

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT PORT ELIZABETH

CASE NO P729/99.

In the matter between:

NATIONAL UNION OF METAL WORKERS

OF SOUTH AFRICA

First Applicant

and

M LANGLEY AND SIX OTHERS

Second and Further Applicants

and

DELTA MOTOR CORPORATION (PTY) LIMITED

Respondent

JUDGMENT

JAMMY AJ

1. The Respondent in this matter is a manufacturer of motor vehicles and the Second and further Applicants, until 2 August 1999, when they were dismissed, were employed by the Respondent at its plant in Port Elizabeth in various capacities on what is known as the "assembly line".
2. The charge that they faced in disciplinary proceedings instituted against them individually was that –

On Thursday, 1 July 1999, you embarked upon an unprocedural work stoppage despite

communications issued by the company advising that any such action would be dealt with most seriously. You persisted in your refusal to resume your normal duties despite repeated instructions. You also refused to conform to a final ultimatum which was given to you. Your actions directly resulted in a loss of 4½ hours production time which equates to 61 reduction units”.

3. Certain salient facts in this matter are not in dispute. The Respondent's plant employees are weekly-paid and in terms of their contracts of employment their wages are paid to them by way of electronic transfer into each employee's banking account by the Respondent's bank Absa, Limited. Although there is no contractual obligation requiring this, it has become the practice over a long period of time for the Respondent to deposit the entire payroll for hourly paid employees on the Wednesday following the week in respect of which that remuneration is due and for the bank to effect the electronic transfers to the individuals' bank accounts on a basis which will render those wages available for withdrawal through automatic teller machines at one minute past midnight the next (Thursday) morning.
4. It is common cause that notwithstanding the deposit by the company with the bank of the relevant payroll on Wednesday 30 June 1999, the electronic transfer by the bank to the individual employees' accounts was, through no fault of the Respondent, delayed and that wages were not available through automatic teller machines just after midnight on the morning of Thursday 1 July 1999 as would otherwise normally have been the case.
5. Mr E D Hattingh the Respondent's employee benefits and services manager, responsible inter alia for payroll administration, testified that on 30 June 1999 at approximately 4.00 p.m. he was informed by the payroll supervisor that, in computer terms, the payroll upload to Absa Bank had been rejected. He immediately contacted the bank manager who could not explain the reason but who undertook to investigate the problem and revert as soon as possible. Shortly after 5.00 p.m. that afternoon said Mr Hattingh, he was informed by the manager that an internal problem had occurred, that it would be addressed as a matter of urgency and if necessary by working through the night and that employee wages would be available electronically by midday the next day, Thursday, - that is to say, some twelve hours later than normal.
6. In the light of these developments. steps were immediately taken for notices to be posted the next morning at the two automatic teller machines on the Respondent's premises to that

effect. He also met immediately inter alia with the Union shop steward, a certain Mr Mngini and informed him what had occurred, that it was beyond the control of the company and that the bank had undertaken to work through the night to ensure that all wages would be electronically credited to the bank accounts of the individual employees by midday the next day. Mr Mngini, Mr Hattingh said, “seemed to appreciate the problem”.

7. The next morning, Mr Hattingh continued, he attended at the Respondent’s Industrial Relations offices where a number of shop stewards were present and conveyed the same information to them. In the result, wages were available in terms of the bank’s undertaking, at midday that day.
8. Questioned by Mr D Cartwright, representing the Applicants, regarding two previous occasions in June 1999 upon which wages had not been available in terms of the prevailing arrangement, Mr Hattingh responded that, in both those instances, the Wednesday of the week in question was a public holiday and it had not been possible for the Respondent to upload the payroll into the bank’s system. Save for those instances, the system had been working efficiently since approximately 1996. It was not true that the notices on the automatic teller machines had been placed there some time after 9.00 a.m. on the Thursday morning. This, Mr Hattingh repeated, had been done shortly after 7.00 a.m. and in fact he and the supervisor who attended to that aspect of the matter had specifically come to work early for that purpose.
9. When he met the shop steward, Mr Mngini, shortly thereafter, he was not aware, and was not told, what was happening on the shop floor. He learned during the morning that there was a work stoppage at the plant but he did not have details at that stage.
10. Mr A S Alexander, the next witness for the Respondent, testified that in July 1999 he was the manager of the assembly line at the Respondent’s Kempston Road plant on which the “build process” of Isuzu Bakkies was carried out. This assembly process involves what is known as a trimline, where “smaller type parts” are installed, and an assembly line relating to the installation of the chassis, underbody, seats, wheels, bumpers and so forth, all necessary fluids and the engine. In short said Mr Alexander, he starts “with the shell” and everything else is added on a conveyor system on which teams of workers are involved in different aspects of the process.

11. If one team does not perform, he said, "the vehicle goes offline as an uncomplete vehicle, something will be missing". This in turn will necessitate overtime work to complete the vehicle, which cannot be put back on the line at the point at which the disruption occurred.
12. The point of assembly in question in this matter is known as the TF assembly line. The line operates on a shift system and the relevant shift in this matter was that from 7.00 a.m. to 3.20 p.m., during which, in the ordinary course with all labour "online", 95 complete units will be produced. On 1 July 1998 however, only 28 units came off the line, - more than 60 less than the scheduled number.
13. Shortly after 7.00 a.m. on the morning of 1 July 1999, Mr Alexander continued, he was informed by the Production Superintendent, Mr Phillips, that there was a work stoppage in the plant. He went there immediately and found that "the line had stopped in the pit area, where underbody work is performed, - parts, brakes and repairs". The pit, he explained, is a long trench under the conveyor belt on which, at the time, vehicles were standing.
14. The seven Applicants in this matter comprised the team at that point, together with another employee by the name of Boggenpoel. Mr Alexander was then joined by the Respondent's IR Manager, Mr Kosani, and they ascertained from the shop steward, Mr Mngini, the reason for the stoppage - that the employees' money had not been available through automatic teller machines that morning. Mr Mngini spoke to the group and then reverted to them to confirm that they were not prepared to work because they had not been paid. Their request that the individuals return to their duties and that the problem be discussed responsibly off the plant, was refused. They persisted in their attitude that they would not work unless they were paid.
15. He remained on the line, said Mr Alexander and shortly after 8.00 a.m. requested his supervisor, Mr Phillips, "to check and see who was not doing what he should be". It was established that the line could not run past the pit area where the eight individuals were refusing to work.
16. Between 9.00 and 10.00 o'clock Mr Kosani had further discussions with the shop stewards,

requesting them to “get the guys back” and inform them that the situation would be assessed at 10.30 a.m. The shop stewards were informed that what was occurring was an unauthorised work stoppage and that disciplinary action would be taken against the participants if the refusal to work continued.

17. The line was started again at 10.30 a.m. at which stage seven of the eight people involved and comprising the Applicants in this matter, were still in their civilian clothes and not willing to work. Mr Boggenpoel however had returned to his post. In the result “units were going off the line incomplete”. The Applicants were standing away from the line in what is known as the EPG area, where teams congregated when not working. There were other individual employees, who had completed as much of their work as was possible in the face of the obstruction at the pit area and who were “milling around in work clothes in the smoking area”. No one other than the seven Applicants indicated or suggested a refusal to work normally at that stage. Stoppages on the line however continued and in an attempt to get it running smoothly, it was decided that another area of the plant would be closed and that employees there would be utilised to carry out the Applicants’ functions on the assembly line. The Applicants in the meantime, were repeatedly requested to return to work and consistently refused to do so, notwithstanding a warning to them that they would be disciplined if that refusal continued. They were subsequently suspended, disciplinary enquiries followed and they were ultimately dismissed.
18. A meeting between himself, Mr Kosani and “IR people” with the shop stewards took place between 9.00 and 10.00 o’clock and ended shortly before 10.00 o’clock with the shop stewards being requested to convey to the workers concerned, that an attempt would be made to start the line at 10.30 a.m., with disciplinary consequences for anyone who refused to return to work normally at that time. It was correct that whilst he was on the shop floor between 8.00 a.m. and 9.00 a.m., employees in the pit area and others outside it were not working. The attempt to start the line at 8.30 a.m. had been futile and it was at that stage that he instructed Mr Phillips to direct team leaders to approach all workers on the line and ascertain who was prepared to work normally and who was not. In due course Mr Phillips returned with the names of eight persons refusing to work after the attempt to start the line was made.
19. Once he ascertained the names he instructed Mr Phillips to assemble the persons concerned in the EPG area. He did so and once again attempted to get them to return to work, to no

avail. Another attempt was made at 10.30 a.m., following further discussions with the shop stewards and an opportunity to them to see if they could persuade the employees concerned to start work, to ascertain finally who was prepared to and who was not. The seven Applicants at that stage were the only persons refusing to resume their duties. That group was again assembled in the EPG area and was told to remain there, it being the company's intention now to suspend them.

20. When it was put to him that what had in fact happened was that the employees who had not received their wages had indicated to management that they would be prepared to work if the company would either give them money to purchase, or would itself provide, something to eat and drink, Mr Alexander declined to comment as he was not involved in those discussions, he said. It was not true however, that no attempt was made to start the line at 8.30 a.m. because no one was working. A full record of all stoppages and starts was maintained at all times.
21. Mr Bruce Phillips, who was the co-ordinator of the assembly and trim lines in July 1999, reporting to Mr Alexander, explained the impact of the Applicants' refusal to work on the assembly process and defined their functions. The Second and Third Applicants Mr Langley and Mr Van Wyk, worked in the pit. The Third Applicant, Mr Cedras, was a repairman on the assembly line, working in the vicinity of the pit. The Fifth Applicant, Mr Brainers, worked in what was known as the body drop area, operating the hoist used to join the vehicle body to the chassis. The function of the Sixth Applicant, Mr Padayachee, was to secure battery cables and harness. His position on the line is 3 stations away from the drop zone, whilst the pit is 7 stages from that point. The Seventh Applicant, Mr Mantoor works inside the vehicle over the pit, fitting under-covers. The Eighth Applicant, Mr Tarentaal, works in the pit together with Mr Langley and Mr Van Wyk.
22. On the morning of 1 July 1999, Mr Phillips testified, he saw Mr Brainers in the pit area and not at his drop zone station. Shortly after 7.00 a.m. he was advised by a team leader that certain individuals were not prepared to commence work because of a pay dispute. He approached the eight individuals in question and requested them to start work while he investigated the problem. Their response was that they would not do so unless they were paid. At that stage they were in the EPG area near the pit and dressed in civilian clothes.

23. He attempted to restart the line shortly after 8.00 a.m. said Mr Phillips, but it could not operate because the eight individuals were not at their respective stations. Shortly thereafter he approached them again and informed them that if they did not commence work as requested, they would face disciplinary action.
24. By 10.30 a.m., one of the group, Mr Boggenpoel, had returned to his station but the remaining seven still refused to do so. He did not see anyone else on the line who was at that stage refusing to work and was not advised by the team leaders that anyone else was involved in that refusal.
25. He then assembled the seven Applicants in the EPG area and informed them that he was suspending them pending disciplinary action against them. He went to his office to prepare the necessary documents and had completed four suspension forms when he was summoned back to the line to attend to problems there. When he returned to his office approximately an hour later, he found that three of the Applicants had returned to the line and were working. He immediately instructed them to cease doing so and informed them that they were under suspension for having ignored the earlier ultimatum to return to work by 10.30 a.m. or face disciplinary action.
26. Questioned by Mr Cartwright, Mr Phillips stated that following the ultimatum at 10.00 a.m. all the other employees including Mr Boggenpoel, worked normally but the seven Applicants persisted in their refusal to do so. He assumed, he said, that three of them had second thoughts thereafter in the face of pending disciplinary action and returned to the line in an attempt to avoid it. He was adamant, in response to persistent questioning by Mr Cartwright in that regard, that at 10.30 a.m., it was only the seven Applicants who refused to work. All other persons were properly at their work stations. He was not aware of any offer by anyone to start working if they were provided with food and drink. It was not true that the four Applicants who did not return to their stations attempted to clock out because they thought the plant was to be closed. They did not respond to the ultimatum and after they were suspended, they left.
27. The salient aspects of the evidence of Mr Langley and Mr Brainers, the only two of the seven Applicants to testify in these proceedings, may be summarised as set out hereunder.

28. As with the other workers who attempted to do so, Mr Langley tried unsuccessfully to draw his wages from an automatic teller machine before he began work on 1 July 1999. When he arrived at work, employees were “walking around” but he “did not trust them” and decided to start work himself. He donned his overalls, collected his tools and proceeded to his station. Shortly before 7.00 a.m. he was approached by a colleague who asked him to “get out of the pit, we are not going to work”. He observed that a group of employees, numbering approximately twenty-seven, were standing around and he joined them.
29. Discussions then ensued with various members of management in the vicinity of the line. They were informed of the problem regarding wages and were asked to go back to work whilst the matter was investigated. “People refused, said they were hungry and asked for something to eat” said Mr Langley. This request was ignored.
30. At approximately 8.30 a.m. members of management again attempted to persuade “people” to return to work but there was a general refusal. After 10.00 a.m., a message was conveyed to them by their team leaders to the effect that if people were not at their work places at 10.30 a.m., the factory would be closed. Everyone at that stage was in overalls but moved to their lockers, put on civilian clothes and proceeded to the clock-out point.
31. Uncertain what to do, said Mr Langley, they went to the shop stewards’ office and were advised to return to work. Together with Mr Van Wyk, Mr Tarentall and Mr Mantoor, he returned to the lockers, and they donned their overalls again. When Mr Phillips saw them doing so he stopped them – there were twelve or thirteen of them present. They were instructed to attend at his office, went there and were informed that they were being suspended. He accepted a suspension letter but did not sign for it, deciding that the best thing to do would be to consult their shop stewards. An approach to Mr Phillips was made by the shop steward Mngini, to have the suspensions retracted, but he refused. He, Mr Mantoor, Mr Van Wyk and Mr Tarentaal eventually left the factory at approximately 13.50. He was not aware, said Mr Langley, why they had been “singled out”, unless it was because a safety issue had been raised by them a few days before with Mr Phillips and he resented that fact.
32. That testimony was broadly corroborated by Mr Brainers. He was wearing his work clothes when he arrived at work that morning he said, but at 7.00 a.m. “guys were calling us together – our wages had not been paid in”. Most of them decided not to start work until they were

informed by their shop stewards “what was wrong”.

33. Various members of management then approached them and explained the problem. They laughed when it was suggested that the company should provide money for food or something to eat and drink. At 10.00 a.m., their foreman called them – “ eight of us from a group of ten” and asked if they were prepared to work. They replied that they would not do so. The line was however then switched on and he returned to his station as a hoist operator and continued working until he and Mr Padayachee were called off the line by Mr Phillips and told to attend at his office. This was at approximately 3.10 p.m. Suspension documents had already been written out and were handed to them. He could not however say why Mr Phillips had singled them out.
34. Questioned by Advocate Wade, representing the Respondent, Mr Brainers acknowledged that they were “repeatedly” informed by their shop stewards that if they were not back at work by 10.30 a.m. they would be disciplined. He was at his work station, said Mr Brainers and worked until 3.00 p.m. when he was called off the line by Mr Phillips and told that he could not work because he had been suspended. As far as he was concerned he was not on strike, he had met the ultimatum and should not have been dismissed. He did not attend the subsequent disciplinary enquiry because, he said, he knew nothing about it.
35. Mr S Bongani, another employee of the Respondent on the assembly line, testified that workers had not started work at 7.00 a.m. because their wages were not available, they were hungry and “didn’t know what was happening”. There were talks, he said, between 7.00 a.m. and 10.00 a.m. and during that period it was not only the seven Applicants who did not work. They were standing in groups waiting until management or their leaders addressed them. Eventually their shop stewards approached them and advised them that if they did not start work, they would be disciplined.
36. There was a threat, he said, that they would be “locked out” at 10.30 a.m. if they did not heed the ultimatum and for that reason he returned to his station, as did all the other workers, apart from the seven Applicants.
37. Mr S Dolley is a full-time shop steward in the employ of the Respondent. In brief testimony he

described meetings between the shop stewards and management between 7.00 a.m. and 10.00 a.m., during which the wage problem that had arisen with the bank was explained to the shop stewards. Eventually, at 10.00 a.m., they were informed that if employees were not back at their stations and ready to work at 10.30 a.m., the plant would be closed. This ultimatum was conveyed by them at approximately 10.15 a.m. when, he concluded, "we advised them to go back".

ANALYSIS AND CONCLUSION

38. The evidence submitted by the respective parties in this matter is, as will be apparent, replete with disputes of fact. In essence however those disputes relate to events and circumstances which occurred and prevailed prior to 10.00 a.m. on 1 July 1999, the day in question. Two cardinal aspects of the matter are however, in that context, common cause. The first is that the workers were not paid in accordance with what had become a practice - although acknowledged on behalf of the Applicants not to have been a contractual obligation, - to have their wages available through automatic teller machines at one minute past midnight each Thursday morning. The second is that, whatever the magnitude thereof might have been, there was a work stoppage that morning prior to 10.30 a.m., that intermittent but unsuccessful attempts were made during that period to operate the assembly line and that production, substantiated by the Respondent's unchallenged records in that regard, was radically negatively affected as a consequence.
39. In the context of the charges faced by the Applicants and as a consequence of which their employment was terminated, those events, save to the extent of their relevance in setting the scene for what subsequently occurred, have no direct bearing on the cardinal reason for those dismissals.
40. The charge against them was, as I have indicated, unambiguously and clearly stated in the notices to them of the disciplinary enquiry which each was required to attend. They had embarked, in the face on the non-payment of their wages, on a work stoppage and they persisted in their refusal to resume their normal duties in response to a final ultimatum requiring them to do so. It is not disputed that that was the ultimatum to them at 10.00 a.m. that morning and in terms of which they were required to resume work at 10.30 a.m. or face disciplinary action.

41. The evidence of the Respondents' management witnesses that it was the seven Applicants, and only they, who ignored that ultimatum, is compelling. Also established, in my view, from the conspectus of the evidence, is the fact that all seven of them were confronted after 10.30 a.m. by Phillips and informed that they were being suspended pending disciplinary action. The probabilities do not support Brainers' submission that, together with two of his colleagues, he returned to work in response to the ultimatum and was consequently called off the line. Much more likely is the contrary contention that, faced now with the reality of disciplinary action the three of them, having been informed of their suspension, thought better of their actions and sought to avoid it. I will revert to this aspect of the matter later in this judgment.

WAS THE WORK STOPPAGE UNLAWFUL?

42. It is a well established principle of employment law, established in a line of cases in the Labour Courts, that in the ordinary course, the tender of their services by employees involves the reciprocal obligation on the part of their employer, to pay them for their labour.

See : Coin Security (Cape) (Pty) Limited v Vukani Guards and Allied Workers Union and others (1989) 10ILJ239 ; Num and others v Via Do Ro Manufacturing Limited (2000) 7BLLR827 (LC)

43. Inherent in that principle must of necessity be the refusal or inability, for whatever reason, of the employer to effect such payment. Where payment is, as an established practice or a condition of employment, effected through some medium other than directly by the employer to the employee, the risk of contractual repercussion if that medium, for whatever reason, fails, lies with the employer. A further immutable requirement however must clearly be that the failure in question constitutes a breach of contract.
44. There was, in the circumstances prevailing in this matter, no such dereliction or breach on the part of the Respondent which would, in that context, have entitled the Applicants lawfully to withhold their labour. It is common cause that, in what had become the established and accepted course, its wage bill was paid by the Respondent into its bank on Wednesday 30 June 1999 and would ordinarily have been available, as normal, immediately after midnight the next morning. The reason for that unavailability and, more importantly, the

steps taken to remedy the situation, were made known to the employees at the earliest opportunity that day. The bank's system had failed, they were told, the fault was being remedied as a matter of urgency and wages would be available by midday. There was no statutory or contractual obligation on the employer to have procured this. In terms of the Basic Conditions of Employment Act, remuneration is payable not later than seven days after the completion of the period for which it is due. The contracts of employment of the individual Applicants were silent as to the date and time of payment, providing only that it would be made "by way of electronic deposits into the employee's banking account". The employee handbook, which is made available to employees as part of their induction process, provides expressly that "wages are usually paid on a Friday in your work area and are one week in arrears". It is further common cause that although the electronic form of payment affected the majority of the Respondent's employees, not all of them were paid in the same way.

45. I am not persuaded in these circumstances that the Respondent was in breach of its obligations in that regard on any basis which would render the undisputed work stoppage on the morning of 1 July 1999 a lawful one. It was conduct on the part of those participating in it, which unquestionably constituted a "strike" within the definition of that term in Section 213 of the Labour Relations Act 1995 and was unprotected by any provision of that statute.

WAS THE DISMISSAL OF THE APPLICANTS FAIR?

46. I have already indicated that the conduct of the Applicants relevant to the determination of this issue is that which occurred at and after the expiry of the ultimatum at 10.30 a.m. on the morning of 1 July 1999. I have no doubt from the evidence, that that ultimatum was in terms relating not to a threatened closure of the plant, as suggested, but to consequential and disciplinary action should it not be complied with and I am satisfied that there was initial non-compliance in that context by all seven of the Applicants and that it was made clear to them as a consequence thereof, that they were suspended with immediate effect pending disciplinary enquiries to be instituted against them.
47. The fact that, following the ultimatum, production stutteringly commenced, negates the contention that there was a congregated move to clock-out in anticipation of the plant being closed. What is apparent is that, in the face of the ultimatum, the bulk of the workforce resumed their functions when the assembly line was tested at 10.30 a.m.

48. The consistency of the Respondent's conduct is challenged by the Applicants in the context that it was only they who were subjected to disciplinary action, notwithstanding the fact that all seventy employees on the assembly line had been involved in the work stoppage at 7.00 a.m. I have already indicated that on the basis of the specific charges put to them in the disciplinary enquiry notices issued against them, the kernel of the Respondent's complaint was based on their refusal "to conform to a final ultimatum which was given to you". That ultimatum was one threatening disciplinary action if it was not complied with. No such threat was an element of the repeated requests to the idle employees before the ultimatum was issued, to return to their posts. The refusal of the seven Applicants to do so once the ultimatum expired was a studied and wilful one, not supported by the balance of the assembly line workforce. The fact that they were then as a consequence treated differentially does not, to my mind, indicate the inconsistency of which they now complain.
49. There does however appear to me to be a legitimate basis for differentiation between the sanctions imposed on the four Applicants who did not resume their duties at all, namely Messrs Langley, Van Wyk, Mantoor and Tarentaal, and the three who subsequently went back to their posts, Messrs Cedras, Brainers and Padayachee. As I have remarked earlier in this judgment, whether those three did so having considered the error of their ways and the unreasonableness of their conduct, or to avoid the disciplinary action of which they had at that stage been given informal notice, is immaterial. The fact is that they resumed their duties and would presumably have continued to perform them, had they not been removed from the line as a consequence of their earlier suspension.
50. The refusal to work, after the explanations had been furnished for the unavailability of wages and the assurances from management that they would be paid by midday that day (when the wages, as a fact, became available), apart from being unlawful, was in my view totally unreasonable. I attach no weight or substance to the issue of the provision of food or money for sustenance in the interim. I cannot, on any reasonable assessment, accept that the provision of a "pie and coke", as was contended, some 3 hours before the wages became available, would have made any significant difference to the ability of the workers concerned to have carried out their duties. That, to my mind, is a spurious suggestion.
51. The consequences to the Respondent of the work stoppage have been emphatically

illustrated. The decision not to discipline employees who were engaged in it but complied with the ultimatum, notwithstanding the prejudice to the Respondent which was caused thereby, was in all the circumstances of the matter, the exercise by management of a generous prerogative. Had the seven Applicants in this matter aligned themselves with their colleagues, that would have been the end of the matter as far as they were concerned. Four of them did not do so, whilst three at least attempted to salvage their positions.

52. In all the circumstances of the matter, as emerging from the conspectus of the evidence presented on both sides, I have concluded that the dismissal of the Applicants Langley, Van Wyk, Mantoor and Tarentaal was fair and justified in all respects. Whilst the remaining three cannot, notwithstanding their apparent contrition, escape some form of sanction for their post-ultimatum conduct, their summary withdrawal from the assembly-line when they were found to be working, constitutes to my mind an unreasonable intransigence on the part of management in the context of the suspensions which had been imposed upon them. I am of the opinion, in their specific cases, that for those reasons they should not have been dismissed.

53. In the result, the order that I make is the following -

1 The dismissal by the Respondent of Mr M Langley, Mr B Van Wyk, Mr H Mantoor and Mr S Tarentaal, was fair and justified and their applications are dismissed;

2 The dismissal of Mr E Cedras, Mr M Brainers and Mr M Padayachee was not warranted and each of them is reinstated in his employment with the Respondent. By reason of their unlawful and unreasonable conduct to the point of the resumption of their duties however, that reinstatement is not retrospective and is without compensation in any respect relating to employment benefits lost by them since their dismissal.

54. I have considerable difficulty with the issue of costs in this matter. Whilst inevitably the result of loss of employment in any circumstances, the financial consequences to the seven Applicants of their dismissal by the Respondent have, over the 20 months which have since passed, been severe. It is also apparent from the history of the litigation in the matter that the pleadings, the amendments thereto, the pre-trial formalities and the problems arising

therefrom have, if not entirely then clearly substantially, been squarely in the domain of their representative, the First Applicant. On the other hand, the Respondent, specifically in the case of three of the Applicants, has not been wholly successful in its opposition. The First Applicant is a prominent and respected Trade Union, adequately endowed, in my experience, with competent legal acumen and experience. It cannot in those circumstances, when its position in relation to this litigation is assessed independently of that of its members, be absolved from liability for what has ultimately occurred.

55. In all of these circumstances, and allowing as I have said for the fact that the Respondent has been unable to establish unqualified justification for aspects of its conduct, I have deemed it equitable to order that the Respondent's trial costs in this matter be paid by the First Applicant. There is no order as to costs in relation to the two previous occasions with regard to which the question of costs was reserved.

B M JAMMY

Acting Judge of the Labour Court

17 April 2001

Representation:

For the Applicants : Mr D Cartwright : NUMSA

For the Respondent : Adv R B Wade instructed by Chris Baker & Associates