



IN THE LABOUR APPEAL COURT OF SOUTH AFRICA, JOHANNESBURG

Reportable

Case No. CA 20/24

In the matter between:

**SUGAR BERRY CC T/A HORISON STAFF
SOLUTIONS**

Appellant

and

**THE MOTOR INDUSTRY BARGAINING
COUNCIL**

First Respondent

MR GORDON EDWARDS N. O.

Second Respondent

MIBCO DISPUTE RESOLUTION CENTRE

Third Respondent

EMISSIONS CONTROL TECHNOLOGIES (PTY) LTD

Fourth Respondent

Heard: 26 August 2025

Delivered:

Coram: Basson AJA, Djaje AJA et Tokota AJA

This judgment was handed down electronically by circulation to the parties' representatives by email, published on the Labour Appeal Court website, and released to SAFLII. The date and time for hand-down is deemed to be 10h00 on 2 October 2025.

JUDGMENT

TOKOTA, AJA

Introduction

- [1] This appeal concerns the interpretation of the Provident Fund Collective Agreement for the Motor Industry (the Fund Agreement). The dispute about the interpretation arose when the first respondent sought to enforce compliance of the order it obtained in terms of the Fund Agreement, in terms of whereof it was obliged to receive and pay over the pension contributions by its employees to the Provident Fund, the custodian of which is the first respondent.
- [2] The contentions of the parties in this Court, as in the Court below (the Labour Court), as to the meaning to be ascribed to the relevant clause of the said agreement, are diametrically opposed. *“The same words often mean different things to different people. This helps to keep the forensic pot boiling”*, so said Schutz JA in *Langston Clothing (Properties) CC v Danco Clothing (Pty) Ltd*¹ What is at issue in this appeal affords a classic example of the truism in that statement.
- [3] The issue was referred to the first respondent for conciliation and arbitration. The second respondent was appointed to arbitrate. The issue for determination was the interpretation of clause 3(13) of the Fund Agreement relating to the meaning and calculation of the phrase ‘pensionable remuneration’. The appellant refused to pay over pension contributions of its employees to the Provident Fund based on a 45 hour per week basis as prescribed by the Fund Agreement, read with the Main Collective Agreement, (the main agreement) contending that this can only be paid according to the

¹ [1998] ZASCA 66; 1998 (4) SA 885 (SCA) at 887B.

actual hours worked by each one of the employees. The arbitrator ruled that the calculation of pensionable remuneration contributions in terms of the Fund Agreement should be based on a 45-hour basis as contended for by the first respondent. Dissatisfied with this ruling, the appellant took the matter on review before the Labour Court. The Labour Court dismissed the application with no order as to costs. This appeal is with leave of that Court.

Factual Background

- [4] In order to elucidate the nature of the issue at the heart of the dispute between the parties, it is necessary to set out the relevant facts which are, to a large extent, common cause. The appellant employs a large number of employees in its capacity as a temporary employment service that provides labour to employers in the motor industry. These employees are entitled to the benefits of the Provident Fund run by the first respondent. The Provident Fund was established by means of a collective agreement between the parties, which was extended to apply to non-parties to the agreement in terms of s. 32 of the Labour Relations Act² (LRA).
- [5] Clause 5(1) of the Fund Agreement provides that membership of the fund shall be compulsory for every employee, within the scope of the registered Council and falling below the threshold as defined in the Main Agreement, who is employed in the motor industry in grades 1 to 6 and who has not reached a retirement age.³ Clause 6(1) provides that every employee for whom membership of the Fund is compulsory in terms of clause 5(1) shall contribute 7,5% of his pensionable remuneration to the Fund in respect of each week of his employment in the industry, provided that where an employee receives or is entitled to receive wages for less than 23 hours in any week, no contribution shall be paid by him in respect of such week. Clause 4 of the Main Agreement regulates ordinary working hours for grades 1 to 6 employees for whom membership of the Provident Fund is mandatory.

² Act 66 of 1995, as amended.

³ The definition of grades 1 to 6 is contained in chapter 2 Division A of the main agreement.

- [6] The appellant's employees' working hours amounted to 37,5 hours per week, which is less than 45 hours but more than 23 hours per week. Clause 6(2) of the Fund Agreement provides that contributions specified in clause 6(1) shall (subject to employees who work less than 23 hours) be deducted by the employer from each employee's wages on each pay-day. In terms of clause 6(3) thereof, each employer is obliged to add a contribution of 8% of each employee's pensionable remuneration to that deducted from the employee and pay such contributions to the Secretary of the appropriate Regional Council of the first respondent.
- [7] The appellant, as the employer, is responsible for payment of the wages of its employees and payment of pension contributions to the first respondent. It deducts employees' contributions and, after paying its 8% contributions, pays to the first respondent such pension contributions. The officials of the first respondent followed this practice of calculating contributions in respect of the period April 2018 to November 2019 (the disputed period). It considered the contributions as if employees had worked for 45 hours per week, even though they had worked less than such hours but more than 23 hours.
- [8] As the appellant employs a large number of employees and places their services to clients who do business in the motor industry, it makes use of a business model requiring the employees to work on a flexi-time basis and that requires employees to work according to the operational requirements of clients as dictated by the availability of work. Its employees work less than 45 hours per week. Even if a member works a full week, that amounts to only 37,5 hours per week or 7,5 per day. Based on its own interpretation of the Fund Agreement, the appellant basis its employees' remuneration on the actual number of hours worked by each employee and the Provident Fund contributions are calculated and paid over to the first respondent on the same basis.
- [9] The first respondent maintained that the basis upon which the pension contributions are to be calculated by the appellant is wrong. It maintains that a proper interpretation of the Fund Agreement is that pension deductions should be interpreted with reference to clause 4 of the Main Agreement, which

regulates ordinary working hours for grades 1 to 6 employees for whom membership of the Provident Fund is mandatory. It is this difference in interpretation which triggered a referral to the Bargaining Council and which was ultimately resolved in favour of the first respondent by the arbitrator and the Labour Court.

[10] Clause 4.1 B(a) of the Main Agreement provides, *inter alia*, that:

'any employee other than a journeyman or brake drum skimmer or machine skimmer employed in an establishment that is registered under chapter V of division C of the agreement works for less than 45 hours in any one week owing to... the employer being unable to regulate the shift of such employee to 45 hours... such employee's week shall be deemed to be 45 hours.'

[11] Pensionable remuneration is defined in the Fund Agreement as follows:

'pensionable remuneration means the amount which an employer *would normally and/or regularly pay* to an employee, either weekly or monthly, in respect of the *ordinary hours required* to complete either a full normal week or month, as the case may be, and does not include remuneration which an employee who is employed on a piece work basis receives over and above the amount which he would have received if he had not been employed on such basis, but includes commission received on the sale of goods; provided, however, that all commission received in excess of R9000 per month shall be calculated unless the employer [and] employee jointly agree that contributions shall be paid on commission earnings in excess of the aforementioned limitation'⁴.

Issues

[12] As will have become clear from what has already been stated above, the central issue in this appeal pivots on the proper interpretation of the Fund Agreements concluded between the parties. As to how the agreement falls to be interpreted, in the light of the words used, read in their context, the contentions of the parties are diametrically opposed.

Interpretation of documents

⁴ Clause 3(13).

- [13] The principles to be applied in interpreting written documents are now well established, but it would be useful for present purposes to rehearse some of the cases in this regard. The approach to the interpretation of documents, broadly stated, is to give consideration:

'... to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of these facts. The process is objective and not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusiness-like results, or undermines the apparent purpose of the document. Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or business-like for the words actually used. To do so in regard to statute or statutory instrument is to cross the divide between interpretation and legislation; in a contractual context it is to make a contract for the parties other than the one they in fact made. The "*inevitable point of departure in the language of the document itself*", read in context and having regard to the purpose of the provision and the background to the preparation and production of the document.'⁵ (Emphasis added)

- [14] That was said by Wallis JA more than a decade ago in *Endumeni*.⁶ *Endumeni* has consistently been followed by the Supreme Court of Appeal⁷ this court⁸ ever since, and endorsed by the Constitutional Court.⁹

- [15] Hot on the heels of *Endumeni*, in *Bothma-Batho Transport*,¹⁰ Wallis JA made plain that his statement in *Endumeni* quoted in para 13 above 'reflected

⁵ *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13; [2012] 2 All SA 262 (SCA) (*Endumeni*) at para 18.

⁶ *Ibid* fn 5 above at para 18.

⁷ *Bothma-Batho Transport (Edms) Bpk v S Bothma & Seun Transport (Edms) Bpk* [2013] ZASCA 176; [2014] 1 All SA 517 (SCA) (*Bothma-Batho Transport*); *North East Finance (Pty) Ltd v Standard Bank of South Africa Ltd* [2013] ZASCA 76; 2013 (5) SA 1 (SCA) at paras 24-28; *Auction Alliance (Pty) Ltd v Wade Park* [2018] ZASCA 28; 2018 (4) SA 358 (SCA) at para 19.

⁸ *Jones v Compendium Group Investment Holdings (Pty) Ltd* (DA20/2023; DA11/2024) [2024] ZALAC 49 (11 October 2024) at para.15; *Herbert v Head Education - Western Cape Education and Others* [2022] ZALAC 9; (2022) 43 ILJ 1618 (LAC) at para.15.

⁹ *Democratic Alliance v African National Congress and Another* [2015] ZACC 1; 2015 (2) SA 232 (CC) at para 136; *Trinity Asset Management (Pty) Limited v Grindstone Investments 132 (Pty) Limited* [2017] ZACC 32; 2017 (12) BCLR 1562 (CC); *Road Traffic Management Corporation v Waymark Infotech (Pty) Ltd* [2019] ZACC 12; 2019 (6) BCLR 749 (CC) at paras 30-32.

developments in regard to contractual interpretation espoused in *Masstores (Pty) Ltd v Murray & Roberts Construction Ltd. (Pty) Ltd and Another*.¹¹ He went on to emphasise that “the process of interpretation does not stop at a perceived literal meaning of those words [employed in the document being interpreted], but considers them in the light of all relevant and admissible context, including the circumstances in which the document came into being”. And, with reference to foreign authority,¹² Wallis JA went on to say that “Interpretation is no longer a process that occurs in stages but is ‘essentially one unitary exercise’”.¹³

[16] Two years earlier, and in the course of construing a pension fund rule, Lewis JA noted that:

'The principle that a provision in a contract must be interpreted not only in the context of the contract as a whole, but also to give it a commercially sensible meaning, is now clear. It is the principle upon which *Bekker NO* [*Bekker NO v Total South Africa (Pty) Ltd* 1990(3) SA 159 (T) at 170G0H] was decided, and, more recently, *Masstores (Pty) Ltd v Murray and Roberts Construction (Pty) Ltd* [*Masstores (Pty) Ltd v Murray & Roberts (Pty) Ltd* 2008 (6) SA 654 (SCA)] was based on the same logic. The principle requires a court to construe a contract in context – within the factual matrix in which the parties operated. In this regard, see *KPMG Chartered Accountants v Securefin* [*KPMG Chartered Accountants v Securefin* [2009] ZASCA 7; 2009 (4) SA 399 (SCA) ([2009] All SA 523) para 39].'¹⁴ (Footnotes omitted)

¹⁰ *Bothma-Batho Transport* at paras 11-12.

¹¹ *Masstores (Pty) Ltd v Murray & Roberts Construction Ltd. (Pty) Ltd and Another* [2008] ZASCA 94; 2008 (6) SA 654 (SCA) at para 23.

¹² *Rainy Sky SA and others v Kookmin Bank* [2011] UKSC 50; [2012] Lloyd's Rep 34 (SC) (*Rainy Sky SA*) at para 21 and the authorities therein cited especially *Society of Lloyd's v Robinson* [1999] 1 All E.R. (Comm) 545, 551 in which the following was stated:

'Loyalty to the text of a commercial contract, instrument, or document read in its contextual setting is the paramount principle of interpretation. But in the process of interpreting the meaning of the language of a commercial document the court ought generally to favour a commercially sensible construction. The reason for this approach is that a commercial construction is likely to give effect to the intention of the parties. Words ought therefore to be interpreted in the way in which a reasonable commercial person would construe them. And the reasonable commercial person can safely be assumed to be unimpressed with technical interpretations and undue emphasis on niceties of language.'

¹³ *Bothma-Batho Transport* at para 12.

¹⁴ See *Ekurhuleni Metropolitan Municipality v Germiston Municipality Retirement Fund* [2009] ZASCA 154; 2010 (2) SA 498 (SCA) at para 13.

[17] I am astute, of course, to the consideration that those remarks do not afford a court authority to construe an agreement at odds with its language so as to improve it or make it fairer. They do, however, convey that where the language is ambiguous or unclear, context and commercial sense play an important part in divining the intended import of the text.

[18] In addition, it is apposite to make reference to a passage in *Hillas Co Ltd v Arcos Ltd*¹⁵ referred to with approval by Hoexter JA in *Murray & Roberts Construction Ltd (Pty) Ltd v Finat Properties (Pty) Ltd*¹⁶ in which Lord Wright pertinently observed:

'Business men often record the most important agreements in crude and summary fashion; modes of expression sufficient and clear to them in the course of their business may appear to those unfamiliar with the business far from complete or precise. It is accordingly the duty of the Court to construe such documents fairly and broadly, without being too astute or subtle in finding defects.'¹⁷

[19] Whilst those observations were made as cautionary remarks against any inclination by the courts to render business agreements ineffectual by subjecting them to a too nice or exacting linguistic analysis, they tacitly also carried the more general import that the interpretation of commercial agreements should be undertaken mindful of the evident business intentions of the contracting parties. It has been stated that:

'The proper approach to the construction of a legal instrument requires a consideration of the document taken as a whole.¹⁸ Effect must be given to every clause in the instrument and, *if two clauses appear to be contradictory, the proper approach is to reconcile them so as to do justice to the intention of the framers of the document.* It is not necessary to resort to extrinsic evidence

¹⁵ *Hillas Co Ltd v Arcos Ltd* 147 LRT 503 (*Hillas & Co*).

¹⁶ *Murray & Roberts Construction Ltd v Finat Properties (Pty) Ltd* 1991 (1) SA 508 (A); [1991] 1 All SA 382 (A).

¹⁷ *Ibid* at 514C.

¹⁸ *Tao Ying Metal Industry (Pty) Ltd v Pooe NO and Others* [2007] 3 All SA 329 (SCA); [2007] 7 BLLR 583 (SCA) at para.86; *CUSA v Tao Ying Metal Industries and Others (CUSA)* [2008] ZACC 15; 2009 (2) SA 204 (CC) at para.90.

if the meaning of the document can be gathered from the contents of the document.’¹⁹

- [20] I wish to add that if two or more documents deal with the same subject matter such documents must be reconciled in order to obtain a sensible interpretation thereof. If the meaning of one document cannot be found, it should be found in the next document dealing with the same subject matter.
- [21] In the context of the facts of this case, one must bear in mind that in interpreting the collective agreement the arbitrator is required to have regard to the aim and purpose of the collective agreement, the words and language used in it, having regard to ordinary rules of grammar and syntax, and the context in which the disputed terms appear in the agreement as well as the objects of the LRA.²⁰
- [22] It is now timely to turn to the agreement itself, the main thrust being the interpretation of the phrase ‘pensionable remuneration’. To begin with I refer to the parties’ submissions in this regard.

Parties’ Contentions

Appellant’s contentions

- [23] The appellant contends that Provident Fund contributions to be paid to the first respondent must be calculated, deducted and paid over on the basis of the *actual* hours worked by each employee. The same applies to the contributions of the employer, so the argument goes. It must be immediately pointed out that although this contention seems to be based on the interpretation of clause 6 of the agreement it does not take into account the provisions of clause 4.1 B (8) (a-e) of the main agreement and is interpreted in isolation to clause 5(1) of the Fund Agreement. The contention in that regard is that the Main Agreement is not applicable to the interpretation of the Fund Agreement.

¹⁹ CUSA note 18 above.

²⁰ *Western Cape Department of Health v Van Wyk & others* 2014 (35) ILJ 3078 (LAC); [2014] 11 BLLR 1122 (LAC) at para 22; *Capitec* (supra) at para 50.

- [24] The appellant submits that 'pensionable remuneration' is the amount that the employer normally or regularly pays to an employee weekly or monthly. The appellant contends that the key to the interpretation is the word 'would' as contained in the definition. It is contended further that had it been the purpose to impose a legal obligation, the definition would have used the word 'should'. It is contended further that the phrase '*would normally and/or regularly pay*' relates to an amount paid weekly or monthly and does not relate to an hourly rate or anything similar. It relates to an amount of wages actually paid to an employee per week or month.
- [25] The appellant contends further that the word '*ordinary*' hours refers to a number of hours the employee *ordinarily* works in order to complete a normal week. It is contended that the arbitrator was bound to give commercial or business efficacy to the interpretation of the phrase *pensionable remuneration* in order to avoid absurd results. It is contended that the intention of the obligation to match contributions to the number of hours actually worked is to provide a retirement benefit to the employee that is affordable and proportional, regard being had to the remuneration actually paid to and received by the employee. It was conceded in oral argument that calculations according to the first respondent's interpretation are beneficial to the employee at the retirement stage.

First respondent's contentions

- [26] The first respondent contends that the interpretation ascribed by the appellant is wrong. The first respondent contends that in interpreting the phrase 'pensionable remuneration' there are four collective agreements which govern conditions of employment which must be read together to resolve the problem. It contends that pensionable remuneration must be read in conjunction with clause 4.1 B (8) (a-e) of the Main Agreement, in terms of which there is a deeming provision of 45 hours.
- [27] It is submitted further that the appellant is supposed to pay its employees who fall within the ambit of the deeming provision as if they worked for 45 hours in any one week, failing which it must apply for exemption in terms of clause 10

of the Fund Agreement. It was submitted further that the business of the appellant must fit the law and not the law to fit it. The agreement was meant to apply across the board and was not made for an individual employer.

Analysis

[28] In my view, the argument advanced on behalf of the appellant seems attractive at first, but it loses sight of the fact that in interpreting the 'pensionable remuneration' as envisaged in the Fund Agreement, one must have regard to the Main Agreement; otherwise, it will not make business sense and will not be in accordance with the objects of the LRA. Consequently, it is my view that one cannot interpret the agreement in isolation. I elaborate on this below.

[29] Clause 4.1 A (1) of the main agreement provides that ordinary hours of work of any employee shall not exceed 45 hours in any one week and 8 hours in any one day. It provides further that whenever any employee works for less than 45 hours in any one week owing to, *inter alia*, any reason other than his absenting himself without the employer's permission, such employee's week shall be deemed to be 45 hours. Clause 10 of the agreement provides: "*Subject to the provisions of the Act and the PFA, exemption from any of the provisions of the agreement may be granted by the Council or Regional council, to any party on application*".

[30] In my view, an interpretation of the phrase 'pensionable remuneration' is inextricably linked to hours worked in any one week. The definition thereof makes it plain that the amount on which payment must be based is the amount that an employee "*would normally and/or regularly*" receive as payment either weekly or monthly "*in respect of the ordinary hours required either to complete either a full normal week or month...*" The word 'would' connotes an amount linked to the prescribed hours per week or month and not '*actual*' hours worked. Read with clause 4.1B(8)(a-e) of the agreement, the deeming provision kicks in.

[31] In my view, a purposeful interpretation which simplifies the problem is the one which takes into account all the relevant documents dealing with the subject

matter. Reading of one collective agreement in this regard will not make business sense. Regard being had to syntax, context and grammatical meanings of words and phrases, it is clear to me that the aim was to simplify the process of calculating the pensionable remuneration by providing for a deeming clause. This makes it easy for those employees that work less than 45 hours per week or month but more than 23 hours. This interpretation is in line with the objects of the LRA in that it provides a simplified method which results in speedy resolution of the dispute.

[32] I have outlined above the principles relating to the interpretation of documents. Although these principles are equally applicable to the interpretation of a collective agreement, one must have regard to the unique purpose of a collective agreement, which is to promote a sound working relationship between the employer and its employees. Furthermore, these collective agreements are the result of long negotiations, which involve a give and take principle. The collective agreement is not meant to cater for a specific individual employer but is meant for all the employers to which it applies in the motor industry. Fairness is not fairness only when directed to one employer with a unique situation. Where an employer is aggrieved by virtue of its unique situation, clause 10 thereof caters for the situation.²¹ The inclusion of clause 10 was aimed at resolving a situation which is unique.

[33] More than a decade ago this Court has held that a collective agreement concluded in terms of the LRA is not an ordinary contract. Therefore, the context within which such an agreement operates is different from that of a commercial contract. Collective agreements operate within the framework established by the LRA and the interpretation thereof ought to be approached with the objects and purpose of the LRA in mind.²²

[34] In *North East Cape Forests v SA Agricultural Plantation & Allied Workers Union & others*,²³ Froneman DJP stated:

²¹ Clause 10 provides “*subject to the provisions of the Act and the PFA, exemption from any of the provisions of this agreement may be granted by the Council or Regional Councils, to any party on application*”.

²² Du Toit *Labour Relations Law – A Comprehensive Guide* 7th ed. at 366.

²³ (1997) 18 ILJ 971 (LAC) at 980H-I.

'It is, in my view, quite clear that these primary objects of the Act are better served by the practical approach to the interpretation and application of the collective agreement as set out in the judgment of Myburgh JP, rather than by reference to purely contractual principles. On the particular facts of this case the object of orderly collective bargaining and effective expression of the fundamental right to strike will be frustrated by the latter approach.'

- [35] By the same token the interpretation which takes into account the provisions of the Main Agreement, makes it practical and easy to calculate the pensionable remuneration and therefore affords with the speedy resolution of disputes as envisaged in the LRA.
- [36] Clause 5(1) of the Fund Agreement makes it plain that the Main Agreement must be read together with the Fund Agreement where it provides that membership of the fund shall be compulsory for every employee, within the scope of the registered Council and falling below the threshold as defined in the Main Agreement, who is employed in the motor industry in grades 1 to 6 and who has not reached a retirement age.²⁴ The employees in these grades are defined in the Main Agreement and not in the Fund Agreement. Without reference to the Main Agreement, one would not be able to trace the grades 1 to 6 employees. Therefore, in order to make sense, this clause must also be reconciled with clause 6, which specifically refers to employees who are working less than 23 hours in any week, which ties up with the deeming clause in clause 4.1 of the Main Agreement.
- [37] In *eThekweni Municipality (Health Department) v Independent Municipal & Allied Trade Union on behalf of Foster & others*,²⁵ this Court held that a collective agreement must be interpreted "*in such a manner as to ensure effective and sound industrial relations*".²⁶ Further, in *Western Cape Department of Health v Van Wyk and others*,²⁷ this Court held:

'In interpreting the collective agreement the arbitrator is required to consider the aim, purpose and all the terms of the collective agreement. Furthermore,

²⁴ The definition of grades 1 to 6 is contained in Chapter 2 Division A of the main agreement.

²⁵ (2012) 33 ILJ 152 (LAC).

²⁶ Ibid at para 27.

²⁷ [2014] 11 BLLR 1122 (LAC); (2014) 35 ILJ 3078 at para 22.

the arbitrator is enjoined to bear in mind that a collective agreement is not like an ordinary contract. Since the arbitrator derives his/her powers from the Act he/she must at all times take into account the primary objects of the Act. The primary objects of the Act are better served by an approach that is practical to the interpretation and application of such agreements, namely, to promote the effective, fair and speedy resolution of labour disputes. In addition, it is expected of the arbitrator to adopt an interpretation and application that is fair to all the parties.'

[38] It must be emphasised that when interpreting a collective agreement, one must bear in mind that it is not like a commercial contract where a degree of primacy is placed on contractual autonomy, in the form particularly of the intention of the parties. When a collective agreement is interpreted, values based on the social character of the agreement are relevant. To this end, the emphasis is always on the objects and purposes of the LRA.

[39] In light of the above analysis, I agree with Counsel for the first respondent that, notwithstanding the fact that the appellant's employees work for hours less than 45 hours per week, they fall within the category envisaged by clause 4.1 B (8) (a-e). Consequently, I am unable to find fault with the judgment of the Labour Court, and in my opinion, the appeal cannot succeed.

Costs

[40] It is trite that in labour matters costs do not necessarily follow the result. An order of costs is determined by taking into account whether it will be fair to award such costs in accordance with law and fairness. Both Counsel agreed that this is an important case for all the parties in the motor industry and does not warrant an award of costs. I agree. It was in the interests of all the parties to get clarity on the interpretation of clause 3(13) of the Fund Agreement.

[41] In the result the following order will issue:

Order

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

B.R. Tokota

Acting Judge of the Labour Appeal Court

Basson AJA *et* Djaje AJA concur.

APPEARANCES:

FOR THE APPELLANT:

F Rautenbach

Instructed by: CK Attorneys Inc.

FOR THE RESPONDENT:

H A van der Merwe

Instructed by Senekal Simmonds Inc.