



REPUBLIC OF SOUTH AFRICA

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Reportable

Case no: JR 2145 / 2008

In the matter between:

MEC: DEPARTMENT OF EDUCATION GAUTENG

Applicant

and

J MSWELI

First Respondent

GPSSBC

Second Respondent

DESMOND LYNCH N.O.

Third Respondent

Heard: 10 July 2012

Delivered: 12 July 2012

Summary:

Bargaining Council arbitration proceedings - Review of proceedings, decisions and

awards of arbitrator - Test for review of finding of procedural unfairness by arbitrator - Test whether arbitrator committed a material error of law so as to justify granting of review

Public Service Act (Proc 103 of 1994) - Dismissal - By operation of law - Public service employee absent without authorization for period exceeding one month - Section 17(5) (a)(i) and (b) – employee not reporting for duty after being deployed into post – employee ignoring several instructions to report for duty - Such constituting absconding - employee's services terminated by operation of law.

Public Service Act - Dismissal – Procedural fairness – the provisions of procedural fairness in the case of absconding in private sector do not apply – no hearing required before dismissal – arbitrator committed material error of law by seeking to apply private sector provisions relating to procedural fairness for absconding

Public Service Act - Dismissal – requirements for the application of Section 17(5) – effect of the application of such requirements – onus shifted to employee to justify absence, show good cause and report for duty – employee's failure to do so means employee cannot challenge fairness of dismissal

JUDGMENT

SNYMAN AJ

Introduction

[1] This matter concerns an application by the applicant to review and set aside an arbitration award of the third respondent in his capacity as an arbitrator of the GPSSBC (the second respondent). This application has been brought in terms of Section 145 of the Labour Relations Act ("the LRA"),¹ as read with Section 158(1) (g).

[2] The first respondent was dismissed by the applicant by way of a notice dated 20 February 2008, with effect from 25 February 2008, for what appears to be an issue of absconding. In an award dated 20 July 2008, the third respondent determined that the dismissal of the first respondent by the applicant was substantively fair, but procedurally unfair. The third respondent then made a determination that the applicant had to pay the first respondent compensation for

¹ 66 of 1995.

such procedural unfairness in the sum of R25 212.00, being an amount equivalent to four months' salary of the first respondent. It is this determination by the third respondent that forms the subject matter of the review application brought by the applicant.

Preliminary issues

- [3] From the outset, there is no issue with regard to the fact that the dismissal of the first respondent by the applicant was substantively fair. This finding of the third respondent thus stands.
- [4] The review application by the applicant is limited to two specific grounds. The first ground is an attack on the determination of procedural unfairness itself, in that the applicant contends that due to the application of Section 17 of the Public Service Act ("PSA"),² the dismissal could not have been procedurally unfair, and the third respondent had committed a gross irregularity in not so determining.
- [5] The second ground of review concerns the award of compensation itself made by the third respondent for such procedural unfairness, in the event of it being found that the dismissal of the first respondent by the applicant was indeed procedurally unfair. The applicant contends that an award of four months' salary was excessive to the extent of constituting a fundamental error of law and an improper exercise of the discretion in respect of the award of compensation.
- [6] I will accordingly only deal with the facts of this matter insofar as the same is relevant for the determination of the above issues.

Background facts

- [7] From the evidence, it is clear that the conduct of the first respondent in this

² 103 of 1994.

instance was entirely unsatisfactory. The third respondent correctly appreciated and determined this in finding that the dismissal of the first respondent was substantively justified. The problem I however have with the award of the third respondent is that he simply does not take his own findings with regard to the conduct of the first respondent, and the nature of his evidence presented in the arbitration far enough, and this will be addressed hereunder.

- [8] The above being said, it is clear from the record that prior to 2007, there was a problem that existed with regard to the deployment of the first respondent in a position at the applicant. This led to the fact that for a protracted period of time, the first respondent was not at work and not working, but still being paid. This situation clearly could not continue.
- [9] In the end, and on 19 July 2007, the first respondent was then placed into a position in the Sub-Directorate Finance and Administration (Office Service Pool) of the applicant. The first respondent was required to report for work on 24 July 2007 at 07h45.
- [10] The first respondent did report at work on 24 July 2007, and a meeting then took place between him and the Acting Deputy Director Finance and Administration, being Mrs E Simbine ("Simbine"). In this meeting, the first respondent's position was confirmed, it was determined who he would report to, what his job description would be, and that he would actually commence his work by reporting for work on Thursday 25 July 2007.
- [11] The applicant's case in the arbitration was that after 24 July 2007, the first respondent never reported for work. The first respondent's case in the arbitration was that he was in fact at work and was never absent from work. The third respondent rejected the case of the first respondent and accepted the case of the applicant. This necessarily meant that the first respondent was indeed absent from work and simply had no cause or reason whatsoever for being absent from

work.

[12] The third respondent further accepted the evidence of Simbine as to the interaction between her and the first respondent and in particular the documents relating to the same. There is simply no cause or reason to interfere with this conclusion. However, and of relevance to this matter, and having so found, what the third respondent then does not adequately consider is the fact that as at 24 July 2007, the first respondent actually knows that he had to report for work on 25 July 2007, what he was required to do as his job, and who he reported to. In the absence of any explanation of any kind by the first respondent for then not so doing, it can reasonably be accepted that his decision not to report for work was deliberate.

[13] My view with regard to the fact that this decision was deliberate is confirmed by the events that followed. In this regard, the evidence is as follows:

[13.1] Firstly, and on the record, there is a letter dated 4 October 2007 to the first respondent recording his absence without authorization since 24 July 2007, and it was conveyed that because of this, there was an intention to discharge him in terms of the PSA. The first respondent was asked to make representations within 14 days. No response was received.

[13.2] Secondly, the salary of the first respondent was stopped in November 2007 because of his absence and his trade union was informed accordingly in terms of a letter dated 10 November 2007. Still the first respondent took no action, did not challenge the issue and more importantly, made no attempt to resume his duties;

[13.3] Finally, and on 25 February 2008, the first respondent was then given formal notice of the termination of his employment, because of his continued absence. However, the first respondent was still informed in this

notice he could made application for reinstatement. Again, no such application was received, and the first respondent did not report for work.

- [14] The first respondent then referred his unfair dismissal dispute to the second respondent on 12 March 2008, ultimately giving rise to these proceedings.

The relevant test for review

- [15] In *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others*,³ Navsa AJ held that in the light of the constitutional requirement (in s 33 (1) of the Constitution) that everyone has the right to administrative action that is lawful, reasonable and procedurally fair, 'the reasonableness standard should now suffuse s 145 of the LRA'. The majority of the Constitutional Court set the threshold test for the reasonableness of an award or ruling as the following: 'Is the decision reached by the commissioner one that a reasonable decision-maker could not reach?'
- [16] In *CUSA v Tao Ying Metal Industries and Others*,⁴ O'Regan J held: 'It is clear... that a commissioner is obliged to apply his or her mind to the issues in a case. Commissioners who do not do so are not acting lawfully and/or reasonably and their decisions will constitute a breach of the right to administrative justice.'
- [17] The Labour Appeal Court in *Fidelity Cash Management Service v Commission for Conciliation, Mediation & Arbitration and Others*⁵ specifically interpreted the *Sidumo* test. The Court held as follows: 'To this end a CCMA arbitration award is required to be reasonable because, if it is not reasonable, it fails to meet the constitutional requirement that an administrative action must be reasonable and, once it is not reasonable, it can be reviewed and set aside.'
- [18] Van Niekerk J in *Southern Sun Hotel Interests (Pty) Ltd v Commission for*

3 (2007) 28 ILJ 2405 (CC).

4 (2008) 29 ILJ 2461 (CC).

5 (2008) 29 ILJ 964 (LAC).

*Conciliation, Mediation & Arbitration and Others*⁶ held that: “If a commissioner fails to take material evidence into account, or has regard to evidence that is irrelevant, or the commissioner commits some other misconduct or a gross irregularity during the proceedings under review and a party is likely to be prejudiced as a consequence, the commissioner's decision is liable to be set aside regardless of the result of the proceedings or whether on the basis of the record of the proceedings, that result is nonetheless capable of justification.”

- [19] Against the above principles and test, the award of the second respondent in this instance must to be determined, especially considering the grounds of review as articulated by the applicant.

Merits of the review: The issue of procedural fairness

- [25] In this matter, it is clear from the evidence and the factual determinations of the third respondent as arbitrator that the first respondent was absent without authorization for a period in excess of a month, without any explanation, and without any attempt to report for work. As will be discussed hereunder, this brings this matter into the realm of Section 17(5) of the PSA, which in my view clearly did apply. This being the case, the finding of the third respondent in the arbitration should have been that the first respondent's employment was terminated by way of operation of law, and as such, the second respondent had no jurisdiction to entertain this matter (see *Hospersa & Another v MEC for Health* (2003) 24 ILJ 2320 (LC) ; *Maidi v MEC for Department of Education and Others* (2003) 24 ILJ 1552 (LC) ; *MEC for Education & Culture v Mabika and Others* (2005) 26 ILJ 2368 (LC) ; *Phenithi v Minister of Education and Others* [\(2006\) 27 ILJ 477 \(SCA\)](#) ; *Jammin Retail (Pty) Ltd v Mokwane and Others* (2010) 31 ILJ 1420 (LC) ; *Mahlangu v Minister of Sport & Recreation* (2010) 31 ILJ 1907 (LC) ; *Solidarity on behalf of Kotze v Public Health & Welfare Sectoral Bargaining*

⁶ (2010) 31 ILJ 452 (LC).

Council and Others (2010) 31 ILJ 3022 (LC) ; *Member of the Executive Council for Health v Khoetha and Others* (2011) 32 ILJ 647 (LC)). The applicant was in fact alive to this, and made submissions to this effect in the arbitration. The applicant however did not raise this jurisdictional issue on review, and it is trite that the applicant is bound to the case as made out in its founding affidavit (see *Lufuno Mphaphuli & Associates (Pty) Ltd v Andrews and Another* 2008 (2) SA 448 (SCA) ; *Songoba Security Services MP (Pty) Ltd VvMotor Transport Workers Union* (2011) 32 ILJ 730 (LC) ; *De Beer v Minister of Safety & Security and Another* (2011) 32 ILJ 2506 (LC) ; *Northam Platinum Ltd v Fganyago No and Others* (2010) 31 ILJ 713 (LC)).

- [26] The above being said, and aside from issues of jurisdiction, the application of Section 17(5)(a) and (b) of the PSA in any event does have direct impact on the determination of the issue of procedural fairness, being the first issue at stake in this review application.
- [27] Section 17(5)(a) of the PSA provides that ‘An officer, other than a member of the services or an educator or a member of the Agency or the Service, who absents himself or herself from his or her official duties without permission of his or her head of department, office or institution for a period exceeding one calendar month, shall be deemed to have been discharged from the public service on account of misconduct with effect from the date immediately succeeding his or her last day of attendance at his or her place of duty.’
- [28] Section 17(5)(b) of the PSA then provides ‘*If an officer who is deemed to have been so discharged, reports for duty at any time after the expiry of the period referred to in paragraph (a), the relevant executing authority may, on good cause shown and notwithstanding anything to the contrary contained in any law, approve the reinstatement of that officer in the public service in his or her former or any other post or position...*’

[30] The third respondent accepted that Section 17(5) of the PSA did apply in this case. The sole reason for the third respondent however then finding that the dismissal of the first respondent was nonetheless procedurally unfair was that according to the third respondent, the applicant still had to adhere to the provisions of Section 4 of Schedule 8 of the LRA. As will be set out hereunder, this conclusion of the third respondent constitutes a material and gross error in law.

[31] The crux of the determination of the third respondent thus is that in effecting the dismissal of the first respondent, accepting for the purposes of this matter that the application of Section 17(5)(a) of the PSA does constitute a dismissal (as stated above it is actually a termination by operation of law), the applicant had to comply with all the guidelines required in law in terms of the LRA in order to effect a fair dismissal for an employee that is considered to have absconded. For purposes of completeness, these provisions are the following:

[31.1] In *SABC v CCMA and Others*,⁷ it was held that as 'It is not desertion when an employee who is absent from work intends returning to work. Desertion necessarily entails the employee's intention no longer to return to work.' The employer would have to establish this intention in a fair process.

[31.2] As to whether the first respondent would be entitled to a hearing in this process, it is important to refer to how the Labour Court dealt with the matter in *SABC v CCMA and Others* (*supra*). The LAC upheld the Labour Court decision, and did not overturn the ratio in the Labour Court judgment itself. The Labour Court decision is reported at *SABC v CCMA and Others* (2001) 22 ILJ 487 (LC). The Labour Court acknowledged that it would be "silly" to require an employer to hold a hearing for an employee who had deserted and indicated an unequivocal intention not to return,

⁷ (2002) 8 BLLR 693 (LAC).

and that the problem really arises in cases of "unexplained" desertion, being when employees give no indication of whether they intend to resume work. The Court held that if the intention to leave is established, there is no need to hold a hearing.

[31.3] The question then necessarily is how does one establish the intention not to return to work. The Labour Court in *SABC v CCMA and Others* held as follows at paragraph 13:

'The real problem arises from circumstances of unexplained absence. Mere absence is no more conclusive evidence of desertion (which is absence plus an intention not to return), than it is evidence of wilful absence without leave (which axiomatically includes an intention to return, albeit at a time of the employee's choosing). The means by which the employer established the existence or absence of the intention to return is the critical point of the debate. What constitutes desertion is of course a matter of fact. In some instances an unexplained absence for a reasonable period, that is to say, reasonable in relation to the employer's operational requirements, will establish the fact of desertion. In the instance of an employee who remains away from the workplace and whose whereabouts are not known and who is out of reach of the employer, it is plainly impractical to impose upon an employer the obligation to convene a disciplinary enquiry before reaching the conclusion that the fact of desertion has occurred and in consequence of which it is entitled in response thereto to elect to terminate the contract.'

And at paragraph 18:

'Whether or not an employer should convene a disciplinary enquiry before taking a decision to dismiss, is dependent on the relevant circumstances, and the practicality of so doing. The grievant was within reach of the applicant. The grievant was in breach of his obligation to tender his services from 27 November 1997. The applicant put him on terms to return to work. In my view, when the grievant failed to respond positively to the letter of 4 December, the applicant

should have furnished him with a notice to appear at a determined date and time to show cause why he should not be dismissed by reason of his persistent desertion of his post. There was nothing impractical about such step and I am of the view that the circumstances which presented themselves to the applicant were not exceptional in the sense contemplated by item 4(4) of the Code of Good Practice.’

[31.4] The above is clearly what the third respondent did in this instance. Whilst I would disagree with the conclusion of the third respondent even when applying these principles, as in my view and on the facts the first respondent actually showed a clear intention not to return to work, it is simply not necessary to determine this, because, as will be set out below, none of these principles find application in this instance.

[32] Mr Molemoeng, who appeared for the applicant, submitted to me that the crux of this matter is that the provisions as set out above do not apply in this instance, because once the PSA applies, there is a deeming provision. Therefore, and according Mr Molemoeng, the nub of the problem with the determination of the third respondent is that the provisions as set out above do not apply in the case of the absconding of an employee in the public service where the PSA finds specific application.

[33] As stated above, and where Section 17(5) of the PSA applies, it is termination of employment by operation of law. As was held in *Director General: Office of the Premier of the Western Cape & another v SA Medical Association on behalf of Broens and Others*:⁸

‘In *Phenithi v Minister of Education & others* the Supreme Court of Appeal explained the purpose of a deeming provision in the Employment of Educators Act similar to that in s 17(5)(a) of the Public Service Act as follows:

⁸ [\(2011\) 32 ILJ 1077 \(LC\)](#) at para 22.

"In my view, the provision creates an essential and reasonable mechanism for the employer to infer 'desertion' when the statutory prerequisites are fulfilled. In such a case, there can be no unfairness, for the educator's absence is taken by the statute to amount to a 'desertion'. Only the very clearest cases are covered. Where this is in fact not the case, the Act provides ample means to rectify or reverse the outcome."

[34] The Court in *PAWUSA and Another v Department of Education, Free State Province and Others*⁹ dealt with the facts that need to be shown by an employer before the application on Section 17(5) of the PSA can be relied on. It was held as follows at paragraph 15 – 16:

'The provisions of s 17(5)(a)(i) clearly contemplate the existence of certain facts before an officer shall be deemed to have been discharged from the public service. These facts are:

- the officer,
- absents himself or herself from his or her official duties,
- without permission of his or her head of department, office or institution,
- for a period exceeding one calendar month.

It is clearly the existence of each of the facts hereinabove outlined that triggers the deeming provision of the subsection. No action of the employer will accordingly trigger the deeming provision to come into operation, which occurs *ex lege*'

[35] The Court in *PAWUSA and Another v Department of Education, Free State Province and Others* went further and held at paragraph 18 that it was Section 17(5)(b) that was 'clearly intended by the legislature to satisfy the audi alteram partem rule which hitherto would not have come into operation.' The Court held

⁹ (2008) 29 ILJ 3013 (LC).

further that in terms of Section 17(5)(b) 'The employee is thereby accorded an opportunity to explain whether he or she indeed absented himself or herself from his or her official duties without the permission of his or her head of department, office or institution for a period exceeding one calendar month. The employer is then to consider whether or not to approve the reinstatement of that employee.'

- [36] In *Hospersa and Another v MEC for Health (supra)* the Court held that where Section 17(5) of the PSA applies:

'Because the employees are discharged, they are deprived of all the rights and protections afforded by the unfair dismissal laws. As a discharge is deemed to be on account of misconduct, the employees are condemned before they have been given a hearing. There may be reasons other than misconduct for their absence. After the employees have been deemed to be so discharged, and provided they, firstly, report for duty and, secondly, they show good cause, their reinstatement into their former or other positions may be approved subject to conditions (s 17(5)(b)). When exercising their right to a hearing in terms of s 17(5)(b) the employees bear the onus of showing good cause. Section 17(5)(a) not merely restricts, but excludes the employees' right to a fair hearing before being found guilty and dismissed.'

- [37] In *Grootboom v National Prosecuting Authority and Another*,¹⁰ the Court also dealt with Section 17(5) (b) and held that:

'It is clear in my view that the requirement of good cause in terms of s 17(5)(b) of the PSA entails the employee having to provide a reasonable explanation for his or her absence without authority. The duty is thus on the employee to provide the employer with a satisfactory explanation as to what were the reasons for being absent without authorization. The employer in considering whether or not to reinstate the employee has to exercise a discretion given by s 17(5)(b) of the PSA. In this respect the decision by the employer has to be influenced by fairness and justice...The key factor amongst others, which the employer has to

10 (2010) 31 ILJ 1875 (LC) at para 56.

take into account, is whether or not the unauthorized absence was wilful on the part of the employee.'

[38] Reference is also made to *Public Servants Association of SA obo Van der Walt v Minister of Public Enterprises and Another* ([2010\) 31 ILJ 420 \(LC\)](#) at paragraph 18. I am in full agreement with all of the above decisions.

[39] In the end, and as was said in *Mahlangu v Minister of Sport & Recreation* at paragraph 13: '...an employee deemed to be dismissed in terms of s 17(5)(a) has no right to a hearing' when it comes to the implementation of the discharge in terms of Section 17(5)(a) of the PSA.

[40] Of direct relevance to the current matter, the judgment of *Jammin Retail (Pty) Ltd v Mokwane and Others* (*supra*) deals specifically with the distinction between employees that have absconded in the public sector and those in the private sector. It was held as follows at paragraph 13 with specific reference to public service employees:

'The authorities are in agreement that such a termination is not a dismissal as the contract is not terminated by virtue of the decision of the employer but by the operation of law. In other words the employment contract is deemed to have been terminated due to absence from work by the employee and not the decision of the employer. This approach is generally applicable in the public sector and the same does not apply in the private sector.'

[41] Similarly, in *Solidarity on behalf of Kotze v Public Health & Welfare Sectoral Bargaining Council and Others* (*supra*) at paragraph 8 – 9, it was held as follows:

'The argument of the applicant is based on the concept of abscondment as applied in private sector cases. The general approach adopted in private sector cases of abscondment was enunciated in the case of *SABC v CCMA & others* ([2002\) 23 ILJ 1549 \(LAC\)](#); [2002] 8 BLLR 693 (LAC).

In the private sector cases of abscondment entail both absence from work without authority and evidence of the intention on the part of the employee not to return to work. To satisfy the requirements of fairness in abscondment cases the employer had to show that it took steps to locate the whereabouts of the employee.

Unlike in the case of absconding in the private sector cases the respondent did not dismiss the applicant but the dismissal occurred by operation of law. The requirement of a fair reason before termination does not apply. In other words the employer does not have to show what steps it took to locate the whereabouts of the applicant before invoking the deeming provisions of the PSA.’

[42] For the purposes of completeness, Mr Molemoeng also referred me to the judgment in *Phenithi v Minister of Education and Others* (2008) (1) SA 420 (SCA) which concerns the consequences of the application of Section 14(1)(a) of the Employment of Educators Act 76 of 1998 where the Court held that the application of this provision was that the employee was not required to be given a hearing before a discharge in terms of that Section, and he submitted this equally applies to Section 17(5)(a) of the PSA. I agree with this submission, which in any event has been confirmed in *Director General: Office of the Premier of the Western Cape & another v SA Medical Association on behalf of Broens and Others* ([supra](#)).

[43] Therefore, and based on all of the above, the application of Section 17(5) of the PSA excludes the operation of the normal procedural requirements to effect the termination of employment of an employee where the employee has absconded as envisaged by the LRA. The provisions of Schedule 8 of the LRA in fact do not apply, The “process provisions”, for want of a better term, as applicable in the case of Section 17(5) of the PSA, can be found in two parts. The first part is that the employer must show that the employee was absent for more than one calendar month and did not have permission for the employee’s absence, and then the employee’s employment is considered to be terminated. The second

part in fact prescribes a shift in the onus, and entails that even where an employee is now deemed to be “discharged” as contemplated by the first part, the employee can actually still report for duty at any time after this and then show good cause as to why the employee should be reinstated, which must then be considered and determined by the employer.

[43] In this matter, there can be no doubt that the first respondent was absent for more than a calendar month without authorization. The applicant proved that this was the case and thus discharged the duty on it as envisaged by Section 17(5) of the PSA. It was also common cause that the first respondent did receive this termination notification from the applicant, as envisaged by Section 17(5)(a) of the PSA, on 25 February 2008. The duty then shifted to the first respondent. The first respondent could then, at any time after receiving this notice, still formally report for duty and make representations to the applicant in order to show good cause as to why he should be reinstated. The notice received on 25 February 2008 in fact notifies the first respondent of this. The first respondent however did nothing in this regard, never reported for work, never asked to be reinstated, and finally never attempted to show good cause, which he had the onus to do. He simply referred his matter to the second respondent. In the circumstances, all the pre-requisites for the lawful termination of employment of the first respondent in terms of Section 17(5) are present in this instance. Insofar as it may be applicable, this would include any requirements for achieving procedural fairness.

[44] In the circumstances, the third respondent committed a gross error of law in his determination of the issue of procedural fairness in this matter. This error of law strikes at the heart of the determination in this matter and applying the test for review as set out above, this in my view constitutes a reviewable irregularity. There is simply no basis that a reasonable decision maker, in applying the proper legal principles relating to the application of Section 17(5) of the PSA, could have come to the conclusion of procedural unfairness that the third respondent did in this instance. As was said in *Pam Golding Properties (Pty) Ltd v Erasmus and*

*Others*¹¹): 'If a commissioner fails to take material evidence into account, or has regard to evidence that is irrelevant, or the commissioner commits some other misconduct or a gross irregularity during the proceedings under review including, for example, a material mistake of law, and a party is likely to be prejudiced as a consequence, the commissioner's decision is liable to be set aside regardless of the result of the proceedings or whether on the basis of the record of the proceedings, that result is nonetheless capable of justification.' The finding of procedural unfairness of the third respondent therefore falls to be reviewed and set aside.

[45] As a result of the conclusion as set out above, there is no need for me to determine the second ground of review raised by the applicant concerning the issue of compensation.

[46] There is no reason or cause to remit this matter back to the second respondent. It concerns the application of a provision of law, which can be properly and finally done in these proceedings, especially considering that the determination of the facts in this matter are unchallenged. I shall therefore determine this matter, and substitute the finding of procedural unfairness of the third respondent with a determination that the termination of employment of the first respondent by the applicant was procedurally fair.

[47] This then only leaves the issue of costs. In the Court file, there is a notice from the first respondent dated 17 January 2012 withdrawing the opposition of the first respondent to the review. In my view, this was a wise approach. As such, I shall consider, for the purposes of costs, that this review is unopposed, and consequently, shall make no order as to costs.

Order

11 (2010) 31 ILJ 1460 (LC).

[48] In the premises, I make the following order:

[48.1] The arbitration award of the third respondent dated 20 July 2008 under case number PGGA 1265-07/08 is reviewed and set aside.

[48.2] The award of the third respondent is substituted with an award that the dismissal of the first respondent by the applicant was procedurally fair.

[48.3] There is no order as to costs.

Snyman AJ

APPEARANCES:

APPLICANT: Adv K M Molemoeg

Instructed by the State Attorney, Pretoria

FIRST RESPONDENT: None

