



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case no: JS649/13

In the matter between:

AMCU obo JOHN SIBIYA AND 151 OTHERS

Applicant

and

SHANDUKA COAL (PTY) LTD, GRASPAN COLLIERY

Respondent

Heard: 8; 9; 10; 11; 12; 15; 16; 17; 18 & 19 February 2016

Written Heads of Argument filed on 14 March 2016;

4 April 2016 and 11 April 2016

Delivered: 25 April 2017

JUDGMENT

TLHOTLHALEMAJE, J

Introduction

[1] The applicant, AMCU, acting on behalf of its members (the Employees) referred a dispute to this Court in terms of the provisions of sections 186(1)(d) and 191(5)(b) of the Labour Relations Act (the LRA).¹ The reliance on these provisions is curious in that it was common cause that the Employees were dismissed for alleged participation in an unprotected strike and violent conduct. No offer was made by the respondent at any stage to re-employ any other employees dismissed as a consequence of the said allegations, and those that were reinstated had successfully appealed against their initial dismissal. The dispute initially involved 152 former employees. When it came before this Court for trial, the number had been reduced to 60 in accordance with the applicants' amended statement of claim.

[2] The Employees contend that their dismissal by the respondent on allegations that they had embarked on an unprotected strike action was both substantively and procedurally unfair. They seek retrospective reinstatement, or in the alternative, just and equitable compensation. The respondent

¹ Act 66 of 1995, as amended. Section 186(1)(d) provides:

- “(1) “Dismissal” means that—
 . . .
 (d) an employer who dismissed a number of employees for the same or similar reasons has offered to re-employ one or more of them but has refused to re-employ another.”

Section 191(5)(b) provides:

- “(5) If a council or a commissioner has certified that the dispute remains unresolved, or if 30 days or any further period as agreed between the parties have expired since the council or the Commission received the referral and the dispute remains unresolved—
 . . .
 (b) the employee may refer the dispute to the Labour Court for adjudication if the employee has alleged that the reason for dismissal is—
 (i) automatically unfair;
 (ii) based on the employer's operational requirements;
 (iii) the employees participation in a strike that does not comply with the provisions of Chapter IV; or
 (iv) because the employee refused to join, was refused membership of or was expelled from a trade union party to a closed shop agreement.”

opposed the claim. It is further common cause that a similar matter emanating from the same set of facts was referred to this Court by the National Union of Mineworkers acting on behalf of its members under case number JS839/13.

Background

- [3] The respondent carries out various mining operations in Mpumalanga Province. The Employees were previously employed at the respondent's Shanduka Coal (Pty) Ltd Mine (the Mine) until 20 March 2013 when they were dismissed.
- [4] The majority of the Employees involved in this matter were employed in the opencast mining section of the Mine in various capacities, the remainder of the Employees were employed in the Eskom Plant. The respondent operates on a shift system with the opencast mining operations being conducted in two shifts, viz, shift A and shift B. One shift reported at 07h11, the day shift and one shift that reported at 16h30, followed by the night shift.
- [5] The events preceding the dismissals, to the extent that they are common cause, are summarised as:
- 5.1 On 7 March 2013 several employees were instructed to be transported on the back of the respondent's personnel carriers to the working sites. They had raised concerns surrounding the safety of these carriers. The dispute necessitated the involvement of officials from the Mine Health and Safety Inspectorate (the Inspectorate).
- 5.2 As a result of the above incident, several employees were suspended from duty on 10 March 2013 flowing from a refusal to be transported in those carriers. Those suspensions were however uplifted on 12 March 2013, following an agreement between the parties, which had also addressed other outstanding contentious issues pertaining to production targets and bonuses. In terms of the agreement, the use of the carriers was suspended pending investigations by the Inspectorate.

- 5.3 Production bonuses are paid to employees on the 15th of every month upon the achievement of certain set targets. Payments in this regard ranged between R80.00 and R1,400.00. The Employees' contention is that flowing from the above agreement, they had expected payment of production bonuses on 15 March 2013, but this was not to be so. The respondent's position was that a production bonuses could not be paid as the performance targets had been missed by a significant margin, and that the Employees had been so advised.
- 5.4 The incident leading to the dismissal took place from 18 March 2013, when the Employees on shift B voiced their dissatisfaction about the non-payment of bonuses. It was common cause that they had only been paid the safety bonus component.
- 5.5 The Employees on shift B voiced their concerns with the Mine overseer, Mr Johan van Eeden (Van Eeden), on the morning of 18 March 2013 and requested that he arrange a meeting with the General Manager, Mr Mark Cunney (Cunney), during lunch at 12h00 to discuss the matter.
- 5.6 The Employees were requested by the Mining Manager (Jordaan) and the Human Resources Manager, Joubert as per Cunney's request to send a delegation of employees to address their concerns with him. The Employees however refused to nominate and send a delegation, and insisted that they be met and addressed as a group. The meeting did not occur at 12h00. It was postponed to 14h00 and then to 16h30. Eventually, it did not take place.
- 5.7 The Employees on shift B congregated at or near the management office from about 16h30 on 18 March 2013. They were later joined by Employees on shift A as they arrived on site to commence their shift. shift A did not commence work in solidarity with their colleagues.
- 5.8 At about 17h30, the group of employees had moved to the respondent's Hard Park area, where the respondent keeps and stores about R1.6 billion worth of mobile equipment including heavy duty vehicles, trucks, and tippers. The group of employees was then joined

by other Plant employees from different parts of the Mine. The group was predominantly composed of the opencast mining shifts. The group, of about 240 employees, remained in the Hard Park area overnight, having also been joined by those on shift A, that had knocked off at 02h30.

- 5.9 During the period that the Employees stayed in the Hard Park area, they maintained their demand that Cunney should address them. It is common cause that the Employees were not union led and were acting on their own. At that stage the NUM was the recognised majority trade union. AMCU, UASA and Solidarity also had members at the respondent. AMCU however was not formally recognised.
- 5.10 NUM was contacted by the respondent for assistance in resolving the situation, however they were unsuccessful in achieving this. The respondent contended that AMCU, even though not officially recognised, was aware of the situation, *albeit* not formally so advised at that stage.
- 5.11 Communication was established with the Employees gathered at the Hard Park area through a two-way radio system between the respondent's offices and radios installed in the vehicles. Mr Jan Tlou (Tlou), an AMCU member spoke on behalf of the Employees during that communication. After protracted negotiations over the two-way radio, it was agreed that the Employees would put their demands in writing and that Cunney would go to the Hard Park area to accept them.
- 5.12 The South African Police Service (SAPS), comprising of members from the local police station as well as members from the Public Order Policing Unit (POP) had been called to the site and were present for the most of 19 March 2013. Private security personnel employed by the Mine was also present.
- 5.13 Cunney was then accompanied by both SAPS' members and private security when he went to the Hard Park area to receive the demands. The Employees sent a delegation of employees, comprising of both

AMCU and NUM members, to meet with Cunney, and to hand over their handwritten demands.

- 5.14 After handing over the demands the Employees were requested to disperse, and to return to work from 05h30 in the morning of 20 March 2013. The Employees however demanded that Cunney immediately resolve their concerns. It was common cause that some of the issues raised in the demands were a subject matter of a dispute pending before the CCMA.
- 5.15 In the light of the Employees' insistence that their demands be resolved immediately, Cunney left the Hard Park area in the control of Captain Jack Scholtz (Scholtz). The delegation was informed by Captain Scholtz that it had 30 minutes within which to address the Employees and advise them to disperse failing which they would be forcibly removed. The period was subsequently reduced to 15 minutes.
- 5.16 An altercation thereafter ensued between the Employees and members of the SAPS when the deadline was not met. Tear gas, live ammunition and rubber bullets were fired at the Employees. A number of Employees were arrested as a consequence of the incident.
- 5.17 The respondent, upon receipt of a report back from Captain Scholtz decided to close the mine and ceased production. The unrest that had started at the mine site spiralled into the local community during the night of 19 March 2013. Local roads were blockaded and private vehicles linked to the Mine's security were torched. Some of the Employees reported for duty in the morning of 20 March 2013 but were not permitted to enter the Mine premises.
- 5.18 A management decision had further been taken during the night of 19 March 2013 to summarily dismiss the Employees as a result of the incidents since 18 March 2013. The notice of dismissal issued to the Employees dated 20 March 2013 and posted at the Mine entrances read as follows:

“3. This notice serves to confirm that you have been dismissed for participation in unprotected industrial action and subsequent acts of violence; your dismissal is effective as from Wednesday, 20 March 2013.”²

5.19 Other than the notices being placed at entrances, correspondence was also sent to unions advising them of the decision to dismiss. The Employees were afforded a right to appeal. AMCU assisted them in this regard by drafting a standard document outlining the grounds of appeal.

5.20 The Employees at the appeal proceedings requested to be represented by their shop stewards, Tlou or Mr John Sibiya (Sibiya). However, these were not recognized shop stewards and the requests were refused. Management had further declined the request on the basis that both Tlou and Sibiya had also been summarily dismissed with the remainder of the group, and thus were not eligible to represent others.

5.21 The respondent's approach at the hearings was to categorise employees into three distinct groups. The first group of employees was reinstated because there was no evidence that they had participated in the events of 18 to 19 March 2013. The second group was issued with written warnings where the respondent was unable to prove their participation in the events. The third group had their dismissals upheld as their participation in the events could be established.

5.22 The employees falling in the third group were issued with notices confirming their dismissals in the following terms:

“This serves to advise you, following your appeal process which was concluded on [date], that the decision of dismissal has been upheld due to your participation in unprotected industrial action and subsequent acts of violence.”³

² Page 130 of the trial bundle.

³ Page 242 to 246 of the trial bundle.

- [6] AMCU had then referred an unfair dismissal dispute to the CCMA. Following unsuccessful conciliation, the CCMA declined to arbitrate the matter on account of lack of jurisdiction because the dismissals related to the Employees' participation in strike action. The matter was subsequently referred to this Court for adjudication.

Issues for determination and the evidence

- [7] This Court is tasked with deciding whether the dismissals of the Employees were substantively and procedurally unfair, and if not, to determine the appropriate relief. Several witnesses were called upon to testify on both sides. Video material in respect of the events that took place at the Hard Park area was also presented in Court.

- [8] Cunney's evidence regarding the events leading to the dismissals was as follows:

8.1 During October 2012, there was a strike in the form of a go-slow on the Mine related to the payment of production bonuses. The strike ended after the respondent had obtained an interdict from this Court. The issue of production bonus was encompassed in the ongoing wage negotiations and presentations were made on how the bonus scheme was to be applied. The presentations were circulated, and the Employees were also briefed on the scheme by their managers.

8.2 During the meeting on 12 March 2013 with the delegation about the safety concerns surrounding the personnel carriers, the issue of production bonus was again raised by Employees, and Cunney advised them that the payment would only be made in terms of the bonus scheme, and only if production targets were met. He denied under cross examination that the Employees were not, during the month of February 2013, given an update on production targets. He contended that they were made aware that they had not met the production targets.

- 8.3 Cunney further denied that the management had left early at 13h00 on Friday 15 March 2013 to avoid meeting with the Employees from the next shift who would have spread the word about the non-payment of the bonus. He testified that the informal policy was that management usually left early at 15h00 on Fridays, but that the Mine operations continued.
- 8.4 On the morning of 18 March 2013, Cunney was informed that Employees wanted a meeting with him relating to unhappiness surrounding non-payment of production bonuses. He denied that the Employees could have expected to receive both the production and the safety bonus on 15 March 2013 as it had been made very clear to them that they would only get the safety bonus portion.
- 8.5 Cunney could, however, not meet with the Employees during their lunch break between 12h00 and 12h30 as he had a pre-arranged meeting with NUM at another mine. He also could not meet with them at the end of the shift as he had to leave early due to family commitments.
- 8.6 Cunney testified that from the moment that the Employees raised their concerns and sought to meet him, he had requested that a delegation be sent to meet him. This according to him was the standard procedure. He had also informed the Employees that he was willing to return to the Mine after his engagements should the Employees agree to nominate a delegation. He testified that it was not possible to negotiate with the large group of Employees hence the need for the Employees to send a delegation.
- 8.7 Cunney further denied under cross examination that the Employees could not have sent a delegation on the basis of fearing that they could be victimised. He contended that it was standard procedure to have a delegation to meet with management as the Employees had done so in the previous week when other matters like the issue of the safety carriers were raised by them.

- 8.8 After he left the premises, Cunney was in contact with the Mine manager during the night of 18 March 2013, and was advised that the Employees had moved to the Hard Park area. He was concerned with these turn of events as the equipment in the Hard Park area was valued at about R1.6 billion, and loss of or damage to the fleet would have resulted in closure of the mine for a minimum of 6 months.
- 8.9 On 19 March 2013, NUM's officials became involved, and went to the Hard Park area to speak to the Employees. On their return, they advised Cunney that the Employees refused to listen to them, and that the strike had nothing to do with the union and subsequently left. Cunney denied that only NUM was contacted about the situation at the Mine and testified that even though AMCU was not recognised, its official, Mr. Nxumalo was informed of the situation but had failed to respond.
- 8.10 It was pointed out to Cunney that the first formal correspondence sent to AMCU by the respondent was on the 20th and 21st of March 2013, and that it could therefore not have engaged with AMCU earlier as alleged. Cunney nevertheless maintained that the respondent had engaged with the recognised union.
- 8.11 Cunney testified that he had issued an ultimatum to the Employees during discussions over the two-way radio and told them to disperse. He had referred to the transcripts of that conversation which formed part of the trial bundle⁴, and in particular, his conversation with Tlou, wherein he had informed him that the Employees were are not authorised to be in the area at that time as their shift has ended, and implored them to leave and to return the next morning on 20 March 2013. He had informed Tlou that the Employees were also trespassing on Mine property and could face disciplinary action that may lead to their dismissal if they did not vacate the property and return to their normal shift the next day.⁵

⁴ Page 77 to 89.

⁵ At page 88 of the trial bundle.

8.12 At about 15h30 on 19 March 2013, and following an agreement reached between Captain Scholtz of the SAPS and the Employees as represented by a delegation, Cunney agreed to meet the delegation at the Hard Park area to accept a list of their demands. The delegation comprised of five AMCU members and three NUM members. At the time, and out of concern for his safety, he was provided with a bullet proof vest and escorted by mine security as well as SAPS members to meet the delegation. He was presented with a list of handwritten demands⁶ which read as follows:

- “1. Housing Allowance R4500-00 (compared to optimum).
2. Basic salary adjustment (R2000-00 on top of current basic).
3. Bonus.
4. Referring to management brief pertaining bonus payment as it was agreed and signed that it will be paid as normal.
5. Facilitation on bonus by selected task team from employees.
6. Bonus should be standardised, irrespective of our categories.’

N.B. We as employees hereby wish to give notice that we will kindly wait for your response on our current position.” (Sic)

8.13 Having accepted the list of demands, Cunney reiterated to the delegation that Employees should return to work the following morning. To make his point, he further wrote on the list of demands handed to him that:

“employees must desist from their illegal strike, they must leave site peacefully and they must return to their normal shifts commencing 05h30 on Wednesday 20th March 2013.”

8.14 Despite agreement with Captain Scholtz that the Employees would leave the site after the demands were accepted, they nevertheless through their delegation changed their stance, and insisted that Cunney must resolve the demands immediately. Cunney had explained that he could not respond to the demands as they formed part of the wage negotiations that were the subject of a dispute before the CCMA.

⁶ Page 118 of the trial bundle.

- 8.15 The Employees accordingly refused to leave the site until their demands were met. Subsequent attempts made to resolve the matter and to ensure that the Employees left the site proved unsuccessful, and again Cunney issued a written ultimatum to the delegation. Video material presented showed that indeed the delegation had accepted the written ultimatum, read it and returned it to Cunney and refused to take it to the Employees.
- 8.16 Cunney left the Hard Park site as the situation turned volatile and tense. A management meeting and debriefing later occurred at the central office of Shanduka Coal (Pty) Ltd. At a later stage, Captain Scholtz also briefed management about subsequent events that had occurred after the Hard Park area was handed over to him and his team.
- 8.17 Based on the events that had unfolded at the Hard Park area, a decision was then taken by management to dismiss the Employees *en masse*. No disciplinary hearings were held as it was believed that it was within management's rights to dismiss due to exceptional circumstances that prevailed at the time. The decision was also taken irrespective of the ultimatum to return to work on 20 March 2013, because management held the view that it had no other option after the events that took place subsequent to Cunney leaving the Hard Park area.
- 8.18 Cunney's testimony was that the Employee's refusal to leave the Hard Park area as agreed had a big impact on the decision to dismiss them, because they had broken their promise even though management had negotiated with them in good faith.
- 8.19 The dismissal notices were posted on the Mine gates on 20 March 2013, and correspondence to this effect was also sent to the unions and posted to the Employees. The respondent's stance was that everyone in the Hard Park was dismissed as they were all presumed to be involved in the violence.

[9] Captain Scholtz is a member of the SAPS's Public Order Policing (POP) unit with a total of 28 years of service in the SAPS. His testimony is summarised as follows:

- 9.1 He was made aware of the situation unfolding at the Mine on 18 March 2013 and could only attend to it on 19 March 2013 where he had found a commander from the local police station busy with negotiations with the Employees. Upon arrival, he was briefed by management. The POP unit was responsible for making available the video evidence presented at the trial, and was recorded by Warrant Officer Hlatswayo. Not every event that took place was however captured on video due to the limited battery life of the recorder.
- 9.2 Further information received by the SAPS according to Captain Scholtz was that the Employees gathered at the site were in possession of fire arms, which posed a concern for safety. However, no fire arms were ultimately found on the Employees that were searched and/or arrested.
- 9.3 Captain Scholtz spoke to the Employees' delegation and it became clear that they would not leave the Hard Park area until Cunney came down to speak to them. An agreement was reached that Cunney would come to the Hard Park to meet the delegation.
- 9.4 Initially, the group that Captain Scholtz negotiated with agreed to disperse after they had met Cunney. However, the Employees changed their stance and refused to do so. Captain Scholtz then issued an ultimatum through the delegation that the Employees should disperse peacefully failing which they would be forcefully removed, including by use of live ammunition.
- 9.5 The delegation was given 15 minutes to address the group of employees during which period Captain Scholtz briefed the SAPS members. It was put to Captain Scholtz under cross-examination that before the 15-minutes period was up, teargas was fired at the Employees by private security members who had surrounded the group of Employees, and that the Employees had in turn used the front loaders to put sand on it to neutralise it. He maintained that members

of the private security he had seen after arriving had remained with him and his men throughout.

- 9.6 Other Employees then started moving the heavy-duty vehicles on site including front loaders/tippers in a line from towards members of the SAPS, in preparation of a what Captain Scholtz considered to be a 'fight', and started throwing stones at members of the SAPS.
- 9.7 The Employees' defence to their actions was that they had merely utilised the equipment to defend themselves against the effects of teargas as the intention was to scoop up sand and pour it on canisters as they were being shot at. Captain Scholtz's view however was that the Employees used the equipment to advance towards members of SAPS.
- 9.8 Captain Scholtz testified that he briefed the SAPS members to use whatever means necessary, to stop the machines, search and arrest the drivers and push the Employees out of the Mine premises. Teargas canisters were also fired into the moving equipment, and this had deterred the Employees from advancing any further.
- 9.9 After running battles, the Employees were ultimately pushed out of the Mine area and onto the main road outside the Mine. The altercation was over within about 45 minutes of the SAPS taking action. The whole incident according to Captain Scholtz had been very violent, as a result of which he had to send his members for treatment as they were traumatised. A total of 9 Employees were arrested. Prosecution was however not pursued as the SAPS' members were unable to identify the Employees other than by their names. Captain Scholtz confirmed that he had briefed management about the events that took place, but contended that he was not involved in the discussions relating to whether Employees should be dismissed.

[10] Tlou was employed from 5 May 2008 and was a member and secretary of the AMCU branch at the workplace. He was part of the opencast B shift at the

time of his dismissal. The nub of his testimony on behalf of the Employees was as follows:

- 10.1 Employees had expected to be paid the production and safety bonus for the month of February 2013. They had however not been updated about the progress in production for the month of February 2013.
- 10.2 The first time that he and others were informed that the target was not achieved for the month was on 11 March 2013, and it was only then that they were made aware that they would not be receiving the production bonus for the month of February. Tlou was also one of the Employees who were suspended for refusing to use the personnel carriers.
- 10.3 On 18 March 2013, the Employees had requested a meeting with Cunney. Tlou however was not aware that Cunney had requested a delegation of Employees to be sent to him. He contended that even if he was aware of such a request, he would not have agreed to be part of any delegation out of fear that he might be victimised in view of his previous suspension.
- 10.4 He nevertheless conceded under cross-examination that he was not suspended for being part of the delegation but for his refusal to comply with an instruction. He insisted however that his fellow employees were also too afraid to be part of the delegation. This was despite it being common cause that a week prior to the incident, management had met a delegation of Employees to discuss similar issues.
- 10.5 Tlou confirmed that Employees initially gathered at management offices and then moved to the Hard Park area. He contended that Employees were not on strike, but that they were merely waiting for Cunney to come and address them on the issue of non-payment of bonuses. He could not however dispute it when it was put to him that the Employees were aware that the respondent's position was that they were on an illegal strike and that they could face dismissal.
- 10.6 Tlou further confirmed that he was part of the delegation that represented the Employees in the Hard Park area, and had also been

the person who represented them in the two-way radio conversation with Cunney whilst they were in the area.

- 10.7 He conceded that the Employees had not contacted AMCU during the incident, and his contention was that the Employees did not see the need to involve the union at that time. He further confirmed that when Cunney came to the Hard Park area to accept the list of demands, an agreement was reached that they would return to work on 20 March 2013, and that Cunney had advised them that he would not be able to respond immediately to the demands as he needed to meet with other managers. He confirmed that Cunney had also informed them that some of the demands were subject to CCMA proceedings, and needed to be addressed at those proceedings.
- 10.8 Tlou complained that the 15-minute period given to the delegation by Captain Scholtz to address Employees was insufficient. He conceded that the delegation did not however request more time.
- 10.9 He could not dispute it when it was put to him that there had been numerous requests for the Employees to leave the site; that they were warned that they were engaged in an illegal strike; and had refused to heed the warnings. Tlou further conceded that the delegation had informed Cunney that the Employees would not leave the site until their demands were addressed.
- 10.10 Tlou conceded that one of the delegates, Mr Joseph Motswene had at the time that the demands were handed over, told Cunney that: *"We are not leaving, if they want to kill us they can kill us"*⁷ as was captured on video material viewed in Court.
- 10.11 Tlou testified that while giving feedback to the Employees, they noticed security personnel running around the safety beams and coming around the trucks. This caused panic amongst Employees, causing them to climb into trucks or hide behind the trucks as shots and teargas were fired at them.

⁷ Translated into English.

10.12 Employees who were operators had then started the machines and used them to extinguish the tear gas canisters and in order to stop the SAPS coming closer, and also to enable others to flee from the site.

10.13 Tlou further denied that the Employees were armed or that they threw stones at members of SAPS. He blamed the SAPS and private security for initiating the altercation. He testified that the SAPS members and security were standing between the Employees and the entrance of the Hard Park area. The Employees could thus not get out especially after they were shot at. This had necessitated that the Employees flee the site by crossing over the trenches at the other side of the area and towards the main road.

10.14 Tlou had not returned to work on 20 March 2013. He was however informed on that day by a fellow employee that he was included in the list of dismissed employees which was posted at the mine gates.

[11] Mr Kingsly Jonkers' (Jonkers) testimony on behalf of the Employees was that he was also part of the delegation of employees in the Hard Park area. After the delegation had handed over their written demands to Cunney, and further after Captain Scholtz had given them 15 minutes to give feedback and disperse, the period given had hardly expired when members of SAPS surround them, fired tear gas and shot at them, causing them to flee the area.

[12] Jonkers testified that he did not see any of the trucks moving in the Hard Park area and that there was no violence. He denied having participated in an unlawful strike, climbing into any truck, throwing stones or participated in any violence. It was further put to him that during his appeal hearing, his testimony was that he had been forced to join the strikers. He nevertheless refuted that version, contending that he had joined voluntarily and also waited for Cunney. Upon his arrival at the Mine on 20 March 2013 he had found it closed and saw his name on the list of dismissed employees as displayed at the entrance.

- [13] Mr Lindani Khumalo (Khumalo), was employed as an operator in the Eskom Plant of the respondent's operations at the time of his dismissal. Having reported for the night shift on 18 March 2013, he went to the Hard Park area to fetch his machine and found the other Employees who were waiting for Cunney in the area and he joined them.
- [14] Khumalo testified that he was amongst the Employees who were arrested during the altercation in the Hard Park area. He denied having thrown stones or having driven one of the trucks. The criminal case against them was withdrawn due to lack of evidence.
- [15] Mr John Sibiya (Sibiya) was employed as an operator on the opencast B shift on 18 March 2013. He was also an AMCU shop steward and part of the employee delegation in the Hard Park area. Like other Employees, he had expected the payment of the production bonus and only became aware on 11 March 2013 that payments would not be made. There was an expectation that the bonus would be paid because Cunney had undertaken to discuss it with his superiors. Under cross examination however, he conceded that Cunney had advised the delegation that the production bonus would not be paid as targets had not been met.
- [16] Sibiya testified that when Captain Scholtz gave the delegation time to address the Employees, he had an exchange of words with him and told him that 15 minutes was not enough. As they went back to the Employees to give feedback, members of the SAPS and private security started to surround the Employees and fired tear gas at them, causing them to run away in all directions.
- [17] He confirmed that he went into one of the trucks, but his only motive was to "park it". He denied that he saw any employee driving any of the machines as he was busy speaking to the members of SAPS. He further denied that the Employees were violent or had participated in a strike.
- [18] Mr Amon Nxumalo (Nxumalo) was an organiser of AMCU in 2013 and was assigned to the Shanduka Mines. He testified that he had engaged with the

respondent in the past on different matters as an organiser including at the level of the CCMA. He had dealt with Joubert and Stanley as well as another member of HR, Mr Sigago, and had communicated directly with them either telephonically or in writing previously.

- [19] Nxumalo testified that in 2013 AMCU had been making meaningful growth in terms of recruiting members at Shanduka but was not recognised. It only enjoyed limited organisational rights in terms of sections 12, 13, 14 and 15 of the LRA.
- [20] Due to AMCU's growth there was pressure for recognition but the respondent had not made things easy for AMCU because they did not like it. The respondent appeared to have favoured NUM because of the recognition agreement between them, including granting NUM full-time shop stewards' rights.
- [21] Nxumalo testified that he had not been contacted by Joubert or anyone else from the respondent on 18 or 19 March 2013 about the situation at the Mine. He testified further that he had not called Joubert either as he was not aware of the situation until it was publicized in the newspapers.

Evaluation

- (i) *Was there a strike on 18th and 19th March 2013?*
- [22] Central to the determination of this dispute is whether the Employees had embarked on an unprotected strike action.⁸ Their main contention as further advanced in their written heads of argument was that on 18 and 19 March 2013, they never intended to embark on unprotected strike action, and

⁸ Section 213 of the LRA provides that—

““strike” means the partial or complete concerted refusal to work, or the retardation of obstruction of work, by persons who are or have been employed by the same employer or by different employers, for the purpose of remedying a grievance or resolving a dispute in respect of any matter of mutual interest between employer and employee, and every reference to work in this definition includes overtime work, whether it is voluntary or compulsory.”

that they were merely waiting for Cunney to come and address them on the issue of unpaid production bonuses. Furthermore, as per the pre-trial minute,⁹ their contention was that the only time that they had received any indication that their action was unprotected was when they were handed back their demands by Cunney (at the Hard Park area).

[23] It is my view that from the events as summarised above, the actions of the Employees between the afternoon of 18 and 19 March 2013 undoubtedly constitute a strike. My conclusions in this regard are fortified by the following:

23.1 The events preceding 18 March 2013 reveal that on 11 March 2013, and during discussions surrounding the safety of the carriers, the Employees were advised that no production bonus payments would be made.

23.2 On 12 March 2013, the issue of the production bonus came up again during discussions surrounding the suspension of other employees emanating from the concerns in regard to the safety of the carriers. In terms of an agreement¹⁰ reached between the parties at the time, it was recorded that *"Production targets will be communicated to all employees every Thursday after the weekly survey report has been issued"*.

23.3 The Employees' contention that they were not briefed on production targets is without merit, in that as at 11 March 2013, and on their own version they knew that payments would not be made and that could only have implied that targets were not met. Their contention therefore that their understanding from that agreement was that Cunney would have further discussions over the matter with Van den Berg, and that the bonuses would thereafter be paid is equally disingenuous.

23.4 Despite their knowledge that no payments would be made, as at 15 March 2013 (Friday), they were still expecting payment and could not secure a meeting with management. On Monday of 18 March 2013,

⁹ Paragraph 20.3.1.

¹⁰ Page 74 of the bundle.

the Employees sought to confront Cunney about the non-payment of the bonus as early as in the daily morning meeting.

- 23.5 It is common cause that the Employees did not secure a meeting with Cunney on 18 March 2018. I have no reason to doubt that Cunney, upon hearing that the Employees wanted to meet him, had requested that they sent a delegation rather than being met as a group. This, in my view, made sense as a meeting with a large group of employees, and who were later in the afternoon joined by the afternoon shift, would not have been fruitful in any event.
- 23.6 The Employees' contention that they were scared that they would be victimised if they formed part of any delegation to meet Cunney is equally without merit. They had previously agreed to nominate a delegation regarding other issues discussed with management previously especially on 12 March 2014. There was no evidence to suggest that anyone of them had been victimised as they had alleged, and Tlou's suspension in regard to the events relating to the safety of carriers had more to do with his conduct than being part of a delegation. The Employees' contention therefore that they were scared that they may be victimised if they formed part of a delegation as requested by Cunney is mere red-herring, and their refusal in that regard was clearly unreasonable.
- 23.7 What is also significant is that on 18 March 2013, the Employees on the morning shift did not leave the premises after their shift as expected, with their contention being that they were waiting for Cunney. They were then joined by the afternoon shift employees and the Employees had then moved to the Hard Park area at about 17h00, where they were also joined by their plant colleagues.
- 23.8 It is apparent from these events that those employees that had gathered at the Hard Park area had not reported for their normal duties or had not left after their shifts, and had clearly plotted on that course of action with a view of conveying and persisting with their demands.

There can therefore no basis not to conclude that their actions were intentional nor planned.

- 23.9 There can further be no doubt that the Employees' actions were in pursuance of demands which they wanted management to address. Their actions fell squarely within the definition of a strike. A demand to meet with Cunney over non-payment of bonuses had precipitated other demands as demonstrated by the list handed to Cunney at the Hard Park area. They had refused to report for their normal duties as instructed by Cunney over the two-way communication with Tlou. They had occupied the Hard Park area and in the process, seized control of the respondent's machinery, thus interrupting and/or retarding its normal operations.
- 23.10 The Employees were advised that their actions were unlawful, but they had nevertheless persisted, even after initially making undertakings to Captain Scholtz that they would disperse after handing in their demands.
- 23.11 There is further no merit in the contention that the Employees had acted reasonably or followed proper procedures in trying to meet with Cunney. It is acknowledged that Cunney, Van Eeden, Jordaan and Joubert had created an expectation that the Employees might be met to address the issue of the bonus on 18 March 2013, but as at the evening of that day, it was apparent that any meeting would not take place. Rather than going home or reporting for their shifts, they had persisted with their unlawful conduct.
- 23.12 There is further no merit in the contention that the Employees could only have realized that their actions were unprotected on 19 March 2013 after they had handed over their demands. The unprotected nature of a strike is not only determined by when Employees were informed that their actions were unprotected, but also by the fact that they had not, in pursuing their demands, complied with procedural requirements in the LRA.

23.13 If the Employees were indeed reasonable in their actions, nothing prevented them from first, nominating a delegation as requested by Cunney, and second, to wait until the next day to meet Cunney. The fact that an expectation was created that Cunney might meet them on 18 March 2013 did not in my view justify the Employees' subsequent conduct of occupying the Hard Park area,¹¹ nor can it be said that the failure of Cunney to meet them in effect provoked the strike. The excuse that the Employees were not on strike and were simply waiting for Cunney to address them is therefore contrived and without merit, and cannot be justification for their conduct.

23.14 The Employees were hell-bent from the evening of 18 March 2013 to pursue their demands. They were not deterred from their course of action despite being repeatedly informed that the bonus would not be paid as targets were not met, and that the issues were in any event, before the CCMA for determination. They were prepared in pursuance of their demands, to disrupt the normal operations of the respondent. As Mr Joseph Motswene, one of the delegates had unequivocally put it to Cunney and others, the Employees were not deterred, and were not going to leave the site even if they were killed.

(ii) *Where the dismissals substantively fair?*

[24] The right to strike is constitutionally guaranteed in section 23(2)(c) of the Constitution of the Republic.¹² Section 64(1) of the LRA further reinforces that

¹¹ See *National Union of Metalworkers of South Africa (NUMSA) and Others v CBI Electric African Cables* [2014] 1 BLLR 31 (LAC); (2014) 35 ILJ 642 (LAC) at para 38 where it was held that:

“ . . . [T]he employees' response, I do not, however, agree that the means they employed justified the end they sought to achieve. Abandoning their work stations and leaving the respondent's premises was not a conduct, which in all the circumstances of the case, could be said to have been a reasonable means by which to respond to the respondent failure to comply with its contractual obligations.”

¹² Section 23(2)(c) provides:

“(2) Every worker has the right—

. . .

(c) to strike.”

right, with the proviso that certain processes and procedures contemplated in subsections 1 (a) and (b) are followed to ensure that the strike action embarked upon is protected. Section 65 equally places limitations on the right to strike.¹³

[25] In *Performing Arts Council of the Transvaal v Paper Printing Wood and Allied Workers Union and Others*,¹⁴ it was held that an illegal strike constitutes serious and unacceptable misconduct by workers. The consequences of

¹³ Section 65 is entitled “*Limitations on right to strike or recourse to lock-out.*” and states:

- “(1) No person may take part in a strike or a lock-out or in any conduct in contemplation or furtherance of a strike or a lock-out if—
 - (a) that person is bound by a collective agreement that prohibits a strike or lock-out in respect of the issue in dispute;
 - (b) that person is bound by an agreement that requires the issue in dispute to be referred to arbitration;
 - (c) the issue in dispute is one that a party has the right to refer to arbitration or to the Labour Court in terms of this Act or any other employment law;
 - (d) that person is engaged in—
 - (i) an essential service; or
 - (ii) a maintenance service.
- (2) (a) Despite section 65 (1) (c), a person may take part in a strike or a lock-out or in any conduct in contemplation or in furtherance of a strike or lock-out if the issue in dispute is about any matter dealt with in sections 12 to 15.
- (b) If the registered trade union has given notice of the proposed strike in terms of section 64 (1) in respect of an issue in dispute referred to in paragraph (a), it may not exercise the right to refer the dispute to arbitration in terms of section 21 for a period of 12 months from the date of the notice.
- (3) Subject to a collective agreement, no person may take part in a strike or a lock-out or in any conduct in contemplation or furtherance of a strike or lock-out—
 - (a) if that person is bound by—
 - (i) any arbitration award or collective agreement that regulates the issue in dispute; or
 - (ii) any determination made in terms of section 44 by the Minister that regulates the issue in dispute; or
 - (b) any determination made in terms of Chapter Eight of the Basic Conditions of Employment Act and that regulates the issue in dispute, during the first year of that determination.”

¹⁴ 1994 (2) SA 204 (A) at 216E.

embarking on an unprotected strike action may be dire as explained by the Constitutional Court in *National Lotteries Board*¹⁵ as follows:

“Employees have a constitutional right to strike. The [Labour Relations] Act regulates the manner in which that right can be exercised. There is no obligation on employees to use the regulated dispute-resolution procedures under the Act, but there are consequences if they do not. If they start by using these regulated procedures, but then abandon them and simply stop working, they are not committing a crime. They are, in that sense, still acting “lawfully”. But that “lawfulness” does not afford them the benefits of a protected strike under the Act. By failing to adhere to the Act the strike becomes unprotected, and an employer will be in a position to take disciplinary steps against them for not coming to work. . . .”¹⁶

[26] Flowing from the conclusions reached elsewhere in this judgment, it is apparent that the strike action embarked upon by the Employees was unprotected. The legal principles applicable in dismissals emanating from unprotected strike action are largely trite and further codified in the LRA¹⁷ and Schedule 8: Code of Good Practice: Dismissal. Item 6(1) of the Code provides that:

“Dismissal and industrial action.

- (1) Participation in a strike that does not comply with the provisions of Chapter IV is misconduct. However, like any other act of misconduct, it does not always deserve dismissal. The substantive fairness of dismissal in the circumstances must be determined in the light of the facts of the case, including—
 - (a) the seriousness of the contravention of this Act;
 - (b) attempts are made to comply with this Act; and

¹⁵ *National Union of Public Service & Allied Workers obo Mani and Others v National Lotteries Board* 2014 (3) SA 544 (CC); 2014 (6) BCLR 663 (CC); [2014] 7 BLLR 621 (CC); (2014) 35 ILJ 1885 (CC).

¹⁶ *Id* at para 69.

¹⁷ Section 68 is headed “*Strike or lock-out not in compliance with this Act*” and subsection (5) and provides as follows:

“Participation in a strike that does not comply with the provisions of this Chapter, or conduct in contemplation or in furtherance of that strike, may constitute a fair reason for dismissal. In determining whether or not the dismissal is fair, the Code of Good Practice Dismissal in Schedule 8 must be taken into account.”

- (c) whether or not the strike was in response to unjustified conduct by the employer.”

[27] In *NUMSA and Others v CBI Electric African Cables*,¹⁸ the Labour Appeal Court held that from a reading of the provisions of section 68(5) of the LRA, a judge called upon to determine the fairness of a dismissal flowing from participation in an unprotected strike should consider in addition to Item 6 of the Code, the provisions of Item 7,¹⁹ which regulates dismissals for misconduct more generally, and requires a determination of *inter alia*, whether the dismissal was an inappropriate sanction or not. The Court further held that:

“In my view the determination of substantive fairness of the strike-related dismissal must take place in two stages, first under item 6 when the strike related enquiry takes place and secondly, under item 7 when the nature of the rule which an employee is alleged to have contravened, is considered. It follows that a strike-related dismissal which passes muster under item 6 may nevertheless fail to pass substantive fairness requirements under item 7. This is so because the illegality of the strike is not “a magic wand which when raised renders the dismissal of strikers fair” (*National Union of Mineworkers of SA v VRN Steel* (1991) 12 ILJ 577 (LAC)). The employer still bears the onus to prove that the dismissal is fair.”²⁰

And further:

¹⁸ Above n 11 at para 28.

¹⁹ Item 7 provides that:

“Guidelines in cases of dismissal for misconduct.—

Any person who is determining whether dismissal for misconduct is unfair should consider –

- a) Whether or not the employee contravened a rule or standard regulating conduct in, or of relevance to, the workplace; and
- b) If a rule or standard was contravened, whether or not –
 - i. the rule was a valid or reasonable rule or standard;
 - ii. the employee was aware, or could reasonably be expected to have been aware, of the rule or standard;
 - iii. the rule or standard has been consistently applied by the employer; and
 - iv. dismissal was an appropriate sanction for the contravention of the rule or standard.”

²⁰ *NUMSA and Others v CBI Electric African Cables* above n 11 at para 29.

“In his work Grogan expresses the view that item 6 of the Code is not, and does not purport to be, exhaustive or rigid but merely identifies in general terms some factors that should be taken into account in evaluating the fairness of a strike dismissal. He therefore opines that in determining substantive fairness regard should also be had to other factors including the duration of the strike, the harm caused by the strike, the legitimacy of the strikers’ demands, the timing of the strike, the conduct of the strikers and the parity principle. I agree with this view as the consideration of the further factors ensures that the enquiry that is conducted to determine the fairness of the strike-related dismissal is much broader and is not confined to the consideration of factors set out in item 6 of the Code.”²¹ (Footnote omitted.)

(iii) *Non-compliance with the provisions of section 64 of the LRA*

- [28] The conduct of the Employees between 18 and 19 March 2013 constituted a strike. It was further common cause that no attempt was made whatsoever to comply with the provisions of section 64 of the LRA, and the strike was therefore unprotected. Even more important in this case is that some or most of the issues that led to the strike as demonstrated with the list of demands handed to Cunney were at the time, a subject of dispute before the CCMA. The Employees, despite being reminded of that fact by Cunney, however appeared to have either forgotten or abandoned the process before the CCMA, and had accordingly taken matters in their own hands.
- [29] It has also been concluded in this judgment that the actions of the Employees could not have been justified by any conduct on the part of the respondent, more particularly since the Employees’ main demand from 18 March 2013 was that they wanted to meet Cunney about the issue of non-payment of bonuses. Even though there was no need for Cunney to meet the Employees over the issue, he had eventually met them at the Hard Park area and accepted a list of their demands.

²¹ Id at para 30.

[30] Before meeting Cunney, the Employees had agreed that they would disperse after their demands were handed over, but had subsequently changed their minds, and insisted on their demands being addressed immediately. Combined with the fact that the non-compliance with the provisions of section 64 (1) of the LRA was serious, these factors should weigh heavily against the Employees as explained in *Mzeku and Others v Volkswagen SA (Pty) Ltd and Others*²² in the following terms:

“Once there is no acceptable explanation for the [workers’] conduct, then it has to be accepted that the [workers] were guilty of unacceptable conduct which was a serious breach of their contracts of employment . . . The only way in which the [workers’] dismissal can justifiably be said to be substantively unfair is if it can be said that dismissal was not an appropriate sanction.”²³

(iv) *Other considerations*

[31] Flowing from a conclusion that there was a strike, which was unprotected and unprovoked, it is further acknowledged that the strike action took place over two days involving various shifts. What precipitated the strike action was a demand to see Cunney in respect of the non-payment of production bonuses, and that demand, in view of it having been made clear to the Employees prior to 15 March 2013 cannot by all accounts be deemed to have been legitimate.

[32] Even if there might have been an inclination to see any legitimacy in the demand, the fact that other demands were added as demonstrated with the list handed over to Cunney at the Hard Park area is indicative of the fact the Employees nevertheless had a different agenda. They had persisted with their unlawful and reasonable conduct by occupying the Hard Park area, and were aware that their demands were a subject of a dispute that was pending at the CCMA. In essence therefore, since they had not met the production targets, and were made aware of that fact prior to 15 March 2013, they were not entitled to any production bonus.

²² [2001] 8 BLLR 857 (LAC).

²³ *Id* at para 17.

- [33] Central to a determination of the fairness of the dismissal is also the conduct of the Employees whilst on strike. Prior to Cunney meeting them at the Hard Park area, they had undertaken to leave the site after their demands were accepted. They were on no less than three occasions instructed to leave the site and had refused to do so.
- [34] Other than the fact that by embarking on unprotected strike action the Employees were in breach of their contractual obligations, they had effectively retarded and/or obstructed the respondent's normal operations in view of their literal hijacking of its equipment in the Hard Park area, and placed such valuable equipment at risk. During skirmishes with members of the SAPS and private security in the Hard Park area, the Employees had also unlawfully and without authorisation (as they were on strike), utilised the equipment to charge towards members of the Police and private security.
- [35] Sibiya's version, that by getting into one of the vehicle during the skirmishes he merely meant to "park" it, borders on the ludicrous and is rejected. It is further improbable that any of the applicants' witnesses had not seen any of these vehicles being moved around. The vehicles had been parked all along and there was no need to interfere with them. All that the Employees could muster through the evidence of Sibiya, Jonker, Tlou and Khumalo was to make bare denials in regards to the violence that took place at the Hard Park area. Overall, I am satisfied that the Employees' conduct after their demands were handed over to Cunney and upon being issued with an ultimatum to leave the site was sufficiently gross to justify a serious sanction.

(v) *Inconsistent application of discipline?*

- [36] It was submitted on behalf of the Employees that the respondent was not consistent in its application of discipline in view of a variety of factors including that it failed to act against employees who had participated in an unprotected strike action (go-slow) between 15 and 19 October 2012 over the same issue.

- [37] The respondent however took issue with these submissions, pointing out that the issue of alleged inconsistency was not pleaded in the statement of claim, and nor was it raised in the signed pre-trial minute. Having had regard to the pleadings and the pre-trial minutes, the only arguments raised pertaining to “inconsistency” was in respect of the issuing of the ultimatums. In this regard, the Employees’ argument was that only NUM was sent an ultimatum prior to the dismissals. The issue of ultimatums will be dealt with shortly.
- [38] I am inclined to agree with the submissions made on behalf of the respondent that the issue of inconsistent application of discipline was not specifically raised in the statement of case or the pre-trial minute. To the extent that the allegations of inconsistency were raised in respect of the respondent’s response to the go-slow of October 2012 and the latter strike, in *Southern Sun Hotel Interests (Pty) Ltd v CCMA & Others*,²⁴ this Court having alluded to the fact that courts have over the years recognized a distinction between “historical” and “contemporaneous” inconsistency, held that inconsistency claims more particularly within the context of similarity of circumstances will fail, where the employer is able to differentiate between employees who committed similar transgressions on the basis of, *inter alia*, differences in personal circumstances, the severity of the misconduct or on the basis of other material factor.
- [39] Flowing from the above and other authorities, it is accepted that for a claim of inconsistent application of discipline to succeed, the Employees must demonstrate that they were treated differently from others; or that the same form of misconduct in the past was treated differently, and that the differentiation could not be justified. The burden is on the Employees to present at least *prima facie* evidence of inconsistency to which the employer must respond to.
- [40] In the absence of evidence to demonstrate that the employer had acted capriciously or was motivated by some irrelevant or unfair considerations in

²⁴ [2009] ZALC 68; (2010) 31 ILJ 452 (LC); [2009] 11 BLLR 1128 (LC) at para 10.

instituting disciplinary measures or handing out sanction between employees in the same or similar circumstances, it should be concluded that the employer's decision to differentiate was fair. As it was stated in *SACCAWU and Others v Irvin and Johnson (Pty) Ltd*, consistency is not a rule unto itself, but rather an element of fairness that must be determined in the circumstances of each case.²⁵

- [41] In this case, it was correctly pointed out on behalf of the respondent that the go-slow embarked upon by the Employees in October 2012 was clearly distinguishable from the events of 18 and 19 March 2013. The go-slow may have been over a longer period, but the latter action was a full-blown strike over a short duration, which had retarded the respondent's operations over a period of four shifts as a result of the occupation of the Hard Park area. Furthermore, the fact that the same issues leading to the go-slow precipitated the latter strike should weigh heavily against the Employees. The fact that the Employees got away without any form of sanction as a result of the go-slow did not entitle them to the same leniency after the strike action. The facts and circumstances of the two industrial actions were clearly distinguishable, and there is no merit in the contention that the respondent had acted inconsistently.

(vi) *Procedural fairness of the dismissal*

- [42] The provisions of Item 6(2) of the Code are to be considered in determining the procedural fairness of a dismissal related to unprotected strike action. These provide that:

"Prior to dismissal the employer should, at the earliest opportunity, contact a trade union official to discuss the course of action it intends to adopt. The employer should issue an ultimatum in clear and unambiguous terms that should state what is required of the employees and what sanction will be imposed if they do not comply with the ultimatum. The employees should be allowed sufficient time to reflect on the ultimatum and respond to it, either by complying with it or rejecting it. If the employer

²⁵ (1999) 20 ILJ 2302 (LAC) at 2313 C-J.

cannot reasonably be expected to extend these steps to the employees in question, the employer may dispense with them.”

(vii) *Was AMCU contacted between 18 and 19 March 2013?*

- [43] It was the respondent's case that on 19 March 2013, it had sought the involvement of NUM in resolving the strike. After NUM officials spoke to the Employees, the feedback received was that the strike had nothing to do with the union; that the Employees would not listen to the officials, and were intent on continuing with their action.
- [44] The Employees however involved in this matter were members of AMCU, and on Tlou's version, they had not seen the need to contact the union at that stage. It was further common cause that AMCU was not officially recognized. I however did not understand the respondent's case to be that it had not dealt with AMCU in the past on a variety of other matters concerning its members even if it was not recognized. The respondent's contention that AMCU was aware of the events as they took place, hence it was not contacted is not a reasonable excuse for not contacting it. This approach is equally baffling in view of the seriousness of the events as they unfolded.
- [45] The respondent's approach, and to its detriment, appeared to be that AMCU was not recognized and therefore there was no need to formally engage with it. However, the mere fact that AMCU was contacted after the dismissals were effected can only be a realisation by the respondent that it should have been engaged earlier. AMCU may not have been recognised. Its influence and presence at the mine could not however have been ignored.
- [46] In attempting to demonstrate that AMCU was contacted prior to the dismissal, the respondent had called upon Daniel Joubert to testify on alleged telephonic contact made with Nxumalo. Joubert had been sitting in Court during Cunney's evidence, and it was contended on behalf of the respondent that there was no initial intention to call him as a witness until the issue of whether AMCU was contacted became in dispute.

- [47] Joubert had made reference to his telephone account itemised bill²⁶ which was meant to demonstrate that AMCU was contacted. The itemised bill however did not reflect any incoming calls. The only calls made to Nxumalo were reflected as having taken place between 11 and 12 March 2013, and at the time that the suspension of some of the Employees arising out of the issue in respect of the safety of the carriers was being discussed. Joubert alleged that he nevertheless had a telephonic discussion with Nxumalo between 18 and 19 March 2013. A copy of the itemised bill however does not support his evidence, and he had confirmed under cross-examination that he had not made any calls to Nxumalo. There was no explanation as to the reason his itemised bill had not reflected the alleged incoming call from Nxumalo.
- [48] Even worrisome is that the itemised bill was belatedly discovered during these proceedings, and after Cunney had led his evidence. The only probable conclusion to be drawn is that neither Joubert nor anyone from the respondent had called Nxumalo between 18 and 19 March 2013. This was in line with the respondent's approach that it would not engage with AMCU at any formal level as it was not recognised, and this was not only foolhardy given the seriousness of the situation, but also to its detriment.
- [49] Contrary to the respondent's contentions, there was no duty on Nxumalo to present evidence of his telephonic records to prove that he had indeed called anyone from the respondent during the period in question. Joubert had alleged that Nxumalo was contacted, and the duty was upon him to substantiate that allegation. To this end, it is concluded that the respondent had failed to contact AMCU as required in terms of the provisions of Item 6(2) of the Code, and in my view, it was irrelevant whether it was recognised or not.

(viii) *The Ultimatum*

²⁶ Page 442 – 448 of the bundle.

[50] In *Mndebele & Others v Xstrata South Africa (Pty) Ltd t/a Xstrata Alloys (Rustenburg Plant)*,²⁷ Murphy AJA addressed the nature and purpose of ultimatums as follows:

“The Code does not suggest how the ultimatum should be distributed, or require that it must be in writing. Furthermore, it states that the issuing of an ultimatum is not an invariable requirement. The purpose of an ultimatum is not to elicit any information or explanations from the employees but to give them an opportunity to reflect on their conduct, digest issues and, if need be, seek advice before making the decision whether to heed the ultimatum or not. The ultimatum must be issued with the sole purpose of enticing the employees to return to work, and should in clear terms warn the employees of the folly of their conduct and that should they not desist from their conduct they face dismissal. Because an ultimatum is akin to a final warning, the purpose of which is to provide for a cooling-off period before a final decision to dismiss is taken, the *audi* rule must be observed both before an ultimatum is issued and after it has expired. In each instance, the hearing may be collective in nature and need not be formal.”²⁸ (Footnotes omitted.)

[51] The respondent’s version was that an ultimatum was sent to NUM, the recognised union. Again, this does not assist the respondent’s case as it was aware that some of the employees, were AMCU members. As to the reason why the respondent had not contacted AMCU or sent the ultimatum to it can only be answered within the context of its approach that AMCU was not a recognised union and there was therefore no need to engage with it.

[52] The respondent’s contention therefore that it had complied with the requirements of the Code by sending an ultimatum to the NUM, and that it was not required to send one to all the other trade unions at the workplace fails to appreciate that AMCU was a major role player despite it not being recognised. It is inconceivable that the respondent would have expected that any communication sent to NUM including the ultimatum would have been shared with AMCU, as it was common cause that the two unions were rivals.

²⁷ (2016) 37 ILJ 2610 (LAC).

²⁸ *Id* at para 27.

- [53] The respondent's further contention that the complaint about the ultimatum only being sent to NUM was merely about form and not substance is equally misplaced. At the stage when NUM was sent the ultimatum, its officials had already spoken to its members, and the latter had in clear terms refused to heed the call to desist from their actions. The Employees on the other hand had not at that stage seen the need to call AMCU to intervene, and it further appears that they too had no confidence in AMCU at the time to assist them in resolving the impasse.
- [54] Notwithstanding the Employees' distrust of their unions, any reasonable employer under the circumstances would still have gone beyond issues of the status of AMCU and the Employees' distrust or attitude, and sent the ultimatum to it. The chief reason however why AMCU was not contacted was that it was not recognized, and not that its members distrusted it. respondent therefore refused to go beyond the formalities of recognition to resolve the impasse.
- [55] The fact that the ultimatum was not sent to AMCU does not however imply that the Employees were not issued with same. It cannot be doubted that a further ultimatum was issued directly to the Employees at 11h40 on 19 March 2013 via a two-way conversation between Cunney and Tlou in the morning of 19 March 2013 whilst the Employees were gathered at the Hard Park Area. The communication between Cunney and Tlou that lasted over an hour²⁹ was initiated at the instance of the Employees and as transcribed, it reveals that:
- 1) Tlou at the commencement of the conversation had requested that an interpreter be made available, so that other Employees listening through other vehicles in the area over the two-way radio could follow the discussion. One Daniel from the HR department was called to interpret the conversation between Tlou and Cunney.
 - 2) Cunney had again requested the Employees to nominate a delegation.

²⁹ Pages 76 to 110 of the bundle.

- 3) Cunney informed the Employees that they had embarked on an illegal strike since 17h00 the previous day; that there was a court interdict in place that was obtained in November 2012; and that the Employees must leave the site failing which consequences may follow. Cunney had further informed the Employees that they must return to work immediately, failing which they may face disciplinary action which could lead to a dismissal.
- 4) Cunney had further implored the Employees to think hard about what they were doing, as the company could enforce the court interdict as from 20 March 2013 if they did not go back to work. He further informed them that those employees not on shift should leave the site and return the next day as they were also trespassing on mine property, and that they could face disciplinary action which could lead to a dismissal.
- 5) Tlou's response was that the Employees were not on a strike, and that all they wanted was to talk to the general manager since the previous day. The Employees were adamant that they would not leave the site, and that Cunney should come to the area and address them.

[56] From the above, it was conceded on behalf of the Employees³⁰ that the respondent had indeed issued an ultimatum over the two-way radio conversation, and that the ultimatum gave them an opportunity to reflect on their conduct seek.

[57] It was however argued on behalf of the Employees that the ultimatum was unclear, and that it did not give the Employees an opportunity to reflect on it and their conduct, as all that it said was that they should desist from the strike immediately and to return to work. It was further contended that the ultimatum as read over the radio did not satisfy the requirements of a fair and reasonable ultimatum, specifically since after it was issued, Cunney had agreed to meet the Employees at the Hard Park Area.

³⁰ Paragraphs 55 – 56 of the written heads of argument.

- [58] It was submitted on behalf of the Employees that once Cunney had met them at the Hard Park area and they had handed over their demands, and further since an agreement was reached that the Employees had until 20 March 2013 to return to work, this meant that the ultimatum only expired on 20 March 2013, and thus the respondent had waived its rights to dismiss the employees until the expiry of the ultimatum. Thus, the argument went, since the Employees were dismissed at 19h30 on 19 March 2013, the dismissal took effect prior to the expiry of the ultimatum, and was accordingly contrary to the provisions of the LRA and the Code.
- [59] The respondent's approach was that since the Employees had all heard the conversation between Tlou and Cunney, they had all received the ultimatum which was issued at about 11h40, and they therefore had sufficient time to reflect on it. The ultimatum was further repeated when Cunney received the list of the demands, and the delegation was also handed a copy of the ultimatum which they had read and refused to accept. It was also submitted that the fact that Cunney had also written on the list of demands that the Employees must desist from their illegal strike and leave the site peacefully and return to work the next day constituted a further ultimatum, and that they failed to heed it.
- [60] I accept that an ultimatum was issued over the two-way radio conversation between Cunney and Tlou, which I have no reason to doubt was understood by all Employees as it was interpreted. I further accept that another ultimatum was issued by Cunney at the time that he accepted a list of demands by advising the Employees to desist from their actions, and further that a copy of the ultimatum was handed over to the delegates which they had read as evident from the video material and had refused to accept it.
- [61] The Employees' contentions that the ultimatum was unclear on the basis that they were simply informed that they should desist from the strike immediately and to return to work is without merit. In line with what Murphy AJA had stated in *Mndebele & Others v Xstrata South Africa (Pty) Ltd t/a Xstrata Alloys*

(*Rustenburg Plant*), the mere fact that the ultimatum was issued, and the Employees were told on no less than three occasions that they should desist from their actions and return to work failing which consequences would follow was more than sufficient.

- [62] I am satisfied that based on the number of occasions the Employees were advised to desist from their actions and leave the site, they had an opportunity to reflect on their conduct and to make informed decisions. The intention of the ultimatums was to entice them to return to work. They were warned of the consequences and had failed to desist from their conduct. They had however made it clear that they would not leave the site until their demands were addressed. Accordingly, there is no substance in the contention that the ultimatum was vague or that it had not given them time to reflect.

(ix) *The Appeal hearings*

- [63] The Employees' main contention was that the respondent dismissed them in the evening of 19 March 2013 when in accordance with the last ultimatum, they were supposed to return to work for the first shift the next morning. On Cunney's version, the decision to dismiss was based on the events after the Employees had handed over their demands, and in particular, the violence that had ensued thereafter as per Captain Scholtz's feedback. Cunney's further reasoning was that the decision was taken after video material of the events as they had unfolded was viewed. Accordingly, the decision to dismissed was based on the evidence that:

- a) Despite repeated requests by Captain Scholtz, the Employees refused to leave the site and desist from their actions;
- b) They threw stones at members of SAPS;
- c) They used large heavy duty vehicles on site to charge against members of SAPS and were thus confrontational.

- [64] It was submitted on behalf of the respondent that since the Employees had insisted with their conduct and were not willing to peacefully leave the site,

they were prepared for confrontation, and it was that conduct and stance that ultimately led to the violent confrontation and their dismissal.

- [65] Van Niekerk J in *Food And Allied Workers Union and Others v Fouries' Poultry Farm (Pty) Ltd t/a Chubby Chick*³¹ held that the *audi alteram partem* principle applies in the case of a dismissal for participation in an unprotected strike, irrespective of whether there has been a failure to comply with an ultimatum. He further stated that:

“In *Modise v & others v Steve's Spar Blackheath* (2000) 21 ILJ 519 (LAC), the LAC held that an ultimatum and a hearing serve two separate and distinct purposes. A hearing serves the purpose ultimately of affording employees or a union acting on their behalf the opportunity of stating why they should not be dismissed, notwithstanding their failure to comply with an ultimatum. In short, the requirements of procedural fairness relevant to dismissal for participation in an unprotected strike are not discharged only by the issuing of an ultimatum. When an ultimatum has gone unheeded, an employer must initiate further steps to afford the right to be heard in a manner that is appropriate to the circumstances.”³²

- [66] In *Steve's Spar Blackheath*, it was further held that the court must not test the hearing against the requirement of a formal hearing, and that a mere letter to the unions requesting them to state their side of the matter can be sufficient.³³ The Appellate Division in *Slagment (Pty) Ltd v Building, Construction and Allied Workers' Union and Others*³⁴ reinforced the applicable principles as follows:

“It is within the province of the employer who holds a disciplinary enquiry to determine its form and the procedure to be adopted, provided always that they must be fair. Fairness requires, inter alia, that the employee should be given an opportunity of meeting the case against him: the employer must obey the injunction *audi alteram partem*.”

³¹ (JS163/12) [2014] ZALCJHB 335 at para 37.

³² *Id.*

³³ *Modise & others v Steve's Spar Blackheath* (2000) 21 ILJ 519 (LAC) at para 96. (*Steve's Spar Blackheath*)

³⁴ 1995 (1) SA 742 (A); [1994] 12 BLLR 1 (A) at 11.

- [67] The SCA in *Old Mutual Life Assurance Co SA Ltd v Gumbi*,³⁵ referencing *Reckitt & Colman (SA) (Pty) Ltd v Chemical Workers Industrial Union & Others*³⁶ further held that the right to a pre-dismissal hearing imposes upon employers nothing more than the obligation to afford employees the opportunity of being heard before employment is terminated by means of a dismissal. Should the employee fail to take the opportunity offered, in a case where he or she ought to have, the employer's decision to dismiss cannot be challenged based on procedural unfairness.³⁷
- [68] In this case, in view of the Employees' recalcitrance, and continued occupation of the Hard Park area after repeated requests to desist from their conduct, and the events that followed after the handing over of demands, I am satisfied that the respondent was within its rights to effect the dismissals at that point without the benefit of a prior hearing. This was so notwithstanding the fact that they were to return to work on the morning of 20 March 2013.
- [69] The respondent's contention was that the strike action had turned violent after the last ultimatum was issued, and this was based on the feedback from Captain Scholtz and after viewing video material of the events at the site. To the extent that the Employees had persisted with their unlawful conduct and sought to be confrontational with members of the SAPS as demonstrated by the use of heavy duty vehicles on site, that conduct on its own in my view entitled the respondent to take action, even prior to the expiry of the ultimatum. The expiry of the ultimatum cannot be looked at in isolation from supervening events that takes place after it was issued. If those events call for action from the employer prior to the expiry, such action should be taken.
- [70] The Employees' contention that they were not given sufficient time to reflect on the feedback after their demands were submitted and accepted by Cunney cannot by any accounts be justification for their subsequent conduct. If indeed

³⁵ [2007] 8 BLLR 699 (SCA) at para 8.

³⁶ (1991) 12 ILJ 806 (LAC) at 813 C-D.

³⁷ Above n 26.

they were prepared to leave the site even after Captain Scholtz' ultimatum of 15 minutes was too short, they should have left the site rather than engaging in confrontation with the members of SAPS in the manner that they did. But as per their stance, they were not prepared to leave the site until their demands were met.

- [71] The Employees' contention was further that the respondent breached its own disciplinary code when dismissing the Employees without a disciplinary hearing. The starting point is that in terms of the provisions of Item 6(2) of the Code, an employer, if it cannot be reasonably expected to extent the steps provided therein to the employees may dispense of them. In essence, the provisions of this Code do not envisage a formal disciplinary hearing prior to the dismissal of employees participating in unprotected industrial action.
- [72] A second consideration is that in line with the principles set out in *Steve's Spar Blackheath*, the form that the hearing, if any may take, will depend on the circumstances. In some cases, a formal hearing might be required whereas in other circumstances it will suffice to send a letter to the strikers or the union inviting them to make representations. The ultimate test is whether the strikers were given a fair hearing.
- [73] In this case, I have accepted that AMCU was not contacted prior to the dismissal, and the only contact made with it was after the dismissals had been effected. Be that as it may be, other than this criticism, the circumstances of this case were such that in view of what had been already stated in regard to the Employees' belligerence and refusal to leave the site after repeated requests, the respondent was entitled to take action.
- [74] To the extent that it might still be argued that the dismissals were procedurally unfair, it was further common cause that the Employees were afforded an opportunity to appeal against the dismissals which they did. A meeting was subsequently held with AMCU and other unions and it had made representations in regard to those dismissals. AMCU subsequently assisted

the Employees in preparation for their appeals, and drafted the standard grounds of appeal as follows:

- *“As part of the employees who mandated worker committee to take up our bonus problem with management on the **18th March 2013**.*
 - *I was hoping that our bonus problem would be amicably resolved with management as we were waiting for the General Manager Mr Mark Cunney to address us on this matter.*
 - *What transpired on the 19th March 2013 was undesired and unforeseen. I honestly do not praise or applaud same.*
 - *If I was afforded a disciplinary hearing opportunity before my dismissal, I could have explained my side of the story.*
- I pray to be reinstated back to my original position of work.”³⁸*

[75] Evidence in regard to what had transpired during those hearings was presented by Gasper of the respondent. Her testimony pertained to her involvement as the HR Development Manager, which was limited largely to sending out communication to dismissed employees and the unions. She confirmed that notwithstanding the respondent's position in regard to the status of AMCU, a decision was ultimately taken by Van der Bank to have a meeting with all unions involved in the mine, to appraise them on the events. Representatives from AMCU, UASA and Solidarity had attended that meeting.

[76] Stanley Joubert, the respondent's then Human Resources Officer and currently Human Resources Manager was involved in the appeal process as assistant to chairpersons in an advisory capacity. He testified that three independent chairpersons were utilised to conduct the appeal hearings. He was referred at length to transcripts of the appeal proceedings of selected Employees³⁹ as well as forms completed during the appeals.⁴⁰

[77] The parties present during the appeals included the chairperson, a representative from HR, a complainant on behalf of the respondent as well as

³⁸ Page 144 to 239 of the trial bundle.

³⁹ Presented in a separate bundle of transcripts from page 1 to page 131 thereof.

⁴⁰ Contained in the main trial bundle.

the relevant employee. The Employees however were not allowed to be represented by Tlou and Sibiya, as none of them were no longer employed by the respondent. Furthermore, the Employees were permitted to be represented by persons not employed by the respondent.

- [78] Joubert further testified that Employees were identified through video clips. He nevertheless conceded that the identification was not sufficient to prove participation in the strike or violent conduct, but testified that it was part of the evidence presented. His impression of the Employees during the appeal proceedings was that they showed no remorse, and just wanted the proceedings to be over. They had simply handed in their appeal documents as drafted by AMCU and refused to add anything further despite being asked by chairpersons of the appeal hearing.
- [79] He testified that the Employees had been afforded an opportunity to state their case to the chairperson but had elected not to. It was put to Joubert that the chairperson had an obligation to satisfy himself that the relevant employee was aware of the appeal process and that he should have explained it at the start of a hearing. He conceded that the chairpersons did not necessarily explain the proceedings to Employees at the start of the proceedings, but held the view that this was done during the proceedings. He further contended that the Employees must have been briefed by AMCU of those proceedings.
- [80] Joubert further conceded that in some cases, the only evidence relied upon was where the employee could be identified on video material, which sometimes showed Employees dancing with sticks in their hands. He however contended that the dismissals were fair because the Employees had chosen to be at the strike. He also denied that the chairpersons of the appeal merely carried out their mandate to confirm the dismissals.
- [81] The Employees, through the evidence of Tlou, confirmed that they had not advanced further grounds of appeal other than those contained in the document prepared by AMCU. Tlou nevertheless as further supported by the

evidence of Jonkers, and Khumalo, contended that the appeal proceedings were procedurally flawed in that:

- a) They were denied representation of their choice; the opportunity to call witnesses; to hand in further documents; to plead in mitigation, and that the appeal process was not explained to them.
- b) The chairpersons had pre-determined the matter as they had merely confirmed their dismissal without applying their minds to the evidence;
- c) No evidence of violence was led, and video clips shown to them to confirm their alleged participation in violent conduct only indicated that they were merely standing or dancing amongst a group of other employees, and that they could not be properly identified in the video material presented.

[82] The appeal proceedings were the Employees' last opportunity to state reasons why their dismissals should not be confirmed. The general reasons as prepared on their behalf and presented at the proceedings pertain to issues which have been dealt with in this judgment. Thus, the issue of the bonus could not have been regarded as a legitimate basis of their conduct in that they had been told that it would not be paid on 15 March 2013. Their contention that they were simply waiting for Cunney to address them on the matter was found to be without merit. Their further contention that "*What transpired on the 19th March 2013 was undesired and unforeseen*" is disingenuous in that they had intentionally planned not to leave the workplace after their shifts on 18 March 2013, had not reported for their shifts (the 16h30 shift), and had consciously taken a decision to occupy the Hard Park area. They were on numerous occasions requested to leave the site and told of the consequences if they did not, and had nevertheless persisted with their unlawful conduct. The consequences of their conduct were clearly foreseen.

[83] I do however accept that the appeal proceedings were not perfect, particularly regarding the argument that the Employees were not allowed representation of their choice. The respondent in my view acted unreasonably in denying the Employees the right to be represented by Tlou and Sibiya. The fact that they

were already dismissed was not justification to prevent them from representing other Employees in that since AMCU could not represent them, the two were at the fore front of the strike and were better placed to plead the Employees' case. The reliance by the respondent on its disciplinary code and procedure in denying the Employees the representation of their choice was misplaced, as it is trite that a disciplinary code and procedure merely serves as a guideline, and exceptions could have been made where warranted.

[84] I further accept on the evidence of Joubert that that the identification of employees through video material was not sufficient to prove acts of violence. Such evidence had in some instances merely demonstrated participation in the strike action. Be that as it may, even if acts of violence in certain circumstances could not be attributed to certain individuals, the fact remains that the Employees were part of the group that had voluntarily participated in the strike and occupied the Hard Park area, which conduct on its own constituted serious misconduct.

[85] I have further no reason to doubt Joubert's evidence that the Employees showed no remorse, and simply handed in their appeal documents as drafted by AMCU. They had refused to add anything further despite being asked by chairpersons of the appeal hearing and in my view, this should be held against them. In circumstances where an employee, notwithstanding the fact that he or she had been denied representation of his or her choice, is afforded an opportunity motivate why a dismissal should not be upheld and chose not to take that opportunity, that employee cannot complain of procedural fairness. This is particularly so in circumstances where that dismissal arose from unprotected strike action.

[86] The complaint raised that the chairpersons played the role of company and chairperson, does not in my view take the Employees' case any further in view of the principle that the appeal hearings did not need to take a formal nature. What is important is that the Employees were indeed afforded an opportunity to state their case, and had merely relied on the grounds of appeal as drafted by AMCU on their behalf without adding anything further.

[87] The Employees can further not complain about not being afforded an opportunity to plead in mitigation. Given the serious consequences that flowed from their conduct, it is not sufficient in my view, for the Employees to simply allege that “*I honestly do not praise or applaud same*”. If this was an attempt at showing contrition on their part, it was indeed lame, and did not appear to be genuine. I therefore have no reason to reject Joubert’s evidence that the Employees showed no contrition for their actions.

Conclusions

[88] To summarise then, it is accepted that in determining the appropriateness of a dismissal as a sanction for the striking workers’ conduct, consideration must be given to whether a less severe form of discipline would have been more appropriate, as dismissal is the most severe sanction available.⁴¹ In this case, I am satisfied that the sanction of dismissal was appropriate when regards is had to the following factors which are worth repeating.

[89] The Employees had embarked on a strike which was unprotected. They failed to comply with any strike procedures as contained in the LRA, and that failure was serious, particularly since some of their demands were a subject of dispute before the CCMA. Furthermore, the conduct of the Employees was not in response to any unjustified conduct on the part of the respondent.

[90] The Employees’ conduct of insisting on seeing Cunney; of not leaving the workplace after the shift on 18 March 2013, or of not commencing their shifts at 16h30 as expected; and further of deliberately occupying the Hard Park area, and thus retarding the respondent’s operations was not a reasonable means by which to advance their demands. The Employees had all voluntarily participated in the conduct in question. They were afforded an opportunity to desist from their conduct and to leave the site, but had persisted with their unlawful conduct. Other less disruptive and non-belligerent ways to resolve

⁴¹ See the minority judgment of Mhlantla J in *TAWUSA obo MW Ngedle and 93 Others v Unitrans Fuel and Chemical (Pty)Ltd* (2016) 37 ILJ 2485 (CC) at para 50.

the issues were available to them. In the light of these considerations, it is concluded that the respondent has discharged the onus placed on it to prove that the dismissals were substantively fair.

- [91] In regard to the procedural fairness of the dismissal, I had not found any merit on most of the submissions made on behalf of the Employees other than that the respondent had not complied with the provisions of Item 6(2) of the Code as it failed to contact AMCU prior to the dismissal, let alone furnish it with an ultimatum. I am further satisfied that the Respondent acted procedurally unfairly by not allowing the Employees to be represented by representatives of their choice during the appeal proceedings.
- [92] Given the procedural irregularities as identified, it follows that the only remedy available to the Employees is that of compensation. Any amount of compensation to be awarded for a dismissal that is only procedurally unfair is the subject of a discretion to be exercised by the Court. Section 194(1) of the LRA requires that any award of compensation must be just and equitable taking into account all relevant facts and circumstances, but which may not be more than the equivalent of 12 months calculated at the employees' rate of remuneration on the date of dismissal.
- [93] In this case, factors to be taken into account include those already mentioned in paragraph [89] and [90] above, including the nature of the strike, its duration, the impact on the respondent's operations, the Employees' belligerence and the events that followed after the demands were handed over.
- [94] It is further taken into account that but for the fact that AMCU was not contacted prior to the dismissals and the fact that the Employees were denied an opportunity of representation by representatives of their choice in the appeal proceedings, the appeal proceedings overall complied with the *audi alteram partem* principle. In the light of all these considerations, it is concluded that compensation equivalent to two months' salary is just and equitable in the circumstances.

[95] Regarding the issue of costs, it is taken into account that the Employees were partially successful with their claim, and the requirements of law and fairness in these circumstances militates against any cost order.

Order

[96] In the premises, the following order is made:

1. The dismissal of the 60 individual applicants as identified in Annexure 'A' to the applicants' amended statement of claim was substantively fair, but procedurally unfair.
2. The respondent is ordered to pay to each of the individual applicants as identified in (1) above, compensation in the amount equivalent to two (2) months' salary calculated at the rate of their remuneration as at the date of their dismissal.
3. There is no order as to costs.

E Tlhotlhemaje
Judge of the Labour Court of South Africa

Appearances:

On behalf of the Applicants:

Adv. C Malan

Instructed by:

Larry Dave Inc

On behalf of the Respondent:

Adv. T Manchu

Instructed by:

Hogan Lovells (South Africa) Inc

LABOUR COURT