

SOUTH AFRICA / JUDGMENT

Goldfields Logistics (Pty) Ltd v Smith (JA 42/08) [2010] ZALAC 33 (24 August 2010)

[2010] ZALAC 33

COURT

Labour Appeal Court

BEFORE

Waglay, Tlaletsi, Revelas

CASE / FILE NUMBER

JA 42/08

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IN LABOUR APPEAL COURT OF SOUTH AFRICA

HELD AT JOHANNESBURG

CASE NO: JA 42/08

In the matter between:

GOLDFIELDS LOGISTICS (PTY) LTDAPPELLANT

and

STEPHANUS WILLEM ADRIAAN SMITHRESPONDENT

Coram: Waglay DJP et Tlaletsi JA et Revelas AJA

Judgment

Tlaletsi JA

Introduction

- [1] This is an appeal (with leave of this Court) against a judgment of the Labour Court in a dispute referred to that court by the respondent. The respondent complained that he had been unfairly dismissed by his employer, the appellant. The appellant, on the other hand contended that the respondent's dismissal was a result of its operational requirements and was both substantively and procedurally fair.

Factual

Background

[2] Most of the facts in this appeal are either common cause or not in dispute. These facts are discerned from the evidence of the appellant's two witnesses namely, L S Hollander and Conrad Niemand as well as the evidence of the respondent and the pleadings. The appellant conducts a nationwide transport and logistics business and operates a vehicle fleet of approximately 140 heavy duty trucks. These trucks travel long distances to deliver their freight to the appellant's customers. If the trucks do not deliver their load

to the customers on schedule, the customers ordinarily impose penalties. For these reasons the appellant's trucks travel 24 hours a day, 7 days a week. Truck breakdown is a frequent (daily) occurrence in the appellant's operation. Most breakdowns occur on the road and those that occur at night expose the drivers and other road users to safety risks. It is therefore necessary that constant repair work be undertaken without delay.

[3] The appellant has four depots country wide. The depots are situated at Bothaville, Cape Town, Durban and Germiston (Driehoek). Thirteen diesel mechanics are employed at these depots. Their core duties include the repair of broken trucks. These diesel mechanics are the only employees of the appellant who are adequately qualified to do the repairs. Their normal working hours are from 07h00 to

17h00. They are also required to perform standby duty. For that purpose they have to be available to be called out to attend to

break-downs outside their ordinary working hours. It is not disputed that it has been a standard practice in the appellant's

operation that during interviews the candidates for appointment as diesel mechanics were informed that they would be expected to do standby duties.

[4] The arrangement was that a diesel mechanic would be on standby from Monday to Sunday during alternate weeks. Diesel mechanics were

required to attend to breakdowns that occur within an approximate radius of 200 kilometers from the depots where they were employed or, in cases of major breakdowns, in areas outside. The appellant at times contracted third parties to conduct repairs in areas further than the 200 kilometres radius.

[5] The appellant furnished every mechanic on standby with a company cellular phone and a motor vehicle ("bakkie"). They were also paid for overtime duties and were given time-off for the time spent on attending to breakdowns whilst on standby. It is common cause that no diesel mechanic or other employees of the appellant were paid standby allowance.

[6] On 7 July 2001 the appellant employed the respondent as a diesel mechanic at its Germiston (Driehoek) depot. At the time two (2)

diesel mechanics were employed at this depot, being the respondent and Mr Kobus Stassen (“Stassen”).

[7] The respondent’s job interview was conducted by Mr Cornelius Coenraad Niemand (“Niemand”), the appellant’s

technical director. The issue of standby was discussed during this interview and at the time Niemand made a contemporaneous manuscript

note in the Afrikaans language on the respondent’s curriculum vitae, which read: “Kobus doen bystand reël met Kobus vir uithelp.”¹ For various personal reasons Stassen did not mind doing standby.

[8] Subsequent to the respondent’s appointment Stassen voluntarily performed all standby duties required of the respondent. This was until Stassen resigned. After Stassen’s resignation, Mr Kiewie, the appellant’s depot manager, and Niemand informed

the respondent that he was now required to perform standby duties since Stassen was no longer performing standby. The respondent’s

response was that he would only do standby duties if the appellant paid him a standby allowance of R 700.00 for every week of standby

duty. As there could not be agreement on the allowance, Niemand referred the matter to Mr Lodewyk Stephanus Hollander (“Hollander”),

the human resources director of Imperial Logistics, the holding company of the appellant, who oversees the appellant’s human

resources matters, for further attention.

[9] It is common cause that Hollander met with the respondent during November 2004 to obtain clarity on the respondent’s point of view as well as the reasons why he did not want to do standby duties. During this meeting Hollander gained the impression that the respondent did not understand the performance of standby duty to form part of his terms and conditions of service. The respondent confirmed to him that he was prepared to perform standby duty provided he was paid a weekly standby allowance of R 700.00.

[10] The appellant’s stance was that the performance of standby duties did form part of the respondent’s terms and conditions

of employment and that he could not be the only one of the appellant’s mechanics not performing standby duties. Because of

what Hollander accepted to be a mistaken belief on the part of the respondent, he thought that it would be unfair to take disciplinary

action against the respondent. He instead concluded that engaging the respondent into further consultations would be fair to him.

[11] The respondent's proposal of a weekly standby allowance of R700.00 was however not acceptable to the appellant. The reason for not accepting the proposal was that any standby allowance paid to the respondent would also have to be paid to the other diesel mechanics employed by the appellant. Since that there were at any given time five (5) of the appellant's diesel mechanics performing standby duties nationwide, the total amount to be paid by the appellant on the basis of a R700.00 weekly standby allowance to its diesel mechanics would in its view be too high.

[12] On 26 November 2004 the appellant offered the respondent a weekly standby allowance of R50.00. The offer was reiterated on 17 January

2005. The respondent rejected this offer by way of a letter dated 25 January 2005.

[13] Following the respondent's rejection of the offer, the appellant convened a meeting with the respondent on 8 February 2005

to further discuss the standby allowance issue. Hollander attended the meeting on behalf of the appellant. At this meeting the appellant reiterated the necessity of the appellant performing standby duties and that the appellant could not expect the other diesel mechanic to be on standby fifty-two (52) weeks of the year. The respondent confirmed that he was not prepared to perform standby for an allowance of R50.00. The appellant thereafter contemplated the respondent's dismissal for operational requirements to be a solution as the parties could not agree on the quantum of a standby allowance.

[14] On 10 February 2005 the appellant issued a letter to the respondent stating that the parties have reached a deadlock on the standby issue and that further consultative meetings would be arranged.

[15] Following the aforesaid letter on 7 April 2005 the appellant issued a letter to the respondent. The letter was issued on terms contemplated in section 189 of the Labour Relations Act 66 of 1995 ("the Act"). The body of the letter reads:

"RE: PROPOSED TERMINATION FOR OPERATIONAL REQUIREMENTS"

You are aware that we have had several meetings at which discussions have taken place about the company's request that you should do standby duty.

The reasons for the said request were discussed with you in detail.

You have indicated that you will do standby if the company pays you a standby allowance. You were made aware that you were required to do work during the standby duty and that you will be remunerated for overtime work. The company agreed to pay you a standby allowance of R50.00 per week, which you refused to accept.

At the meeting held on the 8th February 2005 we have reached deadlock due to your refusal to do standby duty for the amount of R50.00.

The above creates an operational problem for the company at the Driehoek depot as there is only one other diesel mechanic to do the standby duty. The company is now accordingly required to proceed in terms of the remaining process in terms of Section 189 (3) of the Labour Relations Act. It is the company's proposal to dismiss yourself in order to achieve implementation of its operational objectives of standby within the company.

The company has considered the alternatives of:

- (a) discontinuing standby duty; or
- (b) let the one mechanic at the Driehoek depot do all the standby duty; or
- (c) to pay you more standby duty allowance

Regrettably none of these alternatives are viable and neither achieves the company's desired goals.

We anticipate that only one employee will be affected by the proposed retrenchment. As the operational need in this case dictates the selection criterion, we propose utilizing the standby duty system as the selection for retrenchment.

The proposed severance pay will be on the basic conditions of employment norm of one (1) week severance pay for each year of service with the company.

The company needs to implement the standby duty as soon as possible, but not later than 30th of April 2005.

Unfortunately the provisions of Section 187 (1)(c) of the Labour Relations Act prevent the company from offering employment to yourself in exchange for acceptance of the company's standby system. The same provision eliminates the possibility of future re-employment.

We anticipate that the date of implementation and therefore propose that the termination date will be the 30th April 2005."

[16] According to the appellant's witnesses, the appellant was not aware that the respondent was a member of the United People's Union of South Africa ("UPUSA"), a registered trade union. On 9 April 2005 UPUSA notified the appellant of the respondent's UPUSA membership and requested to be consulted on the respondent's behalf. In a letter dated 11 April 2005 the appellant confirmed that it would adhere to this request.

[17] The appellant started with fresh consultations with UPUSA. In this regard three consultative meetings were convened and attended by, amongst others, Mr Hollander, the respondent and his UPUSA representative. These meetings took place on 19 April 2005, 19 May 2005 and 28 July 2005 respectively.

- [18] The minutes of the meeting held on 19 April 2005 reflect, inter alia, that Hollander confirmed the content of his discussions with the respondent during November 2004 to 8 April 2005 and the deadlock reached with regard to the respondent's performance of standby duty and the amount of a standby allowance. UPUSA requested that the proposed timing of the respondent's dismissal be postponed until a proper consultation process had taken place. They further proposed that the respondent be paid a standby allowance of either R500.00 per week or R250.00 per call out and that their proposal was negotiable.
- [19] On 25 April 2005 Mr Hollander informed UPUSA in writing that the respondent's dismissal would be postponed until proper consultations with UPUSA had been finalised.
- [20] At the meeting of 19 May 2005 Hollander informed UPUSA that the appellant was not prepared to accept the union's proposal that was put forward during the previous meeting and insisted on the payment of a R50.00 weekly standby allowance. UPUSA contended that its proposal of a R500.00 weekly standby allowance was reasonable given the safety risks to which the respondent and his family would be exposed when he is on standby. Hollander responded that the appellant had never paid any of its mechanics a standby allowance and that payment of a R50.00 weekly standby allowance would be an additional cost to the appellant. Hollander stated further that a higher standby allowance would not eliminate safety risks. For these reasons the appellant was not amenable to pay more than R50.00 per week. The respondent insisted that he would not perform standby duty for a mere R50.00 weekly allowance. UPUSA declared that the parties have reached a deadlock and that it had nothing more to say.
- [21] In view of this deadlock the appellant decided to initiate the respondent's dismissal for operational requirements. The appellant sent the respondent a letter dated 28 June 2005. The content of this letter are the same as the appellant's previous letter to the respondent, dated 7 April 2005 (quoted above). However, the anticipated date of the respondent's dismissal was extended
- to 31 July 2005.
- [22] On 28 July 2005 the parties held what became the last consultation meeting. At this meeting UPUSA stated that the respondent's dismissal would be unfair as his position was not redundant. Mr Hollander stated that he was not in a position to further consult about the issue of standby and the payment of a standby bonus and confirmed that the respondent would be paid a severance package of one (1) week for every completed year of service.
- [23] In due course the respondent referred an unfair dismissal dispute to the Commission for Conciliation, Mediation and Arbitration ("CCMA"). After the dispute was unsuccessfully conciliated, a referral was made to the Labour Court for adjudication. The matter served before Francis J.

Proceedings in the Labour Court

[24] In its judgment, the Labour Court considered the contentions of the parties as well as the decision of this Court in *Fry's Metal (Pty) Ltd v National Union of Metal Workers of South Africa & Others 2* and made the following findings as regards substantive fairness of the dismissal:

24.1 the “standby” was a term and condition of the respondent’s employment.

24.2 the “standby allowance” was not a term and condition of the “[respondent’s] employment and the [appellant] had to negotiate with the [respondent] about it”.

24.3 that once there was a deadlock in the negotiation of standby allowance between the appellant and the respondent the appellant

could follow the section 189 of the Act route,

24.4 that the appellant had failed to prove that the failure to pay the respondent a standby allowance was necessary for the viability of its business.

24.5 the respondent provided no reasons why it could not give the respondent a revised offer of more than R50.00 a week. That had the appellant done so, the respondent “might” have considered it and there would not have been a need to retrench him;

24.6 the appellant had failed to prove that the dismissal of the respondent was fair.

[25] As regards the procedural fairness of the dismissal the labour court held that:

25.1 the appellant was only prepared to consult with the respondent on severance pay, and only went through the motions. That the appellant did not approach the meeting in an attempt to consult on the issues that were listed in its letter of 28 June 2005 and those referred to in section 189(2) and (3) of the Act.

25.2 the appellant did not approach the consultations with a real intention to reach consensus;

25.3 that Fry’s Metal’s decision does not give a license to employers to exploit its employees by offering them lower salaries or do things that are contrary to their conditions of service. That the “appellant must show that it has a genuine reason to introduce the amendments which if not agreed upon would affect its viability”.

For the above reasons the Labour Court found that the “retrenchment was therefore also procedurally unfair”. The respondent was awarded compensation in the amount of R75 000.00 representing an equivalent of ten months remuneration payable in fifteen days, an amount of R23 682.19 less any taxation within fifteen days being for overtime pay claimed plus costs of the application.

The Appeal

[26] The appellant applied for leave to appeal against the judgment of the Labour Court and his application was dismissed with costs.

Appellant obtained leave from this Court after petitioning the Judge President. The appellant has raised a number of grounds upon which the judgment of the Labour Court is challenged in its Notice of Appeal. The grounds of appeal amount a challenge of the findings of the Labour Court on facts and points of law and that the Court erred in finding that the dismissal of the respondent was procedurally and substantively unfair. In particular, it was contended that the Labour Court erred in finding:

26.1 that the appellant was precluded from dismissing the respondent for operational requirements for his failure to perform standby;

26.2 that the consultative process under section 189 of the Act could only relate to the quantum of the standby allowance;

26.3 that the appellant failed to show sufficient reasons why it could not offer a standby allowance of more than R50.00 per week and that the appellant concomitantly failed to show that the dismissal of the respondent was for a fair reason.

26.4 that the dismissal was procedurally unfair in that the appellant did not approach the consultative process with a real intention to reach consensus on the issues listed in sections 189(2) and (3) of the Act.

[27] The contentions made on behalf of the respondent may be summarised as hereunder:

27.1 Given the finding that the obligation to perform standby duty formed part of the respondent's terms and conditions of employment, the refusal by the respondent to perform standby duty is a form of misconduct which should have been the subject of a disciplinary hearing. The appellant used operational requirements as a guise for dismissing the respondent for misconduct.

In the alternative, if it is found that the appellant was entitled to rely on operational reasons and not institute disciplinary

proceedings in order to deal with misconduct, the appellant did not comply with the provisions of sections 189(2) and (3) of the Act in that:

27.2.1 the consultation involved nothing more than the quantum to be paid to the respondent in order for him to perform standby duties;

27.2.2 the appellant failed to show sufficient reasons why it could not offer a standby allowance of more than R50.00 per week.

27.2.3 the dismissal was procedurally unfair in that the appellant did not approach the consultative process with a real intention to reach consensus.

[28] It is a right of every employee not to be unfairly dismissed.³ Sec 188(1) of the Act provides, inter alia, that a dismissal that is not automatically unfair, is unfair if the employer fails to prove that the reason for the dismissal is a fair reason related to the employee's conduct or capacity, or based on the employer's operational requirements and that the dismissal was

effected in accordance with a fair procedure. Sec 188(2) enjoins any person considering whether or not the reason for the dismissal is a fair reason or whether or not the dismissal was effected in accordance with a fair procedure to take into account any relevant Code of Good Practice issued in terms of the Act. In this regard the applicable code is provided in Schedule 8, the Code of Good Practice: Dismissal.

- [29] In *SA Airways v Bogopa & Others*⁴ this Court held that an employer should generally speaking not use procedures relating to dismissal for operational requirements to solve problems relating to poor work performance of its employees. The Court held further that:

“There is a reason why there are different procedures for the different permissible reasons for dismissal. There is a procedure applicable to dismissal for misconduct. There is a different procedure applicable to dismissals for incapacity. There is yet a different procedure

applicable to dismissals based on the employer’s operational requirements. Where an employer wants to have an employee dismissed

because he has done something unacceptable to him-which should be dealt with through disciplinary procedures, it is unacceptable for the employer to use retrenchment to get rid of such employee because he knows that whatever the employee has done wrong would not constitute a fair reason to dismiss him on disciplinary grounds. Equally, it would not be acceptable for an employer to dismiss an employee for misconduct to avoid having to pay such employee severance pay upon retrenchment when there is no fair reason to

*dismiss the employee on disciplinary grounds.”*⁵

- [30] In *Mazista Tiles(Pty) v NUM & Others*⁶ this court held that an employer who is desirous of effecting changes to terms and conditions applicable to his/her employees is obliged to negotiate with the employees and obtain their consent and may not do so unilaterally. The Court held further that:

*“It may so happen, as it was the position in the case, that the employees refuse to enter into any agreement relating to the alteration of their terms and conditions because the new terms are less attractive or beneficial to them. While it is impermissible for such employer to dismiss his employees in order to compel them to accept his demand relating to the new terms and conditions, it does not mean that the employer can never effect the desired changes. If the employees reject the proposed changes and the employer wants to pursue their implementation, he has the right to invoke the provisions of section 189 and dismiss the employees provided the necessary requirements of that section are met.”*⁷

- [31] The court concluded that the fact that the dismissal came about after the employees’ rejection of the proposed changes cannot affect the fairness of the dismissal if the employer established that it was effected for a fair reason relating to his operational requirements and not in order to compel the employees to accept the proposed changes.⁸

- [32] In my view, there would be instances where a legitimate operational requirement exists, which would justify a dismissal on operational

requirement and also a fair reason on the basis of which an employer may discipline the employee for misconduct which would lead to a dismissal. Such a scenario should give an employer a choice of procedure to follow. I am not aware of any provision that would

compel the employer to follow a particular route. It should be permissible for the employer to opt for the use of operational requirement provided that it is not for improper motive and that the requirements of section 189 of the Act are met. Such an option may prove to be fair and advantageous to the employee. Whether the employer acted fairly or not would depend on the circumstances of a particular case.

[33] In this appeal the finding by the Labour Court that standby duties formed part of the respondent's contract of employment is not challenged. It is indeed a correct finding. It means that the respondent had an obligation to do standby duty. However, having found that standby duties formed part of the respondent's employment contract, the Labour Court seems to have imposed a duty on the appellant to negotiate standby allowance to seek compliance with the contractual obligation. In my view there was no obligation on the appellant to negotiate with the respondent on the question whether he should do standby or not. The practice at the appellant had always been that diesel mechanics performed standby duties without being paid an allowance.

[34] The appellant was entitled to instruct the respondent to perform standby duties and, failing compliance with the instruction, to

institute disciplinary proceedings against him. Instead the appellant opted to embark on a process of discussions and negotiations to seek resolution of the problem with the respondent. It has not been established that there was an improper or ulterior motive on the part of the appellant for not instituting disciplinary proceedings against the respondent. To the contrary, the process that was embarked upon was a matter of fairness to the respondent as its ultimate aim was to preserve the respondent's employment. The decision was taken as a result of the respondent's belief that he was entitled to an allowance for standby duties. There is no indication on the record, either before or after the engagement of the respondent's union representative, that there was any objection to the process that the appellant embarked upon. The parties continued the process of negotiating quantum of the allowance up until a deadlock was reached.

[35] The failure of the parties to reach consensus, resulted in a situation where the respondent was the only diesel mechanic employed by the appellant who did not want to perform standby duties in line with the practice at the appellant's business. The respondent's refusal to perform standby caused an insurmountable operational requirement for the appellant. This meant that the respondent did not meet the business needs of the appellant. The general rule is that employers conclude contracts of employment with employees on certain terms and conditions because its business requires the employees to work on these terms and conditions in order to satisfy its business' operational needs. When that contract no longer suit the operational requirements or the employee no longer seeks to be bound by the agreed terms which are necessary for the employer's business that may be a valid

reason for the employer to terminate that contract of employment.⁹

[36] It was not in dispute that the appellant employed diesel mechanics at its various depots within the republic. Their core duties are to repair broken trucks. They were the only qualified mechanics to do repair works. In the absence of the appellant's

standby system, the appellant will not be able to repair its trucks after hours. Given that after hours breakdowns occur daily, this would mean that the trucks will only be repaired during day time. This may result in the trucks arriving at appellant's customers behind schedule. Consequently the appellant will not be able to operate its business effectively.

[37] The evidence revealed that abandoning the Standby System would not be viable. The appellant demonstrated that it would be costly to engage other companies to do the standby duty. The appellant explored the possibility of paying the respondent an allowance and the parties could not reach agreement on the amount of such allowance. I do not think that it would be fair to expect the appellant to pay the respondent only an allowance acceptable to him when all the other diesel mechanics have been doing standby duties for years and not being paid standby allowance because it was in line with their terms and conditions of their employment. It would also be unfair to expect the appellant in order to accommodate the respondent to introduce a costly standby allowance to all its employees. Furthermore it would not be fair to the appellant to hire the services of third parties to attend to the repair of its trucks at a fee only to keep the respondent in its employment. The argument that the appellant has failed to provide sufficient reasons why it could not offer more than R50.00 is, in my view, therefore misplaced.

[38] The finding that the appellant failed to prove that the failure to pay the respondent a standby allowance was necessary for the

viability of its business imposes a burden on the appellant's business. Obviously by paying no standby allowance which has never been a requirement, would be less expensive than to introduce standby allowance. In other words, it would be better for the appellant from an operational view to retain the existing arrangement. For the above reasons I am of the view that the appellant has shown that the reason for the dismissal of the appellant was fair.

[39] It is common cause that during November 2004 Hollander met the respondent and the need for him to form standby duties was discussed.

On this occasion the appellant persisted with his demand that he be paid an allowance of R700.00. Subsequent communications took place on 26 November 2004, 17 January 2005, 25 January 2005 and 10 February

2005. After these events, the respondent's dismissal was anticipated as a result of the deadlock reached by the parties. On 7 April the appellant issued a letter in terms of sec 189(3) of the Act. On 9 April 2005 the union placed itself on record. Thereafter three consultative meetings were held with the participation of the union. In the meantime the dismissal of the respondent was postponed until the consultations were finalised as proposed by the union.

[40] A consultation process preceding a dismissal for operational reasons is not merely a procedural requirement. It must be exhaustive and thorough. It must be a meaningful joint consensus-seeking process. Both parties are free to raise any issue that is relevant to the process and where necessary to request further information or time if reasonable. In this case it is not the respondent's case that the time was inadequate, that the process was rushed through; that they were not provided with the necessary information or that the appellant did not consult on any of the issues listed in section 189(2) and (3) of the Act. The complaint seems to be that the procedure followed is unfair because the appellant did not approach the consultative process with "a real intention to reach consensus."

[41] The only basis why it is contended that the appellant did not have a real intention to reach consensus is that the appellant failed to accede to a demand for an allowance of either R700.00 or R500.00 per week, or a call out fee of R250.00. These proposals were in fact counter proposals made to the appellant by the respondent and the union and were found to be unaffordable to the appellant. The appellant did explain that whatever quantum of allowance is arrived at, it would have to extend it to other diesel mechanics. In addition, a higher standby allowance would not eliminate safety risks for the respondent and his family which the respondent advanced as the main reason for him not to do standby duties.

[42] In my view, under the circumstances the appellant complied with the requirements of sec 189(5) and (6) of the Act, and the contention

that it had no real intention of reaching consensus is without merit. Indeed there was a deadlock with regard to the quantum of the standby allowance. The appellant was entitled to move forward and not to continue negotiating for an affordable allowance. The dismissal of the respondent was therefore procedurally fair. The appeal should succeed. No appeal was noted against that part of the order relating to payment of the amount of R23 682.19.

[43] What remains to be decided is the issue of costs. In my view, it would be in accordance with the requirements of the law and fairness

not to make any order as to costs.

Order

[44] In the result the following order is made:

The appeal succeeds.

The order of the Labour Court is amended to read as follows:

“a. The dismissal of the applicant by the respondent was substantively and procedurally fair.

b. There is no order as to costs”

Each party is to pay its costs.

TLALETSI JA

I agree

WAGLAY DJP

REVELAS AJA

Appearances: For the Appellant: Adv FA Ponelis Instructed by: Postma Attorneys For the
Respondent: Adv T Motau Instructed by: Maserumule Inc.

Date of hearing: 10 March 2010

Date of Judgement: 24 August 2010

1Literal translation of the manuscript would read “Kobus would do standby duty and
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2(2003) 24 ILJ 133 (LAC)

3Sec 185 of the Act read with Sec 23 of the Republic of South Africa Constitution Act 108 of 1996.

4(2007) 28 ILJ 2718 (LAC); [2007] 11 BLLR 1065 (LAC)

5At para [61]

6(2004) 25 ILJ 2156(LAC); [2005]3 BLLR 219(LAC)

7Mazista Tiles (Pty)Ltd, supra at para 48

8Mazista (supra) at para 49

9Freshmark (Pty) Ltd v CCMA & Others (2003) 6 BLLR 521 (LAC) at para 25.

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