



REPUBLIC OF SOUTH AFRICA

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

Case no: JS 664/2012

In the matter between:

TRANSPORT AND ALLIED WORKERS' UNION

OF SOUTH AFRICA

First Applicant

D TSHABALALA AND 54 OTHERS

Second to further Applicants

and

R P LOGISTIX (PTY) LTD

Respondent

Heard: 27 and 28 January 2014

Delivered: 11 February 2014

Summary: Unfair dismissal in terms of the provisions of section 189 of the Labour Relations Act. No operational requirement existed for dismissal. Dismissal unfair.

JUDGMENT

PRINSLOO, AJ

Introduction

[1] The Applicants approached this Court for relief as they claim that their dismissal was substantively and procedurally unfair.

- [2] The Respondent opposed the matter.
- [3] The matter was enrolled for trial on 27 January 2014 and prior to the commencement of the trial, it became evident that the Respondent raised a point *in limine* namely that section 189A(18) of the Labour Relations Act¹ (the Act) precluded the Court from adjudicating the procedural fairness of the Applicants' dismissal. The Applicants have challenged the procedural fairness of their dismissal in an urgent application at the time of the retrenchment and they cannot challenge the procedural fairness of their retrenchment during this trial.
- [4] Mr Memani for the Applicants conceded that it was indeed the legal position and he abandoned the portion of the Applicants' claim that relates to procedural unfairness.
- [5] The trial proceeded only in respect of the substantive fairness of the retrenchment. The parties were afforded an opportunity to amend the pre-trial minute as a substantial portion of the issues in dispute and to be determined fell away as procedural fairness was not to be determined.
- [6] Before turning to the merits of the case, it is necessary to give a brief overview of the facts that are common cause between the parties and those that are in dispute.

The pleadings and pre-trial minute

- [7] In its statement of case the Applicants claimed that there were no valid reasons to retrench them.
- [8] The Respondent in its statement of defence pleaded that the Applicants' dismissals took place as a result of a demand by the First Applicant (the union or TAWUSA) to retrench its members so that they could find work closer to Alrode. It was also pleaded that the demand by TAWUSA was for the retrenchment of all TAWUSA members and that the Respondent conceded one of the union's demands. It was specifically denied that the Applicants' dismissal was unfair and that the dismissals occurred purely because of operational reasons.

¹ Act 66 of 1995.

- [9] The parties signed a pre-trial minute and the Applicants once again denied that there was a need to retrench. The Respondent contended that the union demanded the retrenchment of all the union members.
- [10] It was disputed whether the dismissal of the Applicants was fair, whether Mr Madolo had a mandate from the general meeting to demand the retrenchment of the TAWUSA members in Cape Town and Johannesburg, whether there was any agreement that the Applicants would be voluntarily retrenched and whether there was a valid reason for the retrenchment.
- [11] The relief sought by the Applicants is retrospective re-instatement.

The evidence adduced

- [12] It is common cause between the parties that the Respondent retrenched the Applicants on 26 April 2012.

The Respondent's testimony

- [13] Ms Masinamela, the Respondent's director human resources, testified that the Respondent moved its premises from Alrode to Isando, approximately 30 – 40 kilometres apart, during February 2012. This move did not result in any job losses, nor was any retrenchment anticipated as a result of the move. On 23 February 2012 the Respondent had a meeting with TAWUSA and two issues were to be discussed namely the retrenchment of two controllers and the move from Alrode to Isando. The retrenchment of the two controllers was finalised and was never a contentious issue and is not relevant for purposes of this trial.
- [14] The only issue that remains relevant was the move from Alrode to Isando. Ms Masinamela, Mr Madolo of TAWUSA and two shop stewards attended the meeting. TAWUSA demanded a transport allowance as workers had to travel further and spend more on transport due to the move to Isando.
- [15] During the meeting of 23 February 2012 Mr Madolo put three options on the table namely that the Respondent either pays a travel allowance of R1 per hour worked or an once-off allowance of R 3000, or that it retrenches all TAWUSA members in the company, alternatively and if those options were not adhered to the union would declare a dispute on all issues, including the

retrenchment of the two controllers and the non-payment of a transport allowance. Mr Madolo stated that the Respondent should give him an answer on which option is accepted as there was a TAWUSA general meeting scheduled for 26 February 2012 and he wanted to table the issue at the general meeting.

- [16] On 24 February 2012 the Respondent wrote a letter to TAWUSA indicating that the mandate to retrench all TAWUSA members was accepted.
- [17] On the same date Ms Masinamela issued a document setting out the reasons for retrenchment and all the other factors as required by the provisions of section 189(3)(a) – (j) of the Act. In this letter it was indicated that the affected employees would be the TAWUSA members in Johannesburg and the proposed method of selecting the employees to be retrenched would be all members of TAWUSA in Johannesburg.
- [18] Subsequent to the TAWUSA general meeting and on 28 February 2012 TAWUSA responded to the Respondent's letter of 24 February 2012 and insisted on the '*total retrenchment of all our members in R P Logistix (Pty) Ltd Cape Town and Johannesburg.*'
- [19] The drivers in Cape Town were in no way affected by the move from Alrode to Isando and they were not claiming the transport allowance.
- [20] Ms Masinamela testified that she was surprised as Cape Town was not part of the initial discussions and she did not know why they were included. On 29 February 2012 the Respondent replied to TAWUSA's letter of 28 February 2012 and stated that the affected employees are the TAWUSA members in Johannesburg only and that Cape Town was never discussed. It was made clear that the Respondent only accepted the voluntary retrenchment of TAWUSA members based in Johannesburg.
- [21] Following the letter of 29 February 2012 a meeting was held on 1 March 2012. Ms Masinamela, Mr Madolo and the two shop stewards, Mr Mqolwana and Mr Tshabalala, attended this meeting. The primary purpose of the meeting was to get clarity on TAWUSA's position. Mr Madolo said that the mandate from TAWUSA, as confirmed at the general meeting and part of the union resolutions taken on 26 February 2012, is that all TAWUSA members be

retrenched. All TAWUSA members included those in Johannesburg and Cape Town, as they could not be divided. It was also made clear that any of the options put forward by TAWUSA might be withdrawn.

- [22] Ms Masinamela enquired about the reason for including the Cape Town employees and Mr Madolo emphasized that it was the mandate given by members and as taken at the general meeting on 26 February 2012 and that the Respondent could not change the mandate so given.
- [23] Ms Masinamela concluded the meeting by stating that she would have to take the union's position to management and that a written response would follow.
- [24] On 7 March 2012 Ms Masinamela addressed a letter to TAWUSA wherein she responded to TAWUSA's demands. The first two demands were that the Respondent pays a travelling allowance (R1 per hour worked or once off R 3000) to the employees. The Respondent's position was that it could not acceded to those demands. The last demand or option was that the Respondent retrenches all TAWUSA members, including Cape Town. The Respondent's position on this was that it has reached consensus with the union on the retrenchments, but it accepted only the voluntary retrenchment of TAWUSA members based in Johannesburg.
- [25] After the Respondent made it clear that it was only going to retrench the Johannesburg TAWUSA members, Mr Madolo sent a letter to the Respondent on 12 March 2012 stating that the TAWUSA members mandated him to withdraw the proposal of being retrenched in the event the Respondent was not prepared to pay a travelling allowance. He suggested a meeting to discuss the move to Isando further.
- [26] On 16 March 2012 Ms Masinamela responded and expressed the Respondent's surprise at the withdrawal of the agreement to be retrenched. She indicated that the Respondent was prepared to meet with the union and proposed a meeting for 22 March 2012. On 20 March 2012 Mr Madolo in a letter refused to meet the Respondent *'regarding our proposal which has been withdrawn.'*
- [27] On 22 March 2012 Ms Masinamela responded to TAWUSA and re-iterated the Respondent's commitment to engage in a meaningful joint consensus seeking

process and she urged the union to consult with the Respondent. This letter was never responded to and a follow up letter was sent on 28 March 2012, wherein the Respondent requested a meeting for 29 or 30 March 2012. Nothing was heard from Mr Madolo and the Respondent approached Mr Mankge, TAWUSA's general secretary for intervention. He was requested to meet with the Respondent on 5 April 2012. That date was not suitable to the parties and on 5 April 2012 a meeting was confirmed for 13 April 2012.

- [28] The meeting took place on 13 April 2012 and Ms Masinamela, Mr Madolo and the two shop stewards, Mr Mqolwana and Mr Tshabalala, attended this meeting. At this meeting it was the Respondent's position that it accepted the union's mandate to retrench and it was late in the process to withdraw such a mandate. The Respondent accepted the union's mandate to retrench as the Respondent wanted to make the Johannesburg depot a turn-around depot. TAWUSA's position was that the mandate to retrench was withdrawn and should the Respondent wish to proceed with the retrenchments, it should follow the correct process as stipulated in section 189 of the Act. The union made it clear that they were not in consultation with the Respondent and should the Respondent proceed with the retrenchments, the union would lodge a dispute. That concluded the meeting.
- [29] On 13 April 2012 TAWUSA addressed a letter to the Respondent wherein it raised concerns about the issue of restructuring raised by the Respondent. The Respondent indicated in a letter dated 10 April 2012 that its intention was to retrench 56 employees due to a restructuring process and TAWUSA made it clear that the restructuring was new to them and is separate from the matter of moving from Alrode to Isando. If a new process of restructuring was envisaged, the Respondent had to follow the provisions of section 189A of the Act.
- [30] On 16 April 2012 the Respondent replied to the letter and denied that the retrenchment of 56 drivers was a new matter as a letter to that effect was already issued on 24 February 2010. The process was continuing and the Respondent intended to finalise the process by 26 April 2012. On 23 April 2012 the union responded and insisted that consultation should be done in terms of section 189A.

- [31] On 26 April 2012 the Respondent issued letters of termination to the individual applicants and paid them one month's notice pay and severance pay of one week for each completed year of service.
- [32] In cross-examination Ms Masinamela testified that she was surprised at the meeting of 23 February 2012 when the union raised the issue of retrenchments as the discussions all along were in connection with the payment of a travel allowance. She testified that when Mr Madolo proposed retrenchment if the Respondent was not prepared to pay a travel allowance, the two shop stewards in attendance did not differ from him. In her presence they were in agreement with Mr Madolo's proposal.
- [33] Ms Masinamela conceded that the Applicants were not given any other reason for the retrenchment as that the Respondent was accepting a mandate presented by Mr Madolo.
- [34] Ms Masinamela testified that it was the first time she experienced a situation where a trade union demands a retrenchment and for the members of the union to follow the demand. She conceded that the demand was for the Respondent to retrench all TAWUSA members and she could not see why the Cape Town drivers should be included. TAWUSA insisted that the Respondent could not change the mandate by retrenching only the Johannesburg drivers.
- [35] Ms Masinamela conceded that she had doubts about the proposal from TAWUSA wherefore she asked the shop stewards if they really wanted to be retrenched. The Respondent did not propose and did not initiate the retrenchment process. The shop stewards confirmed that the mandate was that all TAWUSA members should be retrenched. She regarded the mandate to retrench as strange and irrational, but it was taken seriously.
- [36] Ms Masinamela testified that on 1 March 2012 there was no agreement on the retrenchments as the union was still discussing the three options on the table. Ms Masinamela agreed that the mandate regarding retrenchment could still be withdrawn and that the union regarded the matter as still open for and subject to discussion. She agreed that there was no final agreement on 1 March 2012 but in her view there was agreement on the retrenchment of the Johannesburg drivers.

- [37] Mr Memani put it to the witness that the Respondent was acting in bad faith in that it persisted with a stance that there was an agreement to retrench when the union withdrew from that proposal and the process to retrench was simply proceeded with. Ms Masinamela testified that the decision to retrench was taken and the Respondent merely proceeded with a process the union started.
- [38] Ms Masinamele conceded that there was no consensus on 23 February 2012 as the TAWUSA general meeting still had to take place. She testified that the union gave the Respondent a mandate to retrench and the Respondent merely acceded to that mandate.
- [39] Ms Masinamela testified that the union demanded a transport allowance and that was not going to be paid by the Respondent. If the Respondent retrenched the individual applicants, that would be the end of the transport issue and if not, the demand for transport allowance would never end. The Respondent's decision was to accept the proposal from the union to retrench.

The Applicants' testimony

- [40] Mr Daniel Tshabalala testified on behalf of the Applicants. He testified that he was present in all the meetings held between the Respondent and TAWUSA and Mr Madolo. He confirmed that Ms Masinamela was surprised when Mr Madolo said that if the Respondent did not want to pay a transport allowance, the workers should be retrenched and she asked them if they really wanted to be retrenched. He confirmed that Mr Madolo stated on 1 March 2012 that his mandate was to advise the Respondent to retrench all TAWUSA members, including the Cape Town drivers.
- [41] Mr Tshabalala testified that when Ms Masinamela asked him at the meeting of 23 February 2012 whether they wanted to be retrenched, he responded that they were not there to talk about retrenchment but they were there to demand a transport allowance from Alrode to Isando.
- [42] On 1 March 2012 the union's mandate was that if the TAWUSA members in Johannesburg are to be retrenched, so should the ones in Cape Town. This was an expression of solidarity amongst TAWUSA members and the message to the Respondent was that if the retrenchment process is proceeding, the Cape Town drivers should be retrenched or else the proposal would be

abandoned. He testified that the atmosphere at the meeting of 1 March 2012 was tense.

[43] Mr Tshabalala testified that the Applicants were seeking re-instatement.

[44] In cross-examination Mr Tshabalala confirmed that the mandate TAWUSA took from the general meeting to the Respondent was that if the Respondent wanted to retrench, all TAWUSA members should be retrenched, even the drivers in Cape Town and if that did not happen the mandate and proposals were withdrawn.

Closing arguments

[45] In closing argument Mr Memani on behalf of the Applicants submitted that this Court has to consider two main issues namely whether the Respondent had a valid reason to dismiss the Applicants and whether such dismissal was pursuant to an agreement between the Applicant and TAWUSA.

[46] Mr Memani submitted that there was no evidence before this Court to show that the Respondent had a valid reason to retrench. There was no operational reason to retrench and therefore the Respondent is precluded from relying on the provisions of section 189 of the Act. The Respondent could, in the absence of an operational reason, not have invoked the mechanism of retrenchment provided for in section 189 of the Act.

[47] The Respondent's case is that the Applicants were retrenched as a result of an agreement between the parties. Mr Memani argued that the Respondent did not accept the demand made by TAWUSA and therefore no agreement could be concluded. The parties were not *ad idem* on the issues, the proposals were still on the table and open for discussion and there was no unequivocal acceptance of the retrenchment. The conduct of the Respondent showed that it was not acting in accordance with any agreement. On 24 February 2012 the Respondent sets out the scheme of the retrenchment, how it would be done and who would be affected and this was done prior to any agreement and not in accordance with any agreement. There was no agreement reached on 23 February 2012 or on any date thereafter.

- [48] Mr Memani argued that the Respondent did not rely on any operational requirement, but relied on an agreement that was never concluded. No reference was made to the Respondent's financial position or operational needs whatsoever in the pleadings.
- [49] In closing argument Mr Rood on behalf of the Respondent submitted that the Respondent had valid reasons for the retrenchment of the Applicants. The Respondent made calculations and accepted the retrenchment to be operationally justified. He submitted that the union demanded the retrenchment and the Respondent merely acceded to the demand.
- [50] Mr Rood further argued that the Respondent dismissed the Applicants for 'similar needs'. Acceding to the demand was a similar need as the retrenchment avoided future strike action.

Analysis of the evidence adduced

- [51] The Applicant and Respondent called one witness each and the testimony adduced in respect of relevant and material aspects, was not contradictory. After due consideration of the pleadings and the testimony adduced, I accept the following as common cause:
- i. A meeting took place between TAWUSA and the Respondent on 23 February 2012 and TAWUSA's Mr Madolo put three options on the table namely that the Respondent pays a travel allowance of R1 per hour worked or an once-off allowance of R 3000, alternatively that it retrenches all TAWUSA members in the company, alternatively that the union would declare a dispute on all issues;
 - ii. On 24 February 2012 the Respondent wrote a letter to TAWUSA indicating that the mandate to retrench all TAWUSA members was accepted as the Respondent was not prepared to pay the transport allowance;
 - iii. Subsequent to the TAWUSA general meeting that took place on 26 February 2012 and on 28 February 2012 TAWUSA responded to the Respondent's letter of 24 February 2012 and insisted on the *'total retrenchment of all our members in R P Logistix (Pty) Ltd Cape Town*

and Johannesburg.' At this point Mr Madolo was acting on the mandate of TAWUSA and its members;

- iv. On 1 March 2012 the parties held a meeting and the primary purpose of the meeting was to get clarity on TAWUSA's position. Mr Madolo said that the mandate from TAWUSA, as confirmed at the general meeting and part of the union resolutions taken on 26 February 2012 is that all TAWUSA members be retrenched;
- v. On 7 March 2012 the Respondent's position conveyed to TAWUSA was that it has reached consensus with the union on the retrenchments, but it accepted only the voluntary retrenchment of TAWUSA members based in Johannesburg. The demand that Cape Town drivers should be retrenched was rejected;
- vi. After the Respondent made it clear that it was intending to retrench the Johannesburg TAWUSA members only, Mr Madolo sent a letter to the Respondent on 12 March 2012 stating that the TAWUSA members mandated him to withdraw the proposal of being retrenched in the event the Respondent was not prepared to pay a travelling allowance;
- vii. Ms Masinamela was surprised when TAWUSA proposed that the individual applicants be retrenched in the event the Respondent was not going to pay a transport allowance to the workers;
- viii. The mandate or demand from the union was from the onset that all TAWUSA members be retrenched and the letter from the Respondent dated 24 February 2012 confirmed that *'Management has considered all the above mandates and would like to confirm that we accept your mandate to retrench all employees (TAWUSA members);*
- ix. The Applicants were retrenched after they received a notice of retrenchment on 26 April 2012.
- x. The reason the Respondent provided for the retrenchment was that it acceded to a demand from the union.
- xi. The Applicants are seeking retrospective re-instatement.

- [52] It is evident from the contents of the minutes of the meetings that TAWUSA on 23 February 2012 submitted that it had a mandate to demand from the Respondent to pay them extra money for travelling costs or to *'retrench all of them.'* The Respondent on 24 February 2012 said that *'Management has considered all the above mandates and would like to confirm that we accept your mandate to retrench all employees (TAWUSA members).'* It is evident to me that the mandate or demand from the onset was for the retrenchment of ALL TAWUSA members. It might not have been understood to include Cape Town but objectively 'all TAWUSA members' cannot mean anything else than that it should include all members, irrespective of their location.
- [53] When the Respondent accepted to retrench the Johannesburg TAWUSA members and refused to retrench the Cape Town members, TAWUSA made it clear that either all TAWUSA members be retrenched, or the mandate to retrench would be withdrawn. The mandate was subsequently withdrawn.
- [54] In retrenching the Johannesburg TAWUSA members and refusing to retrench the Cape Town TAWUSA members, the Respondent did not accede to a demand made by the union. The demand was to retrench all TAWUSA members and that demand was not acceded to.
- [55] The Applicants are seeking retrospective re-instatement. The Respondent did not adduce any evidence why that relief should not or could not be granted, nor did the Respondent challenge Mr Tshabalala during cross-examination on the issue of re-instatement.

The issues this Court has to decide:

- [56] The Court is to determine whether the Respondent had any operational requirements that required and justified the dismissal of the Applicants (the need to retrench) and whether there were voluntary retrenchments pursuant to a demand made by TAWUSA and an agreement between the parties.

The Respondent's operational requirements:

- [57] Was there a need to retrench?
- [58] The Respondent's position as is evident from the pleadings and testimony of Ms Masinamela is that it moved from Alrode to Isando in February 2012 and

that this move did not cause any job losses and did not require a retrenchment process. TAWUSA however demanded a transport allowance as a result of the move and the transport expenses incurred by its members.

- [59] The Respondent's stance was that it was unable to accede to the demand of a transport allowance and TAWUSA met this with something that could be called a proposal or mandate or demand to retrench all its members. This demand certainly surprised the Respondent, as the Respondent was not contemplating retrenchment as a result of the move from Alrode to Isando.
- [60] The Respondent's case was that the retrenchments took place pursuant to TAWUSA's demand and that it was simply acceding to the union's demand. Ms Masinamela testified that no other reason was provided to the Applicants for their retrenchment but that it was done because the union demanded it and because there was an agreement to retrench. In the statement of defence the Respondent pleaded specifically that the Applicants' dismissals did not occur purely because of operational reasons.
- [61] The Applicants' case is that there was no need to retrench and there were no valid reasons to retrench them.
- [62] Section 213 of the Act defines operational requirements as 'requirements based on the economic, technological, structural or similar needs of an employer.'
- [63] The only reason for the Applicants' retrenchment was the demand made by TAWUSA. There was no evidence of the Respondent's economic, technological, structural or similar needs. There was no case pleaded to show an economic, technological, structural or similar need. Mr Roodt argued that the retrenchment was for a 'similar need' in that it was to avoid a strike about the transport allowance. Innovative as that argument may be, it was not supported by evidence and was certainly not the Respondent's case as per the pleadings before this Court.
- [64] The only evidence was that the Applicants were retrenched to accede to a demand from the union. In my view that cannot be an operational requirement as contemplated by the Act.

[65] In any event by retrenching the Johannesburg TAWUSA members and refusing to retrench the Cape Town TAWUSA members, the Respondent did not accede to the demand made by the union, as the demand was to retrench all TAWUSA members.

[66] There was no evidence before this Court to convince me that there was operational requirement that justified the dismissal of the Applicants.

Was there an agreement to retrench pursuant to the demand:

[67] The demand was to retrench all TAWUSA members. On 23 February 2012 Mr Madolo put three options on the table one of which was that the Respondent retrenches all TAWUSA members in the company. On 24 February 2012 the Respondent wrote a letter to TAWUSA indicating that the mandate to retrench all TAWUSA members was accepted.

[68] Subsequent to the TAWUSA general meeting and on 28 February 2012 TAWUSA responded to the Respondent's letter of 24 February 2012 and insisted on the *'total retrenchment of all our members in R P Logistix (Pty) Ltd Cape Town and Johannesburg.'*

[69] Ms Masinamela testified that on 1 March 2012 there was no agreement on the retrenchments as the union was still discussing the three options on the table. Ms Masinamela agreed that the mandate regarding retrenchment could still be withdrawn and that the union regarded the matter as still open for and subject to discussion. She agreed that there was no final agreement on 1 March 2012.

[70] After the Respondent made it clear on 7 March 2012 that it was intending to retrench the Johannesburg TAWUSA members only, Mr Madolo sent a letter to the Respondent on 12 March 2012 stating that the TAWUSA members mandated him to withdraw the proposal of being retrenched.

[71] At the meeting that took place on 13 April 2012 TAWUSA's position was that the mandate to retrench was withdrawn and should the Respondent wish to proceed with the retrenchments, it should follow the correct process as stipulated in section 189 of the Act. The union made it clear that they were not in consultation with the Respondent and should the Respondent proceed with the retrenchments, the union would lodge a dispute.

- [72] It is evident from the testimony that there was no agreement reached between the parties and that there was no consensus on the retrenchments. The demand was for the retrenchment of all TAWUSA members and on the Respondent's own version it never agreed to this demand and was not prepared to retrench the Cape Town drivers.
- [73] It is further evident from the chronological sequence of events that as from 23 February 2012 until 12 March 2012 that the demand was made but still subject to discussion, that it could be withdrawn at any time and that it was indeed withdrawn on 12 March 2012. At no point was there consensus on the retrenchment.
- [74] The Respondent proceeded with the retrenchments as if there was an agreement and persisted with the stance that an agreement was reached when all the facts indicated the contrary. Ms Masinamela's own testimony was that on 1 March 2012 there was no agreement, yet the Respondent persisted with its position that an agreement was reached on 24 February 2012. This is clearly an untenable position.
- [75] I cannot accept that the retrenchment of the Applicants was voluntary and pursuant to an agreement between the Respondent and TAWUSA.
- [76] I therefore find the dismissal of the Applicants substantively unfair.
- [77] The Applicants stated that the relief they seek is retrospective re-instatement and in the absence of any evidence as to why re-instatement would not be possible, I can see no reason why the Applicants should not be awarded the relief they seek.

Costs

- [78] Costs should be considered against the provisions of section 162 of the Act and according to the requirements of the law and fairness.
- [79] The requirement of law has been interpreted to mean that the costs would follow the result.
- [80] In considering fairness, this Court has held that the conduct of the parties should be taken into account and that *mala fide*, unreasonableness and

frivolousness are factors justifying the imposition of a costs order. Another factor to be considered is whether there is an ongoing relationship that would survive after the dispute had been resolved by the Court. If so, a costs order may damage the ongoing relationship.

[81] In my view this case does not warrant a cost order, more so because there is an ongoing relationship between the parties. The evidence was that the Respondent deals with TAWUSA on an ongoing basis.

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

Order

1. The Applicants' dismissals were substantively unfair;
2. The Respondent is to re-instate the Applicants retrospectively with effect from the date of their dismissal; without loss of benefits.
3. No order as to costs.

Prinsloo, AJ

Acting Judge of the Labour Court

Appearances:

For the Applicants: Advocate F R Memani

For the Respondent: Advocate C Roodt

LABOUR COURT