



Of interest to other judges

THE LABOUR COURT OF SOUTH AFRICA,

HELD AT JOHANNESBURG

Case no: JS 1085/12

In the matter between:

RAIJA HALIM

Applicant

and

**DEPARTMENT OF COOPERATIVE
GOVERNANCE & TRADITIONAL
AFFAIRS OF SOUTH AFRICA**

First Respondent

**MINISTER FOR COOPERATIVE
GOVERNANCE & TRADITIONAL
AFFAIRS OF SOUTH AFRICA**

Second Respondent

Heard: 16-17 October 2017

Delivered: 15 August 2018

Summary: (Claim for alleged underpayment arising from oral agreement to remunerate the applicant at a rate in excess of existing salary scale maximum and contrary to written contracts of employment– existence of supervening oral agreement not proven – authority of Minister to approve a higher remuneration package not proven)

JUDGMENT

LAGRANGE J

Background

- [1] In September 2009 the applicant, Ms R Halim (Halim), successfully applied for the job of a Project Coordinator in the employment of the second respondent ('the ministry'). She considered the salary offered as insufficient because it was less than what she was earning currently at the South African Broadcasting Corporation ('the SABC') she requested a salary that would be an improvement on that. In short, her case was that an oral agreement was reached that she would be paid R 516, 138. 00 per annum, exclusive of cell phone and travel allowances. After she was employed, the written offer was reduced to R 489, 183. 00 per annum (or R 40,765.25 per month). Halim agreed that this amount included a so-called role-play allowance, and that if the role-play allowance was excluded, her gross remuneration was R 445, 803. 00.
- [2] According to Halim, the discrepancy between what she claimed had been agreed and what was confirmed in writing led to discussions and a further oral agreement was concluded that at the end of her probation period, she would be paid the difference between the reduced offer and what she was originally offered. At the end of her probation, she entered into a fixed term contract, although her salary was not adjusted in terms of the agreements she claimed had been reached with the ministry. Halim pursued her claim to rectify the salary in terms of the oral agreements, without success, and ultimately referred her claim to court. The amount Halim is claiming is R180, 763.75, which is the difference between what she received and what she believed she ought to have been paid for the period October 2009 to March 2012.
- [3] The respondents initially raised a special plea of prescription, but this was abandoned during the course of the trial. Although the respondents ultimately did not dispute that an oral offer was made to Halim, they contend that the Minister had no authority to authorise payment of the

salary at the level claimed by Halim. Accordingly, any such oral agreement to the contrary was invalid, *inter alia*, because it would have entailed the Minister exceeding his powers under the Public Service Regulations.

- [4] Alternatively, if the oral agreement was not invalid, the respondents dispute the terms of such an oral agreement. In particular, it was emphasised in the respondents' opening statement at the trial that, they dispute that the basic remuneration package Halim claimed had been agreed upon in an email dated 18 September 2009 was in fact R 489, 183.00. They contend that the all-inclusive remuneration package was in fact R 445, 803.00 and that she was nevertheless paid an additional role-playing allowance of R 43, 380. 00 which was not part of her general remuneration package, and that this was implemented with effect from 5 October 2009.
- [5] The applicant testified on her own behalf and also called Ms P Ezeolisa ('Ezeolisa'), the former Chief of staff of the Ministry as a witness. The respondents called Ms L Bothma ('Bothma') and Mr J Hector ('Hector'), Deputy Director: Appointments and Service Benefits, both employed in the Department, as witnesses.

Common cause facts and material evidence

Common cause facts

- [6] In terms of the pre-trial minute and facts accepted as common cause by the respondent, the following was common cause:
- 6.1 On 17 August 2009 a one-year contract post with the possibility of an extension was advertised by the first respondent for a Project Coordinator at salary level 11 with an all-inclusive remuneration package of R 344, 052 per annum.
 - 6.2 After being interviewed on 20 August 2009, Halim was recommended as the most suitable candidate for the post. Two other candidates were also interviewed.
 - 6.3 On 2 September 2009 the minister approved the submission to appoint her to the advertised post.

- 6.4 On 10 September 2009 a submission was made by the Department to the office of the Minister that a “buy offer” be made to the applicant to “counter against” the remuneration she received from the S ABC.
- 6.5 At the time, her remuneration package at the SABC was R 388, 306.00 per annum.
- 6.6 Halim accepted the ‘buy offer’ of R 405,276.00 all-inclusive remuneration being the maximum notch of salary level 11. In addition, she accepted a retrospective salary adjustment of 10% in accordance with the increase awarded in the public service effective on 1 July 2009, bringing the annual inclusive value of her remuneration to R 445, 803.00. This was approximately a third more than what she earned at the SABC. Halim claimed that, at that the time the buy offer was made, she did not understand that the salary of R 405,000 was the maximum notch on salary level 11.
- 6.7 Botha confirmed that the ‘buy offer’ had to be approved by the Minister who had the necessary delegated authority, after all other management levels had recommended the proposal. According to Botha, the Minister had authority to approve an appointment at a higher notch but beyond that Halim would have had to be appointed to a higher post. Botha herself could not have signed off on a package beyond the maximum notch on level 11 for the existing post because she had to operate on strict guidelines in such matters.
- 6.8 On 27 September 2010, after her probation was completed, the applicant entered into a fixed term contract of employment running from 5 October 2010 to 31 October 2012, and linked to the term of office of the Minister. The contract document provided *inter alia*:
- 6.8.1 that it was entered into between the government, as represented by the Minister’s Special Adviser, Mr Nhlakanipho Nkontwana (‘Nkontwana’), and Halim;
- 6.8.2 that she would serve in the ministry, and

6.8.3 that her all-inclusive remuneration on assuming duties would be on the maximum notch of salary level 11, would be R 445,803.00 per annum.

6.9 Sometime in June 2011, Halim lodged a grievance concerning issues of a salary adjustment, unilateral change to terms and conditions of her service and the alleged breach of her contract of employment. The critical passage in the letter containing her grievance, reads:

On the assumption of duty, it was agreed with the then CoS¹ and the HR Manager (Ms Liesel Botha) that after my probationary period (1 year) the department would look at an increase in my salary (an explanation given at the time was that the requested offer suggested by the Special Adviser was not in line with the salary level or policy, but after the probationary period it would enable them to give the said increased with the renewal of my contract). Despite the general appreciation of my work and the said agreement, I have not received any salary increment to date other than the annual public service salary increment, yet petrol has gone up several times in 2010 and this would include all other living expenses. I travel daily to and from Johannesburg and this is quite taxing on my pocket, yet my dedication to my office and the ministry drives my motivation to be here.

I was hired for my ability and experience in Administrative/Office Management/Project Coordination, and, I believe that I have fulfilled this role and certain expectations in the department in the last 18 months. I also believe that an increase in my salary based on the above information be considered. Notwithstanding the fact that I am aware that party work should not be mentioned, the reality is that I do a lot about and cannot claim petrol or overtime for same.

(emphasis added)

6.10 On 9 February 2012, Halim received a very belated letter from the Nkontwana to the effect that the grievance had been referred to the Executive Manager: Human Capital Management for a response.

¹ Ezeolisa.

The narrative emerging from the evidence

- [7] Halim maintained that after she was advised that she was the successful candidate she liaised with Eziolisa and was made an offer of a remuneration package of R 516, 000.00 per annum, exclusive of a cell phone allowance, transport and other items. When she received the email from Eziolisa confirming that she should start work on 1 September 2009, she understood it would be on the basis agreed with Eziolisa. Botha testified that the initial recommendation following the interviews was to employ Halim at the minimum salary scale for the job level which was level 11, being the rank of a Deputy Director. The Minister signed off on the initial recommendation.
- [8] Botha also testified that, after Halim had requested that the initial offer be improved they had checked that the offer was less than what she was earning at the SABC, and she was advised that they could offer her the maximum scale on the salary level 11. These scales apply throughout the public service. Halim was placed on the 12th notch of level 11. As mentioned, Halim claimed she was unaware that this was the maximum salary at salary level 11.
- [9] On 16 September 2009, by which stage Halim had actually commenced working in the ministry, and was still trying to sort out her notice arrangements with the SABC, she queried the salary package as it had been conveyed to her by Botha. She did so in the following terms, which she conveyed to Hector in an email:

I am still confused with the salary per annum. Liesel gave me the breakdown as follows:

R 405 276 + 10% increase that was given to all staff in July 09? + R 3615 x 12 other allowance and the total per annum would be R 489 183.60. I will then receive a cell phone allowance at this level of approximately R 1000 – R 1500.

This is perplexing because the first amount mentioned to me by Petronella² was R 472 758 per annum + R 3615 x 12 other allowance totalling R 516 138.00.

² Ezeolisa

I am not sure why this letter of appointment is now reflecting R 405 276 and also does not stipulate things like other allowance, cell phone, housing et cetera. I would also appreciate if you can include a starting date as per my earlier email sent to you.

I really am sorry to sound ungrateful, but I really need to get this right so that I do not disadvantage myself in any way.

[10] Hector responded the same day stating:

I have taken concerns and discuss the matter with Liesel. She has confirmed that she discussed the following with you:

all-inclusive package R 405 276 (Maximum of the salary scale) plus

R 40 527.60 (10% increase which will be affected from 1 July 2009. Not implemented yet, waiting for dpsa)

$R\ 3165.00 \times 12 = R\ 43\ 380$

As will be noted, the total cost of package to employer will be approximately R 489 183.60 per annum.

As explained to you via Liesel the 10% will be implemented as soon as the public service salary system has been updated with the 1 July 2009 general salary adjustment.

The above does not include the benefits you will qualify for in terms of cell phone costs and subsistence and travel when you travel for official purposes, since the above package is an all-inclusive package, you do not qualify for additional benefits such as housing, medical aid and thirteenth cheque. The Chief of Staff Ms Petronella Ezeolisa will be able to provide you with more information.

...

[11] Hector confirmed that a second letter confirming the 'buy offer' of R 489, 183.60 was issued to Halim after getting submissions from the Minister. Halim claimed that the offer of a package of R 516, 138.00 had been made to her telephonically by Eziolisa. After she queried the written offer of R 489 183.60, Eziolisa explained that there were budget constraints. In her testimony, Eziolisa confirmed that Halim had agreed to come in at a package of R 489 183.60 but claimed that had been reduced

because of budgetary constraints, though the Minister agreed that after her probation the difference would be back paid, and she conveyed this to Halim and to the HR department. However, Botha said she was unaware of such agreement, and she could only process approved packages. She did concede she had seen Halim's email of 16 September 2009, in which she mentioned the oral offer made by Ezolisa of R516, 138.00, but noted that Hector's replying email only confirmed the offer of R 489 183. It should be mentioned that this figure included the public service increase and an allowance of R3, 615.00 per month, which sometimes seem to have been referred to as the 'role-playing' allowance.

- [12] On 18 September 2009, Halim sent an email to the Nkontwana setting out the different offers and the packages mentioned in the two contracts she received. In that email, she confirmed that she spoke to Ezolisa telephonically on 17 September and Ezolisa had confirmed the first offer. Halim concluded her email by saying "I sent her an SMS in respect of the 1st offer and she said she will get back to me." In the email Halim described the first offer in the following terms:

1st offer from Petronella - R 472 758 per annum + R 3615 allowance per month and a choice of medical aids.

- [13] On the same day, Ezolisa had responded in emphatic terms, and copied her response to Botha and Nkontwana:

Please note the following:

In our first discussions, I indicated that we would certainly beat your current package. We then had discussions with HR and a decision was taken to advertise the post at the correct entry level. We did so. After the interviews, we submitted a by-offer [*sic*] to accommodate our commitment to 'beat' your current projected package. This has been done. The total package offered is R 489 183 (your projected package was R 383 306)

This excludes the cell phone and 3G card allowances which are R 2800 and R280 per month.

For official trips, you are able to claim for fuel/milage.

Medical aid-as part of MMS, you're able to structure your package to include medical aid.

If you have any other questions, please email so that I can respond.

Within an hour of receiving the clarification from Eziolisa, Halim sent an email in reply in which she stated that she “accept(ed) the offer as is” (emphasis added). Under re-examination Halim sought to qualify this acceptance by pointing out that immediately after that, she stated in the same e-mail of 18 September: “Once I am there I am sure we can work out the finer details of the medical aid and so on”. Eziolisa confirmed that what was set out in her own email above was exactly what was offered and what the Minister had agreed to, but mentioned that it *excluded* the role-play allowance even though the offer was recorded as an “all-inclusive” one. When it was put to her that the figure of R 489 183.00 included the roll-playing allowance, she said that, as far as she could remember the allowance was additional to that amount and Botha never contradicted the Minister on this.

- [14] Halim claims that her understanding was that, the monthly allowance of R 3 615.00 which ‘was given to people working in the ministry’ should not have been included in the R 489 183 sum. However, she agreed under cross-examination that this amount which was the role-playing allowance (of R3, 615.00 per month) did form part of this amount. In passing, it is noted that if the ‘role-playing allowance’ was added this would have raised the overall remuneration package to approximately R 532, 560.00. Later in her testimony Halim reverted to the version that the allowance was a package paid to everyone in the ministry. Eziolisa reaffirmed this interpretation of the allowance saying that all staff in the ministry received it because they were on contract and did not qualify for the same benefits as departmental staff.
- [15] Halim said she believed that when her probation ended she would move up to the R 516, 138.00 package. Nonetheless, she signed the fixed term contract in September 2010 stipulating a total remuneration package of R 445,803.00 per annum. She claimed she did so because she needed the income and the job, but claimed that she explained that it did not conform with what was agreed in 2009 and she had understood that there would be a reversion to what was promised then. Under cross-examination, when it was pointed out to her that clause 6.5 of the contract contains a

comprehensive variation clause, she said she signed the contract in good faith notwithstanding the fact that she did not agree with the remuneration package stipulated. With hindsight she would have varied the written contract. The variation clause in her contract reads:

6.5 Variation

6.5.1 The Contract constitutes the whole of the agreement between the parties to this Contract relating to the subject matter of the Contract, and save as otherwise provided, no amendment, alteration, addition or variation of any right, term or condition of this Contract will be of any force or effect unless reduced to writing and signed by the parties to this Contract.

6.5.2 The parties agree that there are no other conditions, warranties or representations, whether oral or written and whether expressed or implied or otherwise, save those contained in this Contract, the Act the Regulations and other relevant legislation.

- [16] She claims she took steps to rectify matters by speaking to Eziolisa, Botha, Hector, Mr T van Staden ('Van Staden') in the Human Resources Department, the Director-General, Mr E Afrika, and Nkontwana. Her efforts ultimately yielded some fruit in the form of an extraordinary letter written by the Honourable late Minister, Mr S Shiceka himself, dated 29 October 2010 in which he stated:

Dear Ms Halim

RE: REQUEST FOR SALARY ADJUSTMENT

I, Minister Sicelo Shiceka, MP confirmed that I approved your salary on 15 September 2009 on the scale of R 489 183 per annum, excluding cell phone allowance and any other incentives for persons employed in the ministry. It must be noted that this offer was made after discussions with the Chief of Staff at the time, Ms Hector. The initial salary offered to you could not be met due to budget constraints in that specific financial year (2009). It was agreed that the offer be made to you for R 489 183 per annum and that your salary be increased to the next notch after the compulsory one (1) year probationary period.

After signing the second contract, I requested my Special Adviser, Mr Nhlakanipho Nkontwana to address your appeal to revisit your salary as

per the negotiations in October 2009. I am surprised that this matter is still outstanding. I will request that this matter be resolved urgently and that the Department honours its agreement with yourself. This should be effective from 1 October 2010, and should include any/all increases effected.

- [17] Eziolisa confirmed that this letter set out the terms on which Halim had been employed. According to her, the Minister appointed all staff in the ministry and the ministry relied on the HR department for guidance which ought to have advised the ministry if the Minister had done anything irregular. They were in constant contact with the HR department and they were all fully aware of what had been offered by the Minister. She could not say that the letter had definitely been sent to the HR department but all staff correspondence should have been kept in an HR file. Botha could not say the Ministers' letter was not in Halim's HR file.
- [18] Somewhat ambiguously, Eziolisa agreed that the offer could not exceed the maximum level, but insisted that the offer to Halim was R 489 183 plus the role playing allowance. When it was put to her that Botha would testify that she was not aware of any agreement made that would bring Halim's salary up to R 516,138. 00, Eziolisa suggested that there was an email where Botha had agreed to this. Botha confirmed that the offer could not have exceeded the maximum of level 11. If an offer was made in excess of that, it would have been difficult for the Director General of the Department to implement it. The Minister's letter did not conform to the framework for approving packages. He had a discretion to vary the package but within the public service scales. Hector agreed that this was the limit on what the Minister could do. However Botha mentioned that the cell phone arrangements was not a matter the HR department had any say over.
- [19] According to Halim, nothing came of the Minister's letter and the next intervention was by Nkontwana who convened a meeting with Botha and Van Staden. It seems this meeting took place on 10 May 2011 and at that meeting, Halim gave her version of events, which Botha confirmed. Nevertheless, this intervention also did not result in any progress. Botha agreed there had been a discussion about adjusting Halim's salary but no agreement was reached. In August 2011, Halim wrote an email to Eziolisa

apparently asking her to confirm Halim's version of the 2009 offer, to which Ezolisa replied:

I have checked your breakdown and you are correct. I am not understanding what the issue is. Liesel and James from HR need to bring your file for verification of these FACTS. We had agreed that since we could not match your previous cost to company salary the decision was made by myself in constant collaboration with HR that after a year we would do an increase to the R489 package that was the first offer. It must be noted that you did not need to accept the lesser offer but you took into consideration that your competencies were required in the ministry....

By that stage Ezolisa had left the ministry.

[20] By August 2011, Halim was pursuing her long-standing grievance with the new Chief of staff, Ms N T Moyo ('Moyo'). From Moyo's email correspondence it is apparent that she knew nothing of the previous history of the matter. Ezolisa confirmed that Moyo had no knowledge of the negotiations that had taken place. In one of her own emails to Moyo, Halim claimed that Botha had previously confirmed in numerous meetings that the department had reneged on the agreement made with her.

[21] Finally, in February 2012, Halim communicated with the Acting Director General, Ms KC Mketi ('Mketi'). She reiterated her frustration with the lack of progress on her complaint. Mketi responded in a comprehensive manner on 1 March 2012, in which she recorded the following, *inter-alia*:

2 ...

c. The Minister subsequently approved your appointment for a one-year contract with an all-inclusive remuneration package of R 344 052 per annum (Minimum notch of salary level 11).

d. A letter dated 3 September 2009 informing you of your successful application was emailed to you on 4 September 2009.

e. Upon receipt of the letter, you informed Mr J Hector that the salary offered to you was less than your current salary package of which were requested to submit proof of your salary package at the SABC.

f. Upon receipt of your package at the SA BC, you indicated that your guaranteed Total Cost Company amounted to R 383 306 per annum,

excluding your cell phone allowance of 6372 and an average petrol claim of R 1 500 per annum [sic] , which added up to R 391 178 per annum.

g. Based on your above documentation, a second submission was forwarded to the Minister for consideration of a “Buy Offer”. Based on the approval of the Minister, you were subsequently offered an all-inclusive remuneration package of R 405 276 per annum (Maximum notch of Salary Level 11) on 14 September 2009. You were informed by E-mail of the adjustment of your salary by a letter and an amended contract. In an E-mail sent to the Department, you indicated that you accepted the appointment offer “as is”.

h. You assumed duty on 5 October 2009, after which your all-inclusive remuneration package was adjusted to R 445 803 per annum due to a general salary adjustment of 10% effective from 1 July 2009, which notification the Department received after your letter offering you an all-inclusive remuneration package of R 405 276 per annum was mailed to you.

i. Approval was granted on 24 August 2010 for the extension of your contract appointment for the duration of the Special Adviser’s term after which an appointment letter contract was signed on 20 September 2010 retaining your salary notch.

3. Since you are on the maximum of salary 11 and progression to salary 12 is not an option in terms of paragraph 3.6.3.2 of PSCBC Resolution No 3 of 2009, a further salary increase is not possible within the legislative framework. It can be confirmed that you have however received the annual general salary adjustments.

4. Please also refer to the attached salary scales confirming that the scales offered to you were in line with the approval granted by the Minister and not the 10th notch of salary level 12 as indicated in paragraph 4 of your letter.

The last mentioned reference was a reference to the following statement in Halim’s letter to the acting DG:

It should also be further noted that I have been further prejudiced that I was told that my salary level was a level 11, but when one goes back to all the DPSA “translations key addendum 2 of 2009 et cetera” even the salary of R 445 581 was the 10th notch of level 12.

Halim testified that the acting DG's letter was the first time that the Department referred to the PSCBC resolution as a limiting factor on what she could be paid. Under cross-examination, Ezjolisa denied that Halim was employed on the same salary scale as other public service staff and maintained that she was employed subject to the provisions of the Ministerial Handbook because she was employed in the Ministry, but this document was not introduced in evidence before the court nor were any of its provisions canvassed with witnesses in the course of giving evidence.

- [22] From a document issued by Ezjolisa in October 2009, it appears that the ministry sought approval for issuing of 9 cell phones under contracts, including one for Halim. The caller limit was set at R 2,800 for Halim. In May 2010, Halim complained that her cost to company package had included a cell phone allowance of R 2,800 but she had accepted the cell phone provided by the Ministry thinking it would be "simpler to use rather than having to pay an enormous bill on my own cell phone contract". She expressed her regret that she had agreed to do so because her cell phone bill never reached the call limit of 2800 and accordingly she had done herself "an injustice" in not simply insisting on being paid the cell phone allowance. However, under cross-examination, she agreed that the cell phone was not paid as an allowance.

Evaluation

- [23] The first and fundamental question is whether the alleged oral agreement was the contractual basis on which Halim was engaged.
- [24] There is no dispute that Halim asked the Ministry to improve on its original offer based on the minimum notch of salary level 11 , which amounted to R 344 052.00 per annum because this was less than the package she was receiving from her existing employer of approximately R 388,000 per annum.
- [25] Whatever discussions took place between E1 and the applicant about total package the Ministry was offering, the communications between E1 and Halim on 18 September 2009 are crucial because they record the written understanding between the two of them that was concluded after Halim

queried the final package. Whatever E1 subsequently claimed in her oral testimony, she was unequivocal in recording her understanding of what had been offered and Halim, unqualifiedly accepted E1's the offer as described by E1 'as is'. As set out above, E1 articulated the offer thus:

"...The total package offered is R 489 183 (your projected package was R 383 306)

This excludes the cell phone and 3G card allowances which are R 2800 and R280 per month.

For official trips, you are able to claim for fuel/milage.

Medical aid-as part of MMS, you're able to structure your package to include medical aid."

[26] Later , E1 claimed that as far as she could recall the role playing allowance of R 3615-00 was not part of the 'total package offered' and Halim initially claimed it was additional to the R 489 183.00 amount. Importantly, Halim conceded under cross examination that the roll-playing allowance was included in that sum. It is also overwhelmingly the more plausible interpretation because, if one takes the basic remuneration package the Ministry claims was agreed to, amounting to R 445, 803.00 (the highest notch (notch 12) on salary level 11) and add to that the total annual figure for the role playing allowance of R 43 380.00 (based on R 3, 615 per month) one arrives at an annual figure of R 489 183.00. Thus, it is virtually a certainty that the latter figure included the role playing allowance.

[27] As to any other allowances, the only one that might have been paid as part of remuneration were the cell phone and 3G allowances, but everything points to those 'allowances' as items of expenditure for which reimbursement could be obtained and not that they were items which were received as part of monthly remuneration. Halim acknowledged that much in her own complaint that she was never able to recover the full value of the allowance because her cell phone expenses were less than the maximum permitted, and she also conceded that under cross examination.

[28] It is true that Halim kept trying to revive her earlier expectations of what she believed she was offered, but she cannot simply ignore what she did

actually accept. When she was asked why she accepted the terms described by E1 'as is' she seemed to think it was sufficient just to say that she needed the job. The impression one gets from her evidence is that she placed more store on alleged personal assurances of salary improvements than the written terms of her appointment.

[29] Did the Minister's letter change the situation? The critical question in this regard is, whatever the Minister's intention and understanding of the situation might have been, was he able to simply authorise payment of Halim at a package beyond the maximum notch of the salary level she was on? Halim had asserted that employees employed in the Ministry were employed under the provisions of the Ministerial Handbook and therefore fell outside the parameters of the provisions governing remuneration of other public servants governed by the Public Service Act of 1994.³ However, at no stage did E1 or Halim refer to portions of the Handbook which might be construed as conferring such power on the Minister.

[30] Moreover, every version of the remuneration package in dispute between the parties was determined with reference to the Public Service wage scales, increases and allowances. The only exception to this was the R 3615-00 role playing allowance, which it appears was paid to public service employees like Halim, who were working in the ministry and whose terms of employment were linked to that of the Minister and therefore somewhat unpredictable, unlike other public servants on fixed term or indefinite contracts of employment unaffected by new political appointments.

[31] In the circumstances, I am not satisfied that Halim has established that the Minister, as the executive authority of the ministry had the power to engage her on terms and conditions different to those contained in the successive contracts of employment she signed. Further, apart from the fact that all those contracts contained very clear non-variation clauses, it must be mentioned in this regard that they all stipulated that her

³ Proc 103 in GG 15791 of 3 June 1994

employment was governed by the Public Service Act and Public Service Regulations.

[32] In conclusion, the applicant has failed to establish, on a balance of probabilities, the existence of a binding oral agreement which supersedes the written contracts she entered into and she was not underpaid any amount due to her in terms of her contract of employment.

Costs

[33] I would be inclined to award costs against the applicant, but as the respondents appear to accept that the claim was instituted *bona fide* and do not press for an adverse cost award, I decline to do so.

Order

[34] The applicant's claim is dismissed.

[35] No order is made as to costs.

R Lagrange

Judge of the Labour Court of South Africa

APPEARANCES

APPLICANT: S Jackson instructed by Finger Phukubje Inc.

RESPONDENTS: F M M Snyman instructed by the State Attorney,
Pretoria