



REPUBLIC OF SOUTH AFRICA

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

Case no. JR2792/12

In the matter between:

SOLIDARITY obo S W PARKINSON

Applicant

And

DAMELIN (PTY) LTD

First Respondent

COMMISSIONER SIBONGISENI SITHOLE

Second Respondent

**COMMISSION FOR CONCILIATION MEDIATION
AND ARBITRATION**

Third Respondent

Date: 31 March 2015

JUDGMENT – APPLICATION FOR LEAVE TO APPEAL

BLEAZARD, AJ

- [1] I have considered the Applicant's Leave to Appeal, the Applicant's written submissions in support of the Applicant's Application for Leave to Appeal and the First Respondent's submissions opposing the Application for Leave to Appeal.
- [2] At the outset I must state that I referred in my Judgment to the fact that there were two grounds upon which an Award of the Commissioner could be set aside (See: Paragraph 3 of the Judgment).
- [3] On re-reading my Judgment for the purpose of this Application, I am aware that it fails to take account of the constraint placed on the 'process related' (or 'latent irregularity') ground by the Judgment of Herholdt v Nedbank Ltd (Congress of SA Trade Unions as Amicus Curiae) (2013) 34 ILJ 2795 (SCA) at paragraphs 20 – 21.
- [4] I have also considered that another Court may come to a different conclusion to the one which I came, inter alia, in respect of the status of the disciplinary code of the First Respondent, its obligation to act in accordance therewith and the Second Respondent's finding in relation thereto, including the interpretation to be placed on the letter of 25 January 2012, and the consequences that flow therefrom, and whether or not the Second Respondent's finding in regard thereto was reasonable.
- [5] In the circumstances, I make the following Order:
- 5.1. Application for Leave to Appeal to the Labour Appeal Court is granted;
- 5.2. Costs of the Application for Leave to Appeal shall be costs in the Appeal.

Bleazard, AJ

Acting Judge of the Labour Court

APPEARANCES:

For the Applicant:

Instructed by: Solidarity

For the First Respondent: Advocate Nel

Instructed by: