payment shall be effected upon production of the letters either from the administration or the Master of the High Court.
 4. For those of the applicants who were re-employed, the respondent is ordered to pay 12 months compensation calculated at the salary they received as at the date of their dismissal, less the salary they received as at the date of their reemployment and only if the salary at the time of the reemployment is less than what they received before their dismissal.
 5. There is no order as to costs.
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Molahlehi J
Judge of the
Labour Court of
South Africa

APPEARANCES

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FOR THE RESPONDENT: F Venter instructed Johannes De Beer Inc.