

SOUTH AFRICA / JUDGMENT

Genrec Engineering (Pty) Ltd v Metal and Engineering Industries Bargaining Council and Others (JR1284/12) [2016] ZALCJHB 213; (2016) 37 (ILJ) 2649 (LC) (17 June 2016) [2016] ZALCJHB 213

COURT

Labour Court Johannesburg

BEFORE

Benjamin

CASE / FILE NUMBER

JR1284/12

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THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Reportable

Case no: JR 1284/12

In the matter between:

GENREC ENGINEERING (PTY) LTD

Applicant

and

METAL AND ENGINEERING INDUSTRIES

BARGAINING COUNCIL

First Respondent

IMTHIAZ SIRKHOT N.O.

Second Respondent

NATIONAL UNION OF METAL WORKERS OF

SOUTH AFRICA (NUMSA)

Third Respondent

N DINGANE AND 46 OTHERS

Fourth to 51st Respondents

Heard: 3 March 2016

Delivered: 17 June 2016

Summary: Review of an award to determine the back pay to be paid to employees who had been reinstated in terms of a settlement agreement concluded five and a half years after their dismissal.

BENJAMIN, AJ

Introduction

[1] In November 2005, the company instructed its employees to attend a presentation on a BEE share incentive scheme that it was stablishing.

A number of employees refused to attend the meeting, which was held during working time. Certain employees who refused to attend the meeting were at that stage on a final written warning for having failed to attend a safety meeting earlier that year. After

disciplinary inquiries, these employees were dismissed on 3 February

2006. It is the case of these 47 employees that more than a decade later comes before this court.

[2] In the wake of the dismissals, NUMSA referred an unfair dismissal dispute on behalf of the 47 employees concerned to the Metal and

Engineering Industries Bargaining Council (MEIBC), which is cited as the First Respondent in this matter. That began a tortuous process of dispute resolution which has endured for over a decade. The first road-block in the process occurred when the employer reviewed an arbitrator's decision permitting the cases to be heard in consolidated hearing, rather than each employee having a separate hearing. This review was subsequently withdrawn almost two years later, a period during which no progress was made in resolving the dispute.

[3] An arbitration was held over 15 days from 27 October 2008 until 27 May 2009 and an award was given on 30 July 2009. The arbitrator ruled that the dismissal was substantively unfair and ordered that the dismissed employees be reinstated with retrospective effect but without receiving any back pay. The arbitrator's decision that the dismissal was unfair and the order of reinstatement was reviewed by the employer; in a cross – review, the union NUMSA challenged the failure by the arbitrator to award back pay. Subsequently, the parties consented to the award being set aside as the record of arbitration proceedings has been deleted by the bargaining council.

- [4] On 10 October 2010, the Labour Court issued an order directing that the matter be set down once again for arbitration by the MEIBC. The matter then proceeded on 20, 24 and 25 February and 11 and 12 May 2011 before a new arbitrator, who is the Second Respondent in this matter. (For the sake of brevity I will also refer to him as the “second arbitrator” and to the arbitrator in the earlier arbitration as the “first arbitrator”.)
- [5] At this stage, the parties agreed to revert to mediation and on 5 September 2011, they concluded the settlement agreement in terms of which the employees dismissed more than five years earlier had an election to return to work with the employer. It is the interpretation of that settlement agreement which is the first matter that I have to deal with in this judgment.
- [6] The settlement agreement is brief and its full contents is as follows:
- ‘1. The Respondent will reinstate the individual members of NUMSA with effect from 19 September 2011 into their previous positions or similar positions to those in which they worked at the time of their dismissals.
2. Those individual members who do not report for work by 30 September 2011 will not be reinstated by the Respondent.
3. The Arbitrator will determine the back pay to be awarded to:
- 3.1 The estate of those individual employees who have died since their dismissal by the Respondent;
- 3.2 Those individual employees who do not return to work by 30 September 2011.
4. The Arbitrator will also determine the back pay to be paid to the individual employees who have returned to work. For the purposes of determining such back pay, the Respondent concedes that the dismissal of the individual employees was substantively unfair in that dismissal was too harsh a sanction in the circumstances.’
- [7] Following the conclusion of the settlement agreement, the arbitration resumed for the purpose of determining the back pay to be awarded for the dismissed employees. After receiving both written and oral submissions by the representatives of the parties, the arbitrator issued an award on 16 April 2012 in which he awarded back pay to the dismissed employees retrospective to the date of their dismissal.
- [8] A review of that decision brought by the company forms the subject matter of this judgment. The parties shared the view that in the event that the review succeeded and the award was set aside, the matter should not be referred back to the bargaining council for yet another arbitration and the court should substitute its decision for that of the arbitrator.

Meaning of “back pay” in the settlement agreement

- [9] The first ground for review is that the arbitrator misinterpreted the settlement agreement. The company and the union offered divergent

contentions as to the meaning of the term “back pay” as used in paragraphs 3 and 4 of the agreement. In brief, the company argues that the term refers to “compensation” and that, accordingly, the arbitrator’s powers were restricted to awarding a maximum of 12 months’ compensation to employees, as provided for in section 194(1) of the Labour Relations Act, 1995 (‘LRA’). The union, on the other hand, takes the view that the agreement gave the arbitrator power to determine the amount of back pay that employees were entitled to retrospective to the date of their dismissal.

- [10] The company argued that the term “back pay” should not bear its normal meaning in the agreement as it applied to both employees who returned to work in terms of the agreement, as well as those who had died in the interim and those who have elected not to return to work in response to the undertaking of reinstatement contained in the agreement. As these two categories of employees, whose position is specifically dealt with in paragraph 3 of the agreement, at no stage returned to work subsequent to the dismissal in 20 November 2005, it was argued that the monies awarded to them could not be “back pay” and, accordingly, the term “back pay” could not bear its normal meaning in the agreement. The union, in response argued, that the meaning of the term back pay was sufficiently broad to encompass any award of payment for the period up until the employees were entitled to return to work in terms of the settlement agreement.

- [11] In its argument, the Applicant employer attaches much significance to the following passage from the decision of the Constitutional Court in *Equity Aviation Services(Pty) Ltd v CCMA and Others*:^[1]

‘The ordinary meaning of the word “reinstate” means that the reinstatement will not run from a date after the arbitration award. Ordinarily then, if a Commissioner of the CCMA orders the reinstatement of an employee that reinstatement will operate from the date of the award of the CCMA, unless the Commissioner decides to render the reinstatement as retrospective.’

- [12] This passage, it suggested, was supportive of its view that payment for the period between the dismissal and the agreement could not amount to “back-pay” for workers who were unable or declined to take up the opportunity of reinstatement. In dealing with the implications of this passage, it is evident that the case before this arbitrator is not an ordinary arbitration case as adverted to by the Constitutional Court. Ordinarily, the arbitrator deals with the issue of reinstatement and back-pay simultaneously by determining the date from which reinstatement operates. In other words, an employee will automatically receive back-pay if an award requiring an employer to reinstate (or, for that matter, to re-employ) an employee takes effect on a date that is earlier than the date of the arbitration award. In such a case, re-instatement (or re-employment) is retrospective and the returning employee will be entitled to pay calculated from the date on which the arbitrator ruled that the reinstatement took effect.

[13] The present case involves a significantly different constellation of events. The issue of reinstatement for the purposes of the

prospective employment of the dismissed employees was resolved by a settlement agreement concluded by the parties to the dispute. That issue was accordingly removed from the arbitrator's discretion. What remained in issue was the extent to which the employees

concerned would receive payment for the period prior to their resuming work in terms of the agreement. It was this issue, and only

this issue, that arbitrator was required to determine, once the settlement agreement had been concluded.

[14] The company further argued that the fact that the agreement provides for employees to be reinstated "with effect from" 18 September 2010 shows that the reinstatement was not retrospective and, accordingly, the remuneration for the period between the dismissal and reinstatement could not be "back pay". In contrast, the union argued that the term "with effect from" merely had the purpose of signifying the date on which employees could take up the offer of reinstatement by reporting for duty. Therefore, it did not carry the additional implication that employees may only receive compensation for the period prior to their reporting back to work because there was no order of reinstatement operative during this period.

[15] I am of the view that term "back pay" as used in the settlement agreement refers to payment for the period between the

date of dismissal and the date on which the reinstatement statement took effect in terms of the agreement. The fact that the deceased

employees were unable to tender their services for reinstatement and the fact that certain others elected not to do so, does not alter the fact that payment for the period between their dismissal in February 2006 and their entitlement to tender their services for reinstatement in September 2011 can be considered to be back pay. In other words, payment for this period does not only constitute back pay at such time as an employee tenders his or her services.

[16] There is nothing in the text of the agreement that supports the conclusion that the arbitrator's powers were limited to an award of compensation as contemplated by section 194(1) of the LRA. It would not be a reasonable interpretation to imply into the agreement a 12-month limitation on the award that the arbitrator could make in the absence of either an explicit reference to the relevant statutory provision or the use of language mirroring the relevant statutory provision.

[17] In my view, the agreement correctly construed gives the arbitrator a power to determine back pay for the period between the date of dismissal on 6 February 2006 and the date when the reinstatement took effect, 18 September 2011. Accordingly, this ground of review must fail.

[18] As indicated above, the union adopted the view in its argument before the arbitrator that the effect of the agreement was that arbitrator

was obliged to award full back pay to the dismissed employees and had no discretion to award a lesser amount. The employer argued in this review that the arbitrator had merely accepted that argument and accordingly the arbitration award should be set aside. Counsel for NUMSA in the review conceded that the union representative representing NUMSA in the arbitration had argued that the arbitrator did not have a discretion to award a lower amount of compensation. However, he submitted that the arbitrator had rejected this argument and had properly applied his mind to determining the quantum of back pay that he should award. I accept that as a correct submission. It is evident from the arbitration award that the arbitrator was of the view that he had a discretion and analysed the submissions and information before him in order to exercise that discretion. That the arbitrator sought to exercise his discretion on the basis of the evidence that the parties placed before him is evident from the analysis of the further grounds of review that follows.

Further grounds of review

[19] In addition to its critique of the arbitrator's interpretation of the agreement, the company attacks the arbitrator's decision to make a fully retrospective award on the number of grounds:

- (a) the arbitrator should have taken into account the culpability of the employees in refusing an instruction to attend the meeting about the BEE share scheme in November 2005;
- (b) the arbitrator should not have taken into account the history of the matter without providing the parties an opportunity to make

representations on the issue;

- (c) the arbitrator should not have refused to accept the evidence tendered by the employer of the earnings by the employees subsequent to their dismissal;
- (d) the arbitrator failed to take into account the company's financial position.

[20] Before analysing these arguments, it is necessary to set out in some detail the process that was followed after the conclusion of the settlement agreement. Both parties filed heads of argument advancing their contentions as to how the arbitrator should deal with the issue of back-pay in terms of the agreement of 5 September 2011. The company's heads of argument were dated 30 September 2011 and the union's 18 October 2011. A further hearing was held on 31 October 2011 at which both parties had an opportunity to respond to the issues raised in the other side's heads of argument.

[21] Subsequent to that, the parties did submit documentary evidence to the arbitrator. This included the death certificates of the deceased

employees, which the arbitrator had expressly requested at the hearing on 31 October 2011, and information obtained by the company

from the Department of Labour indicating earnings received by dismissed employees from other employers in the period subsequent to the dismissal.

[22] In its written heads of argument, the company argued that the arbitrator should find that his jurisdiction was limited to an award of compensation capped at 12 months. Senior Counsel representing the company argued that the employees should receive six months'

compensation because they had been culpable in their dismissal, as they had refused a lawful and reasonable instruction to attend the BEE meeting. Senior Counsel, who was not the Counsel who represented the company in the review proceedings before this court, further argued that the arbitrator should assume that, in the absence of evidence as to how employees had managed to support their family during the period since their dismissal, the arbitrator should assume that they had been able to generate income.

[23] The heads of argument for the union, who were represented by a union official, on the other hand, proceeded on the basis that the terms of the settlement agreement were such that the arbitrator must order back-pay for the individual employees calculated from the date of their dismissal.

[24] At the hearing of 31 October 2011, the employer's senior counsel reiterated his argument that the 12 month cap on compensation should apply and that the reinstated workers should receive six months compensation because there was "culpability or unreasonable

attitudes" on the part of both the employer and the union and its members. He argued that the arbitrator's award issued on 30 July 2009 in the first arbitration that the employees should only be prospectively reinstated, amounts to a finding of fault on both sides. In addition, he argued that the fact that the employer reviewed the finding in the first arbitration that the dismissals were unfair and that, thereafter, the union instituted a cross-review on the arbitrator's decision not to make the award of reinstatement retrospective, indicated that the blame for the delay subsequent to the first arbitration award should be shared. The arbitrator's rejection of these two lines of argument gives rise to two of the employer's grounds of review and I will now deal with these in turn, although they do overlap.

Culpability for the dismissal

[25] The company argues that it was an irregularity for the arbitrator to make an award fully retrospective to the date of dismissal when the employees had been culpable by refusing the instruction to attend the BEE presentation. This argument relies on the finding in the first arbitration. The arbitrator, whose award is the subject of this review, rejected the assertion that he should take into account evidence presented at the first arbitration. He states that if he were to do so –

‘This would be highly irregular, as the Respondent has to place information before me in the form of evidence.... Respondent has referred me to the previous Arbitration award, which both parties have sought to review and set aside. If I had to take into account the evidence of this previous award, it would lead to substantial unfairness on the part of the applicants.’

[26] The gist of the arbitrator’s response to this argument is that there was no evidence before him on which he could make an evaluation of the employees’ culpability. The evidence presented at the arbitration had been destroyed and the arbitration award, besides being subjected to review by both parties, contains no information that would permit an informed evaluation of culpability. The first arbitrator, having concluded that the dismissal was substantively unfair and that reinstatement was appropriate, does not set out any additional reasons for deciding not to award back pay.

[27] It is evident that the first arbitration award does not provide a basis for setting aside the award of retrospective back pay. It in no way contributes to resolving the parties’ differing contentions over whether, given that the employer had conceded that the dismissal was unfair, any other disciplinary action was justified and whether this provides a basis for reducing the award of back pay. The evidence before the first arbitrator was not before the second arbitrator. Whether the refusal to attend the BEE presentation merited any sanction remained an issue of contention between the parties. Accordingly, I do not believe that the arbitrator’s

decision to award fully retrospective back pay is rendered irrational by the facts of the original dismissal.

[28] The company also contends that it was a reviewable irregularity for the arbitrator to establish the sequence of events in the dispute and then to make a finding that the delay was primarily attributable to the conduct of the company and, therefore, make an award of back pay retrospective to the date of dismissal.

[29] As indicated previously, senior Counsel for the employer argued that the arbitrator should effectively “split the difference” and award employees 50% of the maximum compensation because of the parties’ joint culpability for the delay in resolving this matter. In making this argument, he emphasised the fact that the first arbitration award was reviewed and cross-reviewed.

[30] This was, of course, the second review in the dispute’s history. The employer’s senior Counsel does not deal with the earlier review instituted in June 2006 when the company contested a ruling that the dispute by individual employees could be heard in a single hearing. That review was only withdrawn in April 2008 when the employer tendered the union’s costs. No explanation is offered at any stage in the voluminous papers as to why the employer elected to embark on this course of action which had a very significant delaying effect.

[31] The arbitrator sets out in detail the history of the dispute. The relevant paragraph reads as follows:

‘It is convenient at this stage to set out briefly why it took 6 years in this case to resolve this dispute. It is unfortunate that the parties in their heads of argument did not address the delay. I have perused the files in this matter and have attempted to put together a chronology of events leading up to the signing of Annexure A. It is common cause that the Applicants were dismissed on 3 February 2006. The Conciliation was set down in April 2006. The Commissioner issued a ruling based on an Application brought by the Applicants consolidating the various dismissals into one hearing. The Respondent opposed the consolidation of the various dismissals and reviewed the ruling of the Commissioner in the Labour Court in June 2006. In April 2008, the Respondent withdrew the review Application and tendered the Applicants costs. The Arbitration at the Councils offices was set down in July 2008 and postponed in October 2008 and was finalised in July 2009, there were postponements in between the 15 days that it had taken to finalise the matter. The Arbitration award was issued to the parties in August 2009. In October 2009, the Respondent reviewed the reinstatement of the Applicants and sought an order declaring the dismissals of the 48 Applicants substantively fair. There was a cross review by the Applicants. In February 2010, the Council notified the parties that while trying to download data, the recorded data was erased from the CDR electronic recording system.’

[32] It should have been evident to Counsel for the employer that if the arbitrator rejected the company’s argument that he was limited to an award of 12 months’ compensation limit, the issue of delay would be relevant to determining the amount of back pay. Counsel was in no way prevented from making this argument in response to the union’s submission that the arbitrator should order full back pay.

[33] The prime authority relied upon by the applicant in support of this attack on the award is the judgment of Landman, J in *Portnet (A division of Transnet Ltd) v Finnemore and Others*. [2] In that matter, the arbitrator made conclusions based on the record of a disciplinary enquiry that had been provided to the arbitrator but had not been presented as evidence in the enquiry and drew inferences against the employee which the employee concerned had no opportunity to counter. Accordingly, the Learned Judge held that there had been a violation of the employee’s right to contest allegations from which an unfavourable inference was drawn.

[34] As counsel for NUMSA argued before this court, the facts in the *Portnet* judgment are very different from the present case. The arbitrator in the second arbitration had regard to matters that were explicitly set out in the documents that were before the arbitration. The representatives of both sides had every opportunity to deal with this material in both their written and the oral arguments. The company’s Counsel elected to deal with one aspect of the history (the review of the first arbitration award) in argument and not another (the abandoned review of the decision to consolidate the disputes). This does not entail that the arbitrator should have given Counsel a third bite of the cherry to argue on an issue that was within his knowledge. The arbitrator was entirely justified in drawing an inference that the

delay occasioned by the first review was a consequence of the company's obstructive approach to the resolution of the dispute at the time.

- [35] With respect to the second review, the employer's argument that the union's institution of a cross review against the failure to award back pay implies that the union was equally culpable in the delay caused by that review is flawed. Had the employer not contested the arbitration ruling to reinstate the employees in April 2009, they would have been able to return to work at that stage. The cross review caused no significant delay beyond that which can be attributed to the employer's decision to review the finding that the dismissal was unfair.
- [36] The arbitrator's finding that the major portion of the delay in the resolution of the dispute can be attributed to the manner in which the company elected to deal with the matter is in no way unreasonable. He correctly concludes that the major part of the delay was occasioned by the two reviews instituted by the employer. The first directed against the decision to consolidate proceedings was abandoned with a tender of costs after 22 months. The basis for the second review directed against the finding of the second arbitrator that the dismissal was unfair was conceded when the employer accepted in the settlement agreement that the dismissals were substantively unfair. This happened 26 months after the employer had instituted those review proceedings,
- [37] The arbitrator found that some of the delay in resolving the matter could be attributed to institutional factors in setting matters down in the bargaining council. In particular, he points to a lapse of 12 months between the setting aside of the first arbitration and the commencement of the second arbitration. However, he did not consider it appropriate to reduce the quantum of back-pay on account of this. His decision in this regard does not fall outside the range of decisions that a reasonable arbitrator could have made in the circumstances.
- [38] The finding that the major part of the delay was attributable to the manner in which the employer had conducted the dispute is consistent

with the facts that were before the arbitrator. It is an issue on which the parties' representatives had every opportunity to present argument to the arbitrator. Accordingly, neither the arbitrator's reference to history of the dispute nor his

conclusions based on it constitute reviewable irregularities and they do not provide any basis for setting aside his award of full back pay to the employees.

Inconsistency and bias in the admission of evidence

- [39] The employer also argues that the Commissioner applied the rules of evidence inconsistently. It seeks to characterise the conduct of the Commissioner during the arbitration as inquisitorial. In this regard, it points to the fact that he prompted the representative for the trade union, on several occasions, to provide the death certificates of the deceased employees. It contrasts this with the fact that he did not admit evidence

presented by the company that it had obtained from the Department of Labour information indicating that certain of the employees had obtained other employment during the period subsequent to the dismissal. This, it argued, was indicative of bias on the part of the arbitrator.

[40] As indicated, senior Counsel for the employer during the second arbitration (who was not the same Counsel who represented the Company

in the review) argued that the arbitrator should assume that the employees had found alternative employment and sources of income in the interim because this would have been necessary for their survival and to support their families. The arbitrator correctly rejected this ill-considered argument and it was not persisted with in the review. In the light of the approach that it adopted on this issue during the arbitration hearing, the company did not seek to adduce evidence as to the earnings of the employees in the period between their dismissal and reinstatement.

[41] Subsequent to the final session of the arbitration at which the parties presented argument, the company submitted a document to the arbitrator headed: "Department of Labour: Record of Work". The document lists the names of all of the employees and indicates that 20 of them had worked with other employers. The document does not specify their earnings but merely states the period for which they worked. Presumably, this information was obtained by virtue of the fact that these employees were registered by employers for whom they were working for the purposes of statutes such as the Unemployment Insurance Act, 2001 and the Compensation for Occupational Injuries and Diseases Act, 1993. The document is not signed or attested and does not shed any light on the source of the information or how it had been obtained, other than the reference to the Department of Labour in the heading.

[42] The company relies on the difference in attitude that the arbitrator adopted to this document and the question of the death certificates,

pointing out that the arbitrator prompted the representative of the union on a number of occasions to file the death certificates. I do not find that arbitrator's approach in this regard is in any way irregular. Death certificates constitute definitive proof of the date of the death and the admission of copies of these as evidence in no way prejudiced the company as it merely provided certainty as to the extent of the claims of the deceased workers. On the other hand, the provenance of the evidence of earnings from other employers is not apparent from the document itself.

[43] The argument for bias is without foundation. The hearing conducted subsequent to the agreement was confined to submissions by the

parties' representatives. The fact that the arbitrator pressed the trade union official on several occasions to provide the death certificates does not constitute an inquisitorial approach nor is it in the slightest indicative of bias.

[44] The absence of bias does not resolve the issue of whether the arbitrator should have taken into account the earnings of the employees between the date of the dismissal and their reinstatement. A further issue that requires consideration is whether the arbitrator's

rejection of the document amounts to an inappropriate level of formalism which might constitute an irregularity. Section 138(1) of the LRA requires CCMA arbitrators to "deal with the substantial merits of the dispute with the minimum of legal formalities"

and bargaining council arbitrators can reasonably be expected to conform to a similar standard, either in terms of the bargaining

council rules or the approach to dispute resolution endorsed by the LRA.

[45] If the arbitrator had chosen to admit the list of alternative employment, he would have been required to continue with the arbitration, allowing the union and its members an opportunity to respond to the information that the document purports to establish. He could not merely have relied on the document in making his award, without seeking to verify it and allowing the employees the opportunity to respond.

[46] While it is appropriate that arbitrations are conducted with less formality than court cases, [3] this does not imply that arbitrations should be a free-for-all in which parties can introduce evidence in any way and at any time they see fit. The company must have known, at the time it submitted the document, that the arbitrator could not have admitted it as evidence and would, at a minimum, have had to permit the employees concerned to respond to its contents. Under the circumstances, the company should, at the very least, have submitted an affidavit by one of its officials who had secured the document to explain its contents or an affidavit by a relevant official of the Department of Labour who had provided the information and applied for a re-opening of the arbitration. The fact that the arbitrator rejected the submission of the document in these circumstances is not a decision that a reasonable arbitrator could not have come to nor is it a failure to apply an approach that is consistent with the approach of the LRA to dispute resolution, as typified by section 135 (1) of the LRA.

The company's financial position

[47] A further attack by the company is that the arbitrator did not take into account the fact, stated by the Counsel for the employer in its heads of argument at the arbitration, that the company had made a loss of R1,8 billion during the previous financial year. In rejecting the argument that this was a relevant factor in determining the quantum of back pay, the arbitrator stated:

'The respondent has not placed any specific or written or oral evidence before me as to what brought about the huge financial loss.'

[48] The arbitrator's conclusion in this regard is entirely justifiable. The company failed to present any evidence placing the loss of R1, 8 billion in context. It would have been entirely arbitrary for the arbitrator to reduce the quantum of back pay merely because this substantial loss had been mentioned. The company did not argue that the award in this case would place untenable strain on its financial resources nor did it explain the reason for the loss in the previous financial year. If anything, the fact that the company could sustain a loss of that type in the previous financial year and still be in operation is an indication that the award, which amounts to some R 18 million, would not have a significant impact on its overall financial position. Accordingly, the fact that the arbitrator did not consider that he should reduce the back pay award in the light of the company's financial position is not a reviewable irregularity.

Conclusion

[49] For the reasons set out above, I am of the view that the Applicant's review of the second respondent's award dated 16 April 2012 is without merits and must fail.

Order

[50] It is hereby ordered that:

- a. The Applicant's review of the Arbitration Award by the Second Respondent is dismissed;
- b. The Applicant is directed to pay the Third Respondent's costs, including the costs of senior counsel.

Benjamin, AJ

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant:

Advocates HA van der Merwe SC and E Tolmay

Instructed by:

Fluxmans Inc. Attorneys

For the Respondent: J G van der Riet SC

Instructed by:

Y Johnson Inc. Attorneys

[1] [2008] 12 BLLR 1129 (CC) at para 36.

[2] [1999] 2 BLLR 151 (LC).

[3] See, for instance, the judgment of Wallis AJ (as he then was) in *Narandaith v CCMA and Others*

[2000] 6 BLLR 716 (LC) at para 26.

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