



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

Case no: JS906/10

MOLEFI JUTAS MMUSI

First Applicant

TIMPANA JOHN RAMODIBE

Second Applicant

And

VEMISANI SECURITY SERVICES CC

Respondent

Delivered: 6 October 2015

JUDGMENT

TLHOTLHALEMAJE, AJ

Introduction:

- [1] The Applicants approached the court by way of a statement of claim to contest the fairness of their dismissal based on the operational requirements of the Respondent. They seek reinstatement or compensation in the event that it is found that their dismissal was unfair.

Background:

- [2] The Applicants were both employed as security guards by the Respondent and were based at a client's site (Mittal Steel, a division of ArcelorMittal) in Vanderbijlpark, until their dismissal on 30 July 2010. On 8 November 2009, the Second Applicant had authored a document titled '*Time to wake up*

document’ addressed to all security officers employed by the Respondent who were based at the client’s site. In the document, various issues of concern were raised including *inter alia*, bonuses, overtime, allowances, the dismissal of other colleagues, and under payment of salaries.

- [3] On 25 March 2010, Mr. Moloi of ArcelorMittal addressed correspondence to the Respondent’s Assistant Operations Manager, Mr. Khoarane, raising concerns about ‘unbecoming conduct on the part of security personnel’, which was viewed as being disruptive to the client’s security operations. In this regard, the complaint was about a letter that circulated amongst personnel inciting them to rebel against their Union representatives and management.
- [4] In this letter, Moloi further indicated that during the month of February 2010, he was asked by three individuals employed by the Respondent for a meeting to discuss their conditions of service within the Respondent. He therefore requested that certain unidentified individual security personnel be removed from ArcelorMittal’s premises.
- [5] On 29 March 2010, the Applicants were suspended with full pay until 4 May 2010 when they were issued with notices to attend a disciplinary enquiry scheduled for 7 May 2010. The charges pertained to their failure to notify or get permission from management of the Respondent to go and see the Works Manager of ArcelorMittal.
- [6] On 10 May 2010, the Respondent addressed a letter to the Applicants, advising them that the client had instructed it that it did not want them on its premises anymore, and it had been decided to offer them alternative posting at a site in Standerton in Mpumalanga Province with effect from 14 May 2010. On 13 May 2010, the Applicants sent a reply to the Respondent, effectively rejecting the offer, and further contending that they viewed the offer of a transfer to Standerton as punishment.
- [7] At about the same time, the Applicants lodged a complaint with the Department of Labour, and on 13 May 2010, correspondence was sent to the Respondent by the Department in which it was asked to investigate several

complaints lodged against it by its employees pertaining to conditions of service. On 6 June 2010, and in a letter dated 2 June 2010, the Applicants were issued with section 189 (3)¹ notices inviting them for consultations. Following a consultation meeting that took place on 30 July 2010, the Applicants' services were terminated with immediate effect on the same day.

The evidence:

[8] The Respondent's then Operations Manager, Mr. Anton Delport testified as follows;

8.1 At the time of the dismissals, the Respondent had about 125 employees of which 20 were based at ArcelorMittal. Problems arose in November 2009 when the Applicants went to the management of ArcelorMittal and complained about their conditions of service under the employ of the Respondent. ArcelorMittal informed them to raise those issues with their employer.

8.2 The Applicants had then met with the Respondent's management where they had raised their grievances. Management was however unhappy with the fact that the employees had complained to a client about their conditions of employment, and they were advised that disciplinary proceedings were to be instituted against them.

8.3 The Applicants nevertheless again went to one of ArcelorMittal's managers, Moloi and raised the same grievances. They were called by the Respondent to respond to the reason that they again went to a client to complain about their conditions of service when they were told before that they should approach their employer instead.

8.4 When ArcelorMittal in the correspondence of 25 March 2010 advised the Respondent that the Applicants should be removed from site, they were suspended and then offered an alternative posting in Standerton.

¹ Of the Labour relations Act, 66 of 1995 as amended

- 8.5 Delpont had also had discussions with Moloi of the client and asked him to take back the Applicants. Moloi however refused to take them back. ArcelorMittal was the Respondent's only client in the area and the alternative posting was at Eskom site in Standerton. The Applicants nevertheless rejected the offer on the basis that they saw it as punishment, and also that they had families, and could not relocate to Standerton. Delpont however testified that the Applicants had not proposed any alternative. The Applicants had referred an alleged unfair labour practice dispute to the CCMA. That dispute was heard on 7 July 2010 and was dismissed on account of the suspensions having been uplifted on 10 May 2010.
- 8.6 Under cross-examination, Delpont conceded that some of the issues raised in the *'Time to wake up document'* were legitimate concerns. He further conceded that the Respondent had made an undertaking to address some of the grievances raised with the Department of Labour.
- 8.7 Delpont also testified that other than the Standerton alternative, the applicants were offered alternative positions in Bloemfontein, which offer was repeated at the CCMA hearing. He further testified that when he gave the Applicants the letter of 10 May 2010, he had discussed with them alternatives, including arrangements in regards to the transfer, travel and accommodation. When the offer was rejected, the Applicants remained on suspension. He nevertheless conceded that he never asked them for their views in regards to the posting in Standerton.
- 8.8 According to Delpont, the retrenchments were not as a consequence of redundancy, but purely because of allegations of misconduct against the Applicants and their removal from the client's site. In the same vein, he conceded that the dismissals were due to the Applicants' refusal to accept the Standerton post. He further contended that the termination date was agreed upon with the Applicants.

- [9] The evidence of Mr. Malefetsane Khoarane, the Respondent's assistant operations manager was to the effect that the Applicants were retrenched as they had refused the alternative posting to Standerton. This posting entailed 15 days on and 15 days off duty, and the Applicants were to be offered accommodation and transport. He testified that this information was shared with the Applicants in the offices of the Respondent at the client's site. He further testified that the terms of the posting were fully explained to the Applicants and that they had not said anything in response.
- [10] Khoarane was also present in the consultation meeting held on 30 July 2010, and his contention was that the Applicants did not make any proposals after the posts in Standerton were discussed. He further confirmed that he was aware that the client did not want the Applicants back on site even though their names were not mentioned in the letter where a request was made to remove certain security personnel from the client's site.
- [11] Khoarane further gave three reasons why the Applicants were dismissed, viz, the refusal to accept the offer to take positions in Standerton, the fact that the client did not want them, and the Respondent's operational requirements. He further added that when the offer to Standerton was made, the Applicant's response was that they wanted nothing to do with Standerton.
- [12] The Second Applicant, Mr. Ramodibe's evidence was that he disagreed with any contention that the client did not want him on site. He confirmed that he received the letter dated 10 May 2010 from the Respondent wherein the offer to Standerton was made. The letter was received on 11 May 2010 and was delivered to his house by 'Billy', who had not discussed its contents with him. Although the offer was made, no mention was made of travel arrangements or accommodation. He and the First Applicant, Mr. Mmusi had then decided to respond by rejecting the offer as no details were provided.
- [13] On 14 June 2010 they had received a letter informing them of their intended retrenchment due to allegations of misconduct, and they had responded by asking for more details in regard to the allegations. No response was however received. It was only when they had attended a matter at the CCMA that they

became aware of correspondence of 25 March 2010 from the client in which it had complained about security personnel. He denied that any offer was made when they were at the CCMA. He contended that they were never informed that if they accepted the offer there would be transport and accommodation offered. He also testified that Delport never informed them that other employees in Standerton would be retrenched to make way for them. At the consultation of 30 July 2010, the offer of Standerton was not mentioned at all, and they were immediately dismissed after that consultation meeting.

[14] Under cross-examination, Ramodibe conceded that when attending to a dispute at the CCMA, the offer of Standerton was mentioned and they were also advised of transport and accommodation arrangements. He contended that the offer would have been considered. At the consultation meeting of 30 July 2010 they had not said anything as every avenue for discussion was closed after the chairperson of that meeting told them that since the alternative posts were rejected nothing further could be discussed.

[15] Mmusi had sat in court throughout the evidence of Ramodibe and confirmed that the circumstances of their cases were the same. He denied any involvement in the writing of the *"Time to wake up document"*. He also testified that the details in regards to the offer to Standerton were not provided or explained to them in the letter of 11 May 2010. They had also rejected the offer as they viewed it as punishment, and also since it was intended for them to leave by 14 May 2010. He denied having said that he wanted nothing to do with the offer when it was made, and further testified that they had not made any alternative proposals, and would not have done so as they had realized that the Respondent had closed all doors for any proposals.

The submissions and evaluation:

[16] The issue for determination is whether the dismissal of the Applicants was fair. In circumstances such as in this case where it is contended that the dismissals were on account of the employer's operational requirements, in accordance with the provisions of sections 188 (1) and 192 (2) of the LRA, the onus is on the employer to prove that the reason for the dismissal was fair. In

discharging the onus, it is expected of the employer to show that there was a need to retrench, that there was a fair reason to retrench the employees, and that the dismissals were effected in accordance with the requirements of a fair procedure².

- [17] In further summarising the applicable principles where the fairness of a dismissal based on operational requirements is challenged, Tlaletsi JA (as he then was) stated the following in *Super Group Supply Chain Partners*:

“It is trite that an employer is permitted to dismiss an employee for its operational requirements. However, for the employer to do so successfully, it is obliged to have a *bona fide* economic rationale for the dismissal and to comply with the provisions of sections 189 as well as section 189A of the Act where applicable. Section 189 imposes an obligation on the employer to consult the employee or its representative on the matters listed in subsection (2). There is a duty on the employer not only to consult the affected employee(s) but to take appropriate measures on its own initiative to avoid and minimise the effect of the dismissal. The consultation envisaged by the Act is a ‘meaningful joint consensus-seeking process’ in which parties to the process should attempt to reach some agreement on a range of issues that may best avoid the dismissal and where not possible to ameliorate the effects of the dismissal for operational requirements.”³

“An employer should not approach the consultation process with a predisposition to a particular solution but to approach the process with a mind open to persuasion to alternatives that are practical and rational. The employee party or its representative should be given a fair opportunity to suggest ways in which job losses might be avoided or the effects of the dismissal might be ameliorated before the dismissal. There also rests a duty on the employer to provide the employee or its representatives with relevant and sufficient information that would place them in a position to make informed representations and suggestions on the subjects specified for the consultation. It is not fair for an employer to shirk its statutory duty to consult and create an onus on an employee to ensure that he or she chases the employer around to ensure that consultation takes place.”⁴

Substantive fairness:

² *Super Group Supply Chain Partners v Dlamini and Another* (2013) 34 ILJ 108 (LAC) at para 27

³ At para [24]

⁴ At para [25]

[18] The Respondent's main contention was that the Applicants were dismissed based on operational requirements as a direct result of their sole client refusing them access to its site, and further based on the reason that the Applicants had refused to accept alternative positions available in Standerton. It was further submitted that substantive reasons for the dismissal and retrenchment process was sound; that it was not for the Court to question the commercial imperatives that underlie the decision unless an ulterior motive was established, and further that an employer can dismiss employees to ensure its survival.

[19] Submissions made on behalf of the Applicants were to the effect that it was unfair for an employer to dismiss an employee simply because a third party demands so. Reliance in this regard was placed on *Lebowa Platinum Mines Limited v Hill*⁵. The reasoning in this regard is that to allow a third party to insist on a dismissal of an employee would violate the provisions of section 5 (2) of the LRA because it would prevent the employee from exercising the rights under section 189 of the LRA⁶. The Court in *Lebowa Platinum Mines Limited* had further stated that whether the dismissal of an employee would be fair where it is as a result of a demand by a third party would depend on a variety of considerations including that;

- a) The mere fact that a third party demands the dismissal of an employee would not render such dismissal unfair;
- b) The demand for the employee's dismissal must usually enjoy a good and sufficient foundation;
- c) The threat by the third party to impose a sanction must be a real one.
- d) The employer should, therefore, initially assess the reality of the threat;
- e) The employer should, secondly, assess the probable effect of the sanction threatened by the third party;

⁵ (1998) 18 ILJ 1112 (LAC)

⁶ In reference to *Nape v INTCS Corporate Solutions (Pty) Limited* (2010) 31 ILJ 2120

- f) The mere fact that the dismissal of the employee would ensure continued smooth commercial operation is not sufficient to justify termination of employment. Something more is required;
- g) There must be an objectively sound conclusion that dismissal is the only option that is fair to both the employer and the employee;
- h) The employee should make reasonable endeavours to dissuade the party making the demand for the dismissal of the employee from persisting therein;
- i) The employer should properly investigate and consider all the alternatives to the dismissal with a view to determining whether one or more of them constitutes a reasonable alternative to dismissal;
- j) In the process of reaching a determination whether or not there is a reasonable alternative to the dismissal the employer must consult fully and properly with the employee, afford him a proper opportunity to make an input, and properly take his representations into account before arriving at a decision;
- k) It is incumbent on the employer to ensure that the employee is aware that non-acceptance by him of an identified reasonable alternative or alternatives would, or could, result in his dismissal;
- l) In all its deliberations the employer must properly consider the extent of the injustice to the employee that would be occasioned by a dismissal;
- m) Relevant to the consideration of injustice to the employee would be the question whether any objectively blameworthy conduct on his part gave rise to the demand for his dismissal.

[20] Having had regard to all the evidence presented and the submissions made, it is concluded that the dismissal of the Applicants could not have been for a *bona fide* economic rationale, and was accordingly unfair. My conclusions are based on the following;

20.1 An important distinguishing feature in this case is that it was not the Respondent's case that ArcelorMittal had sought the dismissal of the

Applicants. As I understand the facts, it only sought their removal from the site. The first issue is to determine whether indeed the client sought the removal of the Applicants from its site. Reliance in this regard was placed on the client's correspondence of 25 March 2010 wherein complaints were made about alleged 'unbecoming conduct on the part of the Respondent's personnel on site'. The correspondence makes general comments about a letter that was circulated amongst personnel inciting them to rebel against their then Trade Union and Management, and also a meeting that was sought by with the individuals concerned.

- 20.2 It is not known which letter was being referred to, and it can only be assumed that this was in reference to *'Time to wake up document'*. However the correspondence does not mention who the involved individuals are and with whom was a meeting requested, and who had refused to acknowledge the invitation to a meeting as Moloi had alleged. Moloi on behalf of the client makes reference to 'they', and 'them' without mentioning who these individuals were and but for the fact that Rabodibe authored the document, it is not known who were the individuals that the client sought to be removed from its premises.
- 20.3 Delport's contention that Mmusi had co-authored the documents is clearly incorrect as the latter had not placed his signature on it, and his further contentions that Moloi had told him that it was the two Applicants that had made the complaints clearly bordered on inadmissible hearsay.
- 20.4 It is accepted that the Respondent was expected to react in circumstances where its sole client in the area had raised concerns about the conduct of its personnel on site. This response was expected where the conduct complained of posed an operational risk. However, there was a need to verify the allegations in question, and the response needed to be fair and reasonable, and be balanced with the employees' rights to fair labour practices.

20.5 The Respondent's response however was to remove the Applicants based on that correspondence and there is no indication that any attempts were made to verify the allegations against made against the employees, and whether the employees concerned were properly identified. Furthermore, it is clear from the letter that ArcelorMittal had not made any discernable threat should the unidentified individuals not be removed.

20.6 Of even more importance was for the Respondent to afford the Applicants an opportunity to defend themselves against any allegations made against them by the client. It was common cause that the disciplinary enquiries against the Applicants were abandoned, and there is no basis for a conclusion to be made that any form of misconduct on the part of the Applicants was established. It can therefore be concluded that objectively, the Respondent had not established any blameworthy conduct on the part of the Applicants that gave rise to their need to be removed from the client's site.

The alleged refusal to consider alternatives:

[21] Despite concluding that the Applicants were guilty of some form of misconduct without the benefit of a disciplinary enquiry, the Respondent had then embarked on a process of retrenching them. In initiating consultations on 2 June 2010, the Respondent in a letter addressed to the Applicants informed them that as a result of their 'misconduct' the client did not want them on the site and there was therefore a need to retrench them. As correctly pointed out on behalf of the Applicants, no misconduct had been proven at the time as the disciplinary process had been abandoned. The Applicants had sought further information from the Respondent in regards to the need to retrench them. However no response was received in this regard.

[22] The second invitation to consult was issued on 27 July 2010, and the same reasons that the client did not want the Applicants on site were given. The consultation meeting of 30 July 2010 was the one and only that the Respondent had with the Applicants, resulting in their dismissal on the same

date. The Respondent's contention was that the dismissal followed upon the Applicants' refusal to consider the Standerton alternative. It had also submitted that an employer's conduct cannot be seen to be unfair in the event that the employees obstruct or did not wish to engage in a consultation process, and in this case, the Applicants did not intend to be part of the joint consensus seeking consultation process by not making any contributions to it. It further submitted that an employer is under no obligation to persuade an employee to take up alternative employment offered to him.

[23] It is accepted that where employees within the context of a retrenchment exercise refuse to consider reasonable alternatives to a dismissal, the employer cannot be accused of having acted unfairly⁷. It has further been held that there is nothing in law or in fairness, that places an obligation upon an employer who offers an employee alternative employment in order to avoid retrenchment to make an effort to convince the employee to accept the alternative offer⁸. It is further accepted that courts would be reluctant to come to the assistance of employees who refuse reasonable offers of alternative employment even if this entailed relocation to other areas⁹. The *proviso* however in circumstances where the offer involves a relocation, is that the employee should not be expected to be burdened with the costs associated with the relocation.

[24] Central to this dispute is whether the offer to Standerton was made. In line with the principles set out in *Lebowa Platinum Mines Limited*, and to the extent that the Respondent's contention was that the retrenchments were necessitated by the clients' requests to remove the Applicants from its site, the issue is whether if alternatives were offered to the Applicants, there was full and proper consultation with them in regards to those alternatives, and whether they were afforded a proper opportunity to make an input. Furthermore, the issue is whether the Applicants were made fully aware that non-acceptance of the reasonable alternative would or could result in a

⁷ *Freshmark (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and Others* (2003) 24 ILJ 373 (LAC)

⁸ *L & C Steinhilber (Africa) Ltd v Shepherd* (2005) 26 ILJ 2359 (LAC) at para 7

⁹ *SACCAWU & others v Gallo Africa* [2006] 1 BLLR 36 (LC)

dismissal. It is my view that the Respondent was found wanting in this regard as shall be illustrated below.

- [25] The Respondent's contention was that the Applicants were provided with further information on numerous occasions including at the CCMA about the alternative position. Delport's evidence was that the offer was first made on 10 May 2010. The Applicants had conceded having received correspondence in this regard. That correspondence however stated that;

"....Please be advised that in view of the fact that the client has indicated that it does not want you anymore in its premises, as a security officer. Management has resolved to offer you an alternative post at Standerton site with effect from 14 May 2010....."

"Kindly indicate on or before 13 May 2010 if you accept our offer...." (Sic)

- [26] The Applicants' contention was that the letter of 10 May 2010 was simply delivered to their homes when they were on suspension. It was common cause that the letters were delivered to the Applicants by another person. Delport could therefore not have been in a position to explain the contents of the letters to them or the terms and conditions of the posting to Standerton to them.

- [27] It was common cause that the Applicants were initially based in the Vereeniging area, and it could surely not have been reasonable for the Respondent to expect them to make a life changing decision within two days in view of the fact that they had only received the letters on 11 May 2010 and were expected to make a decision on 13 May 2010. Furthermore, such a decision could not have been made in circumstances where the Applicants had not been furnished with sufficient details regarding the posts in Standerton. The offer was clearly vague, and the Applicants could not be blamed for rejecting it and seeing it as punishment.

- [28] The Respondent nevertheless did not provide such further information as requested, and had issued an invitation to consult on 2 June 2010. There is a dispute in regards to the nature of consultations. Delport's contentions that he

had previously discussed the alternative to Standerton prior to 2 June 2010 was denied by the Applicants. Equally, his contentions that a further alternative in Bloemfontein was discussed with them was denied. Despite further contending that the offer to Standerton was on the basis of 15 days on and 15 days off, and also that it came with transportation and accommodation, the Applicants nevertheless contended that these conditions were never discussed with them. Delport had further conceded that it was never mentioned in the letter of 10 May 2010 that the Applicants were to report for duty on 14 May 2010 in order to be transported to Standerton. He had further conceded under cross-examination that he never asked the Applicants of their views in regards to the move to Standerton. He had further conceded that when the offer to Standerton was made, the Applicants were never informed that the incumbents of those positions in Standerton were to be retrenched. Critical to Delport's evidence however was that when the Applicants declined the offer to Standerton they had remained on suspension (in regards to the allegations of misconduct), and further that they were dismissed subsequent to rejecting that offer.

[29] Other than Delport's concessions, Khoarane's evidence in regards to the proposals in regards to the post in Standerton was even more confusing. This was mainly due to his propensity during cross-examination to fail to answer direct questions posed to him, being long-winded and generally evasive even in response to mundane questions. His credibility as a witness was clearly found wanting.

[30] On his version all the details of the offer were discussed with the Applicants at the Respondent's offices at the client's site, and their dismissal was as a result of refusing to accept the offer. This was despite having conceded that they had not reported at work either at the Respondent's premises or at the client's site since their suspension on 26 March 2010. He could not state when these discussions had taken place as they were not documented.

[31] Khoarane had further conceded having delivered the letter of 10 May 2010 to them but could not recall whether he had explained or discussed its contents with them. He further conceded that he had not kept a record of any

discussions held with the Applicants about the offer except in respect of the meeting of 30 July 2010. He had referred to meetings where the offer was previously made but could not recall when those informal meetings were held.

- [32] In the minutes of the meeting held on 30 July 2010, it was recorded that the alternative to Standerton was rejected; that no alternative positions in Vereeniging existed, and further that the posts in Standerton had been filled. Despite what was recorded in the minutes, Khoarane's contentions was that the Applicants were to be posted after LIFO was utilized to make room for them, a fact which the Applicants had not been made aware of. When it was pointed out to him that the offer was not made on 30 July 2010 as the posts did not exist, his response was that they had already rejected the offer in any event. This was notwithstanding his other version that when the offer was repeated on 30 July 2010, the Applicant's response was to say nothing and agree to be retrenched, and in the same breath, had responded by stating that they wanted nothing to do with Standerton.

Conclusions:

- [33] In the light of the above, it should be concluded that the Respondent had not established that there was merit in the allegations of misconduct made against the Applicants by the client, and there was therefore no justifiable reason to remove them from the client's site. The alleged offer of alternative employment in Bloemfontein was never made to the Applicants as alleged by Delpont, whilst the offer to Standerton was not properly and fully discussed with and communicated to the Applicants from 10 May 2010 when it was first made to enable them to make informed decisions or meaningful proposals. Even if the offer was discussed at the level of the CCMA, this could not have been within the course of a proper consultation meeting, and it is trite that conciliation proceedings at the CCMA are without prejudice.
- [34] Any contention that the Applicants had refused to meaningfully participate in any joint consensus seeking process is belied by the fact that they could not have done so without having been furnished with the necessary information in regards to the proposals made. Furthermore, as reflected in the minutes of 30

July 2010, they were not afforded an opportunity to consider any available options as none existed at the time, and in particular, the posts in Standerton had been filled. It is apparent that any suggestion that posts in Standerton could have been made available by invoking LIFO is an afterthought, and the Applicants had not been made aware of any such plans, especially in the one and only consultation meeting held with them.

- [35] It is not sufficient for an employer to allege that an employee failed to make any proposals in circumstances where any proposal made would not have had any effect, and where the employees are in essence faced with a *fait accompli*. The consultation process held on 30 July 2010 was the only formal process held with the Applicants with a view of ostensibly preventing retrenchments. Nevertheless this process was not only flawed but was indeed a sham, and it is apparent that the Respondent had approached that process with a predisposition to a particular solution. Its sole purpose was merely to confirm the termination of the Applicants' services as evident from the immediate termination of their services after that meeting.
- [36] It therefore follows from the above that the Respondent has not discharged the onus of proving that the dismissal of the Applicants was fair. The Applicants are therefore entitled to some relief. The Applicants had sought reinstatement. In the light of this being a primary remedy, there is a need to determine whether it is appropriate in the circumstances of this case. Section 193 (2) of the LRA require the Court to reinstate or re-employ the employee unless circumstances under subsections (a) to (d) militate against such an order. It was submitted on behalf of the Respondent that it would be unable to accommodate the Applicants due to them not being allowed on their sole client's premises in the Vaal area. It has already been concluded that these allegations have not been tested nor proven.
- [37] It is however taken into account that even though Khoarane's evidence had been found to be lacking in credibility, his contention that the Respondent had in July 2014 retrenched 57 employees was never contested. In the light of these considerations, it is determined that compensation would be the appropriate relief. Having regard to the gross nature of the unfairness of

the dismissal, it is further determined that compensation in the amount equal to eight months' salary to each of the Applicants would be just and equitable. Other than this compensation amount, I did not understand it to be seriously disputed that the Applicants are further entitled to outstanding salary in respect of May and June 2010. Further having had regard to considerations of law and fairness, there is no reason why the Applicants should not be entitled to their costs.

Order:

- a) The dismissal of the First and Second Applicants was unfair.
- b) The Respondent is ordered to pay to the First and Second Applicants, compensation in the amount equal to eight (8) months' salary calculated at their level of position and grade as at their date of dismissal.
- c) The Respondent is further ordered to pay to the First and Second Applicants, outstanding salary in respect of the months of May and June 2010.
- d) The Respondent is ordered to pay the Applicants' costs.



Tlhotlhamaje, AJ

Acting Judge of the Labour Court of South Africa

APPEARANCES:

On behalf of the Applicants:

Adv. Nalane

Instructed by:

Cheadle Thompson & Haysom

On behalf of the Third Respondent:

Adv. SU Roeloffs

Instructed by:

De Villiers & Du Plessis Attorneys

LABOUR COURT