

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JR2637/16

In the matter between:

CHARLES TUMELO SIBANDA

Applicant

and

DA PRETORRIUS N O

First Respondent

**COMMISSION FOR CONCILIATION
MEDIATION AND ARBITRATION**

Second Respondent

DINERS CLUB SA (PTY) LTD

Third Respondent

Heard: 13 July 2018

Delivered: 4 April 2019

JUDGMENT

MOSEBO, AJ

Introduction

- [1] This is an application brought in terms of section 145(1)(a) of the Labour Relations Act¹ (the Act). In this application, the applicant seeks to review and set aside the arbitration award handed down by the first respondent (the commissioner) on 21 October 2016, under case number GAJB6816-16.
- [2] In her arbitration award, the commissioner had accepted that the applicant was guilty as charged and had found his dismissal to have been substantively fair. The review application is opposed by the third respondent.

Background

- [3] The applicant was employed by the third respondent in various capacities for a period of 15 years. At the time of his dismissal the applicant was employed as a relationship manager. In that position, he was looking after various portfolios which included the Liberty account. Liberty is a subsidiary of the Standard Bank Group. He reported directly to Mr Warren Tanner-Ellis (Tanner-Ellis), head of sales and relationship management and Tanner-Ellis reported to Mr Kevin Lomax (Lomax), a senior manager for corporate card division.
- [4] On or about 21 December 2015, the applicant went on leave and left an out of office notice on his e-mail explaining that he would return on 11 January 2016. He gave alternative contact details of his subordinate and two other persons.
- [5] On 13 January 2016, an e-mail was received from Ms Kele Mohatle (Mohatle), a travel manager from Liberty addressed to Tanner-Ellis. In that email, Mohatle advised Tanner-Ellis that the Liberty diners lodge card was cancelled on 31 December 2015 due to suspected fraud and she lamented the fact that she had not received feedback from the third respondent regarding the outcome of the suspected fraud which led to the cancellation of the said card. She indicated that as a result, it was difficult for Liberty to process travel bookings. Mohatle further stated that she had attempted to

¹ 66 of 1995, as amended.

contact the applicant and even left him a voicemail to assist urgently but no feedback was received from him.

- [6] On the same date, Tanner-Ellis responded to Mohatle's e-mail aforesaid. He apologised for the inconvenience and *inter alia*, indicated that Ms Tania Roos would research as to what could have happened and would provide feedback. He also indicated that going forward and with immediate effect, the applicant had been replaced with Mr Cassie Esterhuizen (Esterhuizen), a senior relationship manager who would be handling the Liberty account.
- [7] On the same date, the applicant received an email from Lomax instructing him to respond to Mohatle's complaint as aforesaid. It appears that as the applicant was going through Lomax's email, he noticed Tanner-Ellis's email to Mohatle and realised that Tanner-Ellis had already spoken to Mohatle on the same date. This was the first time the applicant became aware of Mohatle's complaint. However, on perusal of Tanner-Ellis's email, the applicant felt that Tanner-Ellis spoke to his client behind his back and that he had also made a decision to replace him as the account holder without consulting with him. He then responded to Tanner-Ellis's email and indicated that he was on leave from 21 December 2015 to 11 January 2016 and had no access to his email. He also stated as follows:

'Why don't you advise the client that I was on leave, and just take remedial action without involving me? Warren, I would like to have a meeting with HR regarding this matter, you cannot just remove an account from my portfolio without discussing it with me first'.²

- [8] Lomax responded to the applicant's email and indicated that the decision to move the entire Standard Bank Group account to Esterhuizen was due to business development opportunities and that he had communicated that decision when he took the applicant through the operating model review. He indicated that this particular decision had nothing to do with the incident in

² Record of the proceedings (Volume 3) at p 287.

question but he also indicated that he wanted this particular incident to be reviewed and to learn from it.³

[9] On 14 January 2016, Lomax scheduled a meeting involving himself, Tanner-Ellis and the applicant. Lomax opened the meeting by indicating that the purpose of the meeting was to discuss the incident concerning Mohatle's email received on 13 January 2016. It appears that the applicant provided his explanation, but on the other hand, he also wanted to know as to why the Liberty account was removed from his portfolio without consulting him. It appears that Lomax explained to the applicant that the decision to remove the Liberty account from the applicant's portfolio was already taken in the previous year as part of the new business model review to be introduced in January 2016 and this was part of the presentation made to the applicant by Lomax in December 2015.

[10] It is alleged that the applicant responded by raising his voice and became very aggressive and in the process accused Lomax of lying and making 'willy-nilly' decisions and also stated that he did not recognise Lomax's authority to make that type of a decision. It is further alleged that the applicant pounded the table several times until Lomax abruptly adjourned the meeting. As a result of the alleged conduct the applicant was issued with a notice to attend a disciplinary hearing scheduled for 17 February 2016 formulated as follows:

"The purpose of the Hearing will be to consider the Bank's concerns relating to the alleged misconduct on your part in that you conducted yourself in unacceptable and unprofessional manner while attending a staff meeting on the 14th of January 2016, your actions were insubordinate and disrespectful to your senior manager".⁴

[11] At the end of the disciplinary hearing the applicant was found guilty as charged and the chairperson imposed a sanction of dismissal effective from

³ Record of the proceedings (Volume 3) at p 288.

⁴ Record of the proceedings (Volume 3) at p 267.

07 March 2016.⁵ Thereafter, the applicant referred an alleged unfair dispute to the second respondent for conciliation which was unsuccessful and the matter was then referred to arbitration which took place before the commissioner on 06 September and 07 October 2016. As stated, the commissioner found the dismissal of the applicant substantively fair and dismissed the claim.

The Arbitration Award

- [12] In her analysis of evidence and argument, the commissioner found that the respondent's evidence was clearly presented and supported by e-mails, minutes and a copy of the warning. She found the respondent's first witness to have been precise and his version consistent with his presentation at the disciplinary hearing and his version of events was more or less unchallenged except in one respect. She found the respondent's second witness to have corroborated the first witness's version in every detail and she concluded that the respondent's witnesses seemed more reliable.
- [13] On the other hand, the commissioner found the applicant's evidence to have been an uneasy blend of bare denials of the allegations against him, unconvincing and disingenuous at various points.
- [14] In respect of the meeting held on 14 January 2016, the commissioner recorded that the applicant's case was that he was being falsely accused of not following up a query when he was legitimately away from work on holiday and that he took reasonable steps to provide his clients with assistance in his absence and that he was ambushed on his return by an uncommunicated decision to remove one of his biggest accounts thereby threatening his income.
- [15] The commissioner stated that she found the applicant's version on what happened with regard to the complaint contradictory in that the applicant admitted that he received a call from Mohatle then later denied it and then admitted that there was a follow up call which would have indicated the

⁵ Record of the proceedings (Volume 3) at p 280.

urgency and the nature of the problem, but then he apparently did nothing about it upon his return to the office on 11 January 2016. When he was challenged further on this he claimed that he was told that the problem was resolved.

- [16] In respect of the alleged unacceptable and unprofessional conduct, the commissioner stated that the issue at hand was whether or not the applicant conducted himself 'in an unacceptable and unprofessional manner' on 14 January 2016, and whether or not he was 'insubordinate and disrespectful' to his senior manager.⁶ The commissioner indicated that insubordination, according to Professor John Grogan in his book *Dismissal, Discrimination and Unfair Labour Practices*, is often linked to a refusal to obey an instruction, but this is really only a symptom of the underlying problem, which is an employee refuses to accept the authority of a person in authority over the employee.
- [17] She further stated that this is generally considered to be dismissible if it can be shown there was "gross" insubordination. Factors to be considered include the manner in which this is expressed, the position of the person whose authority is repudiated, the reason for the person's defiance and the number of times it occurs. The key is whether or not this conduct is both deliberate, persistent and serious.⁷
- [18] The commissioner also referred to the learned author's view that is based on *Slagment (Pty) Ltd v BCAWU and others*⁸, arbitrators should be slow to regard 'insensitivity' by management when rearranging working structures as an excuse for sustained and deliberate refusal to comply with them, though he noted that in the case of changed working conditions, employers must at least try to persuade employees to accept these.
- [19] Based on the authority set out above, the commissioner concluded that the applicant refused to accept the authority of Lomax to move his Liberty

⁶ Pleadings Bundle at p33 para 252.

⁷ Id fn 6 at paras 253 and 254.

⁸ (1994) 15 ILJ 979 (A).

account. This was because the applicant said so, when he said that he did not recognise Lomax's authority and when he said this was not within Tanner-Ellis's powers. The commissioner rejected the applicant's version and accepted the third respondent's version.

[20] She then found that the applicant had told Lomax that he was a liar, he had no authority to make such decisions, he always saw problems with his work, he did not know anything and he refused to change his approach to customer complaints and told him that he did not care what he thought. She found that the applicant's words and actions on that day were largely undisputed, except for the raised voice, which the applicant later also conceded that he did do. The commissioner found that there was enough evidence to establish that the applicant was grossly insubordinate and that he conducted himself in a disrespectful and unprofessional manner towards his senior. Therefore, she concluded that all these allegations made against Lomax in the presence of Tanner-Ellis amounted to clear repudiation of Lomax's authority who was two levels more senior than the applicant.

[21] Thereafter, the commissioner dealt with the reasons that could have led to the said defiance but she rejected all of them as being untrue, unreasonable and unlikely to justify the applicant's actions. She found that a more likely 'trigger' for his rage, as the applicant's representative put it, seemed to be his ongoing sense of grievance at actually being supervised.

Grounds for Review

[22] The arbitration award is attacked on the following grounds:

22.1 The commissioner committed an error of fact by *inter alia* failing to have regard to relevant evidence, interpreting the evidence incorrectly and/or drawing erroneous conclusions from the evidence.

22.2 The commissioner failed to apply her mind to the facts and the law relating to the charge of insubordination. She misconstrued the nature

of the charges by failing to distinguish between insubordination and insolence and she committed an error of law by not taking into consideration that the applicant was charged and dismissed for something he did not do. It is contended that the third respondent charged the applicant with insubordination when the contents of the charge constitutes gross insolence and it further contended that the conduct and evidence clearly indicated that the applicant did not fail to obey an instruction but was rather dismissed for his tone and disrespect.

22.3 The commissioner in assessing the fairness and appropriateness of dismissal failed to assess the gravity of the alleged misconduct with reference to the fact that the applicant's conduct was neither wilful nor serious and further failed to take into consideration that the applicant's dismissal was too harsh.

The Legal Position

[23] In his celebrated work, Professor John Grogan⁹ states that a distinction has traditionally been drawn between insolence (repudiation by an employee of the employee's duty to show respect) and insubordination (refusal to obey the employer's instructions)¹⁰. The learned author referring to *Wasteman Group v SAMWU and Others*¹¹ further indicated that '*however, nothing turns on the distinction in that the test for both forms of misconduct is whether the employee's conduct demonstrates an intention to challenge the employer's authority.*'

[24] In *Wasteman* supra, the Labour Appeal Court (LAC) held that a reasonable decision maker in the position of a commissioner is required to be alive to the distinction between mere insubordination and gross insubordination which must give rise to the ultimate sanction of dismissal and that in order to come

⁹ Grogan Dismissal 3rd Edition (Juta, 2017) at p285

¹⁰ *CCAWUSA and Another v Wooltru Ltd t/a Woolworths (Randburg)* (1989) 10 ILJ 311 (IC).

¹¹ (2012) 33 ILJ 2054 (LAC).

to the latter conclusion, the commissioner is required to have analysed the facts and found a plausible and reasonable justification for the sanction.

- [25] Prof Grogan also referred to *CCAWUSA and Another v Wooltru Ltd t/a Woolworths (Randburg)*¹² where the Court equated insolence with impudence, cheekiness, disrespect or rudeness and distinguished 'mere' insolence from insubordination but then opined that the distinction is overly technical as both forms of misconduct give expression to a repudiation of authority, which rests as much on respect as it does on obedience.
- [26] In *Palluci Home Depot (Pty) Ltd v Herskowitz and Others*¹³ the LAC had an opportunity to address the issue of insubordination versus insolence. The court per Kathree-Setiloane AJA stated the following:

"It is clear from this finding that the Labour Court failed to appreciate that the refusal to carry out an instruction is not the only basis upon which to found a charge of insubordination. The offence of insubordination in the workplace has, in this regard, been described by our courts as a wilful and serious refusal by an employee to obey a lawful and reasonable instruction or where the conduct of an employee poses a deliberate (wilful) and serious challenge to the employer's authority. Whereas in some cases defiance of an instruction may indicate a challenge to the authority of the employer, this is not so in every case. Insubordination may also be found to be present where disrespectful conduct poses a deliberate (wilful) and serious challenge to or defiance of the employer's authority, even where there is no indication of the giving of an instruction or defiance of an instruction. It is, therefore, not essential for an instruction to be given or disobeyed to found a challenge to the employer's authority.¹⁴

The refusal by an employee to carry out an employer's instruction is, therefore, not always required for a finding of insubordination. However, the failure of the Labour Court to recognise this did not, in my view, influence its characterisation of the conduct of the first respondent, on the evidence led at

¹² (1989) 10 ILJ 311 (IC).

¹³ (2015) 36 ILJ 1511 (LAC)

¹⁴ *Id* fn 13 at para 19.

the arbitration hearing in relation to charge (a), as constituting 'insolence' as opposed to 'insubordination'. In characterising the first respondent's conduct as 'insolence', the Labour Court relied upon the decision of Wooltru, which emphasises the importance of distinguishing insubordination from insolence simply because they are different offences. Wooltru equates the offence of insolence with conduct which is offensive, disrespectful, impudent, cheeky, rude (disrespectful in speech or behaviour), insulting or contemptuous, and insubordination with 'resistance to or defiance of authority; disobedience, and refusal to obey an order of a superior'. Wooltru makes it clear that, although an employee can be both insolent and insubordinate at the same time, he or she can be insolent without necessarily being insubordinate."¹⁵

[27] The Court continued:

"As demonstrated, there is a fine line between insubordination and insolence, and insolence may very well become insubordination where there is an outright challenge to the employer's authority. However acts of mere insolence and insubordination do not justify dismissal unless they are serious and wilful. A failure of an employee to comply with a reasonable and lawful instruction of an employer or an employee's challenge to, or defiance of the authority of the employer may justify a dismissal, provided that it is wilful (deliberate) and serious. Likewise, insolent or disrespectful conduct towards an employer will only justify dismissal if it is wilful and serious. The sanction of dismissal should be reserved for instances of gross insolence and gross insubordination as respect and obedience are implied duties of an employee under contract law, and any repudiation thereof will constitute a fundamental and calculated breach by the employee to obey and respect the employer's lawful authority over him or her."¹⁶

Analysis

[28] The applicant's first ground of review is that the commissioner committed an error of fact by inter alia failing to have regard to relevant evidence, interpreting the evidence incorrectly and/or drawing erroneous conclusions

¹⁵ Id fn 13 at para 20.

¹⁶ Id fn 13 at para 22.

from the evidence. The problem with this ground of review is that there is no supporting factual basis provided in the founding affidavit on exactly which parts of the commissioner's findings are being challenged. This ground of review was also not pursued by the applicant either in the heads of argument filed on his behalf or in oral argument at the hearing of this matter. Therefore, I do not find this ground of review to have any substance.

[29] The applicant's representative's attention was more focused on the second ground of review. In this regard, it was submitted that the commissioner failed to apply her mind to the facts and to the law relating to the charge of insubordination and that she misconstrued the nature of the charges by failing to distinguish between insubordination and insolence. The applicant's contention is based on *Wooltru* and *Palluci* supra and it was submitted that the commissioner committed an error of law by not taking into consideration that the applicant was charged and dismissed for something he did not do. The applicant's main contention is that the third respondent charged him with insubordination when the contents of the charge constitutes gross insolence. It was further submitted that the conduct and evidence clearly indicated that the applicant did not fail to obey an instruction but was dismissed for his tone and disrespect.

[30] I find this ground of review a bid astounding in particular because of its reliance on *Palluci*. This is because in *Palluci*, the LAC indicated that the offence of insubordination in the workplace has been described by our courts as a wilful and serious refusal by an employee to obey a lawful and reasonable instruction or where the conduct of an employee poses a deliberate (wilful) and serious challenge to the employer's authority. It was made clear that insubordination may also be found to be present where disrespectful conduct poses a deliberate (wilful) and serious challenge to or defiance of the employer's authority, even where there is no indication of the giving of an instruction or defiance of an instruction. It is, therefore, not essential for an instruction to be given or disobeyed to found a challenge to the employer's authority.

- [31] In *Palluci*, the LAC went on to explain and demystify any misunderstandings that may have been attributed to *Wooltru*. In particular, it was pointed out that *Wooltru* equates the offence of insolence with conduct which is offensive, disrespectful, impudent, cheeky, rude (disrespectful in speech or behaviour), insulting or contemptuous, and insubordination with 'resistance to or defiance of authority; disobedience, and refusal to obey an order of a superior' but *Wooltru* also makes it clear that, although an employee can be both insolent and insubordinate at the same time, he or she can be insolent without necessarily being insubordinate.
- [32] The LAC concluded that there is a fine line between insubordination and insolence, but insolence may very well become insubordination where there is an outright challenge to the employer's authority. In my view, this confirms Professor Grogan's opinion referred to above that nothing turns on the distinction in that the test for both forms of misconduct is whether the employee's conduct demonstrates an intention to challenge the employer's authority.
- [33] It follows therefore that the applicant's contention that the commissioner misconstrued the nature of the charges by failing to distinguish between insubordination and insolence and/or that the third respondent charged the applicant with gross-insubordination when the evidence indicated gross-insolence has no basis. It is apparent from *Palluci* that the issuing of an instruction and/or the defiance of an instruction is not the necessary element of this offence because the test is whether the employee's conduct demonstrated an intention to challenge the employer's authority.
- [34] In her arbitration award the commissioner concluded, taking into account his behaviour as recorded above, that the applicant refused to accept the authority of Lomax to move his Liberty account. The commissioner further found that there was enough evidence to establish that the applicant was grossly insubordinate and that he conducted himself in a disrespectful and unprofessional way towards his senior and that the applicant's act of insubordination demonstrated in the presence of Tanner-Ellis amounted to

clear repudiation of Lomax's authority who was two levels more senior than the applicant.

- [35] It also important to consider that, in this matter, the commissioner also dealt with the reasons that could have led to the applicant's defiance but rejected all of them as being untrue, unreasonable and unlikely to justify the applicant's actions. She found that a more likely 'trigger' for his rage, as the applicant's representative put it, seemed to be his ongoing sense of grievance at actually being supervised.
- [36] It is apparent from the facts set out above that the commissioner has, in this matter, properly applied her mind to the facts and to the law relating to the charge of insubordination and that she has not misconstrued the nature of the charges by failing to distinguish between insubordination and insolence.
- [37] In *Palluci*, the LAC found that although the employee's conduct could be described as insolent, impudent, disrespectful and rude, it did not constitute insubordination as it was not persistent, wilful and serious challenge of defiance of the employer's authority. Nor could it be described, on the evidence, as a "calculated challenge" to the employer's authority since it was found to be neither deliberate nor intentional.
- [38] The LAC found that the employee had been provoked by the employer firstly by the unlawful deduction of monies from her salary and secondly by the condescending manner in which the employer had turned his back to her whilst she attempted to discuss the issue of the deduction with him. The court found that the employee's conduct was nothing more than, at best, an isolated knee jerk in the heat of the moment by the employee – who had been provoked by the employer. In her anger at the deduction coupled with the employer's refusal to discuss the issue with her by turning his back to her, she reacted precipitously by demanding, in a raised voice, that he should not turn his back to her while she was discussing the issue of deduction with him. The court found that whilst the employee's conduct was manifestly insolent, it could not be said to be a serious, persistent and a deliberate challenge to the

employer's authority on which to found a charge of insubordination or gross insubordination.

- [39] In the instant case, the commissioner did not find any evidence of provocation. She considered the reasons that could have led to the applicant's defiance in particular his claim that he did not know about the account being moved to Esterhuizen and learnt about it in a provocative manner in a chain of events and that he felt that he was unjustly being held to account for poor service when he was on holiday. The commissioner considered the applicant's version in this regard and found that from the 01 December 2015, there was considerable evidence that the applicant knew that this account would move. She also considered the applicant's version that he knew that the Standard Bank Group account would move to Esterhuizen but he did not see that as including the Liberty account as he assumed that the move would only apply to future accounts.
- [40] The commissioner found it unreasonable for an experienced account manager such as the applicant to assume that the Liberty account was not going to move to Esterhuizen even though it was part of the Standard Bank Group given the rationale for the move which was to treat Standard Bank and all its subsidiaries as one very important client in its own right. Therefore, the commissioner rejected the applicant's version and preferred the third respondent's version. The effect of this conclusion is that the commissioner found no evidence of provocation by the employer.
- [41] This court is alive to the fact that there was a considerable dispute between the parties on whether or not, at the meeting held with the applicant on 01 December 2015, the third respondent's witnesses had informed the applicant that the Liberty account would also move to Esterhuizen. As stated in the preceding paragraph, the commissioner considered that dispute and came to the conclusion that there was considerable evidence presented at the arbitration to establish that the applicant was duly informed. In *Quest Flexible*

*Staffing Solutions (Pty) Ltd (A division of Adcorp Fulfilment Services (Pty) Ltd) v Legobate*¹⁷ the LAC stated that:

"Our courts have repeatedly stated that in order to maintain the distinction between review and appeal, an award of an arbitrator will only be set aside if both the reasons and the result are unreasonable...."¹⁸

An award will no doubt be considered to be reasonable when there is a material connection between the evidence and the result or, put differently, when the result is reasonably supported by some evidence. Unreasonableness is, thus, the threshold for interference with an arbitrator's award on review."¹⁹

[42] In *Fidelity Cash Management Service v CCMA and Others*²⁰ Zondo JP (as then he was) stated the following:

"The Constitutional Court further held that to determine whether a CCMA commissioner's arbitration award is reasonable or unreasonable, the question that must be asked is whether or not the decision or finding reached by the commissioner 'is one that a reasonable decision maker could not reach' (para 110 of the *Sidumo* case). If it is an award or decision that a reasonable decision maker could not reach, then the decision or award of the CCMA is unreasonable, and, therefore, reviewable and could be set aside. If it is a decision that a reasonable decision maker could reach, the decision or award is reasonable and must stand. It is important to bear in mind that the question is not whether the arbitration award or decision of the commissioner is one that a reasonable decision maker would not reach but one that a reasonable decision maker could not reach"²¹

[43] In applying this test to the present case, I am of the view that the commissioner's conclusions are reasonably supported by the evidence and that there is a material connection between the evidence and the result.

¹⁷ (2015) 36 ILJ 968 (LAC).

¹⁸ *Id* fn 17 at para 12.

¹⁹ *Id* fn 17 at para 13.

²⁰ (2008) 29 ILJ 964 (LAC).

²¹ *Id* fn 20 at para 97.

Therefore, I am of the view that the finding reached by the commissioner herein is one that a reasonable decision maker could reach based on the evidence presented at the arbitration.

- [44] Therefore *Palluci* is distinguishable on the facts from the instant case in that apart from the lack of provocation, in the instant matter, the applicant's conduct as recorded above was found to have amounted to a clear repudiation of Lomax's authority and further the applicant also had a valid previous final written warning relating to failure to comply with instructions which was considered to be relevant. In the final analysis, the level of insubordination in the instant matter was more serious than the level of insubordination in *Palluci* and the circumstances were also different.
- [45] The applicant's last ground of review is that in assessing the fairness and appropriateness of the dismissal, the commissioner failed to assess the gravity of the alleged misconduct with reference to the fact that the applicant's conduct was neither wilful nor serious and that the sanction of dismissal was too harsh.
- [46] In her award, the commissioner stated that on the question of whether or not this was deliberate defiance, this was not so clearly established as all the parties seemed to agree that the applicant lost his temper. This would imply that his actions were less than deliberate. However, seen in the context which the applicant himself insisted on creating, there was more than one challenge to the authority of Tanner-Ellis when he set about the process of querying the applicant's travel claims and verifying his whereabouts.
- [47] If this was not deliberate defiance, it seemed more likely than not that it would keep occurring as the applicant did not seem to be able to control his on-going defensive and difficult reactions when given instructions. It is apparent that the commissioner considered that the applicant's conduct was not wilful because she found it to be less than deliberate but she also found that his defiance to Tanner-Ellis seemed more likely than not to keep occurring.

[48] It is also apparent that the commissioner considered the appropriate penalty by weighing the gravity of the offence against the mitigating factors but found that the applicant seemed unlikely to change his attitude as he was unrepentant, had admitted no fault at all and had confirmed that he felt no remorse. This ground of review has no substance and falls to be dismissed as well.

Costs

[49] This court finds that it would be fair for each party to bear its own costs.

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

Order

1. The review application is dismissed.
2. There is no order as to costs.

PM Mosebo

Acting Judge of the Labour Court of South Africa

Appearances:

For the applicant: Mr T Carstens

Instructed by: Higgs Attorneys

For the respondent: Mr D Cithi of Mervyn Taback Incorporated