

SOUTH AFRICA / JUDGMENT

Super Group Gateway Services v Chakale and Others (JR 219/21) [2022] ZALCJHB 371 (1 September 2022) [2022] ZALCJHB 371

COURT

Labour Court Johannesburg

BEFORE

S Snyman

CASE / FILE NUMBER

JR 219/21

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THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

case no: JR 219 / 21

In the matter between:

SUPER GROUP GATEWAY SERVICES (A DIVISION OF SUPER GROUP AFRICA (PTY) LTD)

Applicant And MMALEWENG ELLEANOUR CHAKALE First Respondent ISAAC SAKKIE KEKANA

N.O. Second Respondent COMMISSION FOR CONCILIATION, MEDIATION AND ARBITRATION

Third Respondent

Heard: 28 July 2022

Delivered: 1 September 2022

Summary: CCMA arbitration proceedings – Review of proceedings, decisions and awards of arbitrators – Test for review – Section 145 of LRA – application of review test set out

CCMA arbitration proceedings – assessment of evidence by arbitrator –arbitrator failing to reasonably and rationally consider and determine the evidence relating to misconduct by the employee – award reviewed and set aside

Misconduct – insubordination – principles considered – employee clearly failing to obey clear work instructions – employee guilty of serious misconduct – dismissal justified – award set aside

Review application – arbitration award review reviewable – award set aside and substituted with finding of fair dismissal

JUDGMENT: REASONS

SNYMAN, AJ

Introduction

- [1] The current case concerns an application by the applicant to review and set aside an arbitration award made by the second respondent in his capacity as an arbitrator of the Commission for Conciliation, Mediation and Arbitration (CCMA), being the third respondent. This application has been brought in terms of section 145 of the Labour Relations Act[1] (LRA).
- [2] The dispute arose from the dismissal of the first respondent by the applicant for misconduct, with the first respondent having challenged her dismissal as an unfair dismissal dispute to the CCMA. This unfair dismissal dispute came before the second respondent for arbitration on 2 December 2020. In an arbitration award dated 14 December 2020, the second respondent found that the dismissal of the first respondent by the applicant was substantively unfair. As the first respondent did not seek reinstatement, the second respondent awarded her compensation in the sum of R126 000.00, being an amount equivalent to 9(nine) months' salary.
- [3] Despite being dated 14 December 2020, the applicant was only served with the arbitration award by the CCMA on 14 January 2021. Dissatisfied with this award, the applicant launched its current review application on 3 March 2021. It is clear that the applicant's review application was brought within the six weeks' time limit as contemplated by section 145(1) of the LRA, and is therefore properly before Court for determination.
- [4] The review application came before me for argument on 28 July 2022. After hearing argument, and considering the application, I granted the following order on 28 July 2022:
- '1. The applicant's review application is granted.
2. The arbitration award issued by the second respondent, being commissioner Isaac Sakkie Kekana, dated 14v December 2020 and issued under case number GAEK 7194-20, is reviewed and set aside.
3. The arbitration award of the second respondent is substituted with an award that he dismissal of the first respondent, Mmaleweng Elleanor Chakale, by the applicant, was substantively fair.
4. There is no order as to costs.
5. Written reasons for these orders will be handed down in due course.'
- [5] This judgment constitutes the written reasons as contemplated by paragraph 5 of the above order.

The relevant

background

- [6] The applicant conducts business as an integrated end-to-end solutions service provider, specifically relating to what is called fast moving consumer goods brands. In the context of rendering this service, the applicant optimises the purchase, flow and sale of products from various suppliers to over 15 000 retail locations on a national basis. In short, the applicant provides suppliers of consumer goods with an optimised means to move their products from the manufacturing plant to the end consumers.
- [7] The first respondent was employed by the applicant as an invoice clerk, having commenced employment with the applicant on 13 February
2012. The first respondent reported to the customer relations manager, Linda Jansen (Jansen). At the time when the events giving rise to this matter arose, the overall head of department was the CFO, Craig Campbell (Campbell).
- [8] On 23 April 2020, Campbell issued an e-mail instruction to all the managers in the department, and this included Jansen. In terms of this instruction, it was recorded that: ‘... Please note that with immediate effect no upliftments from Customers are permitted without the written authorisation from either Anthony or myself ...’. The ‘Anthony’ referred to was Anthony Reznik (Reznik), the applicant’s CEO. The managers were also instructed by Campbell to ensure that all their staff were informed accordingly.
- [9] What ‘upliftments’ mean in the business of the applicant is the process of removing / recalling stock which has already been delivered by the applicant to its end customers. The upliftments will therefore result in the need to reverse a valid sale that has already been concluded, as well as reversing the delivery of the goods itself. This process of upliftments have significant operational and cost implications of the applicant, and should therefore only happen in exceptional circumstances. It is for this reason that senior management oversight was required, hence the instruction of 23 April 2020.
- [10] Jansen, having received the aforesaid instruction from Campbell, in turn informed the employees reporting to her, which included the first respondent, on the same day (23 April 2020), of the instruction. Jansen copied the actual instruction by Campbell to these employees, referred to it, and added: ‘... Should you have any upliftments, all documents need to be printed given to me for approval from Anthony and Craig ...’.
- [11] Therefore, and in terms of the above instructions, all the employees reporting to Jansen, which included the first respondent, were required to, in the case of any upliftment request, to first print out all the upliftment documents, and then take these documents to Jansen. Jansen in turn would take the upliftment documents to Campbell or Reznik, for written approval. Either Campbell or Reznick would then approve the upliftment in writing. Once that approval is obtained, the documents will be returned to the employee to process the upliftment. It is as simple and clear as that.

- [12] Some two months after the instructions were issued, and on 6 July 2020, one of the applicant's sales personnel, Mohammed Rawat (Rawat) sent an e-mail to the first respondent relating to an upliftment for a customer, Saania Distributors (Saania). In this e-mail, Rawat asked the first respondent to process an upliftment of 2876 cases of the spray product of this customer. Rawat recorded that: '... Please ensure that an uplift is done and communicated to customer ...'.
- [13] In his e-mail communication to the first respondent, Rawat intimates that Campbell had granted approval. Rawat attached an e-mail discussion between himself and Campbell, in which Rawat sent an upliftment proposal to Campbell for Saania. In response to this request Campbell, summarized the financial implications of the proposed upliftment, and stated that in terms of the proposal, there was still a R577 627.94 credit amount. On that basis, Campbell indicated that the upliftment could only be approved if there is a neutral effect, meaning that sufficient cases must be invoiced to offset the R577 627.94 credit. It was clear that Campbell certainly never approved the upliftment.
- [14] Despite the clear instruction and resulting process referred to above, as to how upliftments must be dealt with, the first respondent simply proceeded to process the upliftment based on the e-mail from Rawat. She never printed out any upliftment documents and never took such documents to Jansen. She also never secured written approval for the upliftment from Campbell or Reznik. Having processed the upliftment of her own accord, the first respondent then informed Rawat later that same day that she had processed the upliftment.
- [15] As a direct result of this conduct of the first respondent, stock from Saania with the total value of R986 472.58 was uplifted and a valid sale of these products reversed, without any approval for such a transaction. In the end, and having regard to re-invoicing and further orders, this resulted in a direct loss in revenue to the applicant in the sum of R102 672.00.
- [16] Once these events came to the attention of Campbell, the first respondent was given notice on 15 July 2020 to attend a disciplinary hearing to be held on 20 July 2020. In terms of this notice, the first respondent was charged with disobeying a reasonable and lawful job instruction, as well as negligence. The disciplinary hearing indeed took place on 20 July 2020, and was presided over by an independent third party chairperson.
- [17] Pursuant to the disciplinary hearing held on 20 July 2020, the chairperson found the first respondent guilty of both the charges against her, and in a written finding dated 22 July 2020, recommended her dismissal. In terms of this recommendation, the applicant then dismissed the first respondent on 23 July 2020.
- [18] Dissatisfied with being dismissed, the first respondent challenged her dismissal as an unfair dismissal dispute to the CCMA, by way of a referral filed on 31 July 2020. The dispute remained unresolved following conciliation, and ultimately came before the second respondent for arbitration on 3 November, and 1 and 2 December 2020. Procedural fairness was not in dispute in the arbitration.

- [19] As touched on above, the second respondent determined the dispute by way of an arbitration award dated 14 December 2020. In terms of this award, the second respondent held that the dismissal of the first respondent by the applicant was substantively unfair.
- [20] The second respondent reasoned that Rawat, whom the second respondent considered to be a 'senior manager', was entitled to give the first respondent instructions, and since his e-mail to her constituted an instruction to process the Saania upliftment, she was entitled to carry it out, and did not need to seek approval from Campbell. According to the second respondent, the first respondent was entitled to adopt this view, because she regularly worked with the personnel in the sales department and processed their orders.
- [21] Further, and according to the second respondent, when the first respondent executed the instruction from Rawat, she copied Jansen in the mail confirming she had processed the transaction. The second respondent then reasoned that because Jansen did not immediately intervene to stop the transaction, it had to follow there was nothing untoward in the transaction. The second respondent also took issue with the applicant failing to call Jansen to testify in the arbitration.
- [22] The second respondent, for the above reasons, concluded that the applicant had failed to prove the first respondent had committed misconduct, and held her dismissal was consequently substantively unfair. He directed that the first respondent be compensated as set out above, since the first respondent did not seek reinstatement. It is this award that then gave rise to the current review application.

The test for review

- [23] The test for review is trite. In *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others*[2] the Court held that 'the reasonableness standard should now suffuse s 145 of the LRA', and that the threshold test for the reasonableness of an award was: '... Is the decision reached by the commissioner one that a reasonable decision-maker could not reach?...'[3]. This means that the award in question is tested against the facts before the arbitrator to ascertain if it meets the requirement of reasonableness.[4] In conducting this test it is always necessary and important for the Court to enquire into and consider the merits of the matter and the entire evidence on record in deciding what is reasonable. In *Herholdt v Nedbank Ltd and Another*[5] the Court said:
- '... A result will only be unreasonable if it is one that a reasonable arbitrator could not reach on all the material that was before the arbitrator. Material errors of fact, as well as the weight and relevance to be attached to the particular facts, are not in and of themselves sufficient for an award to be set aside, but are only of consequence if their effect is to render the outcome unreasonable.'
- [24] In sum, applying the correct review test has a logical chronology. First, it must be ascertained if there a failure or error on the part of the arbitrator. Second, and where there is such a failure or error, it must be shown that the outcome arrived at by the arbitrator was

unreasonable, based on all the evidence and issues before the arbitrator, even if it may be for different reasons or on different grounds as those referred to by the arbitrator.[6] It would only be if the consideration of the evidence and issues before the arbitrator shows that the outcome arrived at by the

arbitrator cannot be sustained on any grounds, and the irregularity, failure or error concerned is the only basis to sustain the outcome the arbitrator arrived at, that the review application would succeed.[7]

[25] Against the above principles and test, I will now proceed to consider the applicant's application to review and set aside the arbitration award of the second respondent.

Analysis

[26] In the end, the case in casu is relatively straight forward and simple. The core facts were in essence not disputed, save only for the issues whether Rawat was entitled to give the first respondent instructions to process the upliftment, and whether she was still required to seek approval from either Campbell or Reznik.

[27] It was undisputed that the processing of upliftments could have a material prejudicial impact to the business of the applicant. It in essence negates a valid sale where delivery has already been made. Not only does this compromise the revenue earned, but it could also attract the additional costs of having to reverse the delivery itself. Further, and considering the nature of the applicant's business, the amounts involved are substantial. It is therefore a matter of common sense and logic that the applicant

would want to keep a very firm hand on these kinds of transactions, at the most senior level, and ensure that the same only takes place in exceptional circumstances.

[28] In fact, the transaction which gave rise to the current matter illustrates the very point. It is clear that Rawat was quite willing to have the Saania upliftment processed as it stood and as he submitted it to Campbell. It needed Campbell to point out to him what the financial effects of the transaction would be. Campbell made it clear that despite what Rawat had proposed, there was still a substantial credit that need to be catered for by way of additional orders. In the end, and with the applicant simply processing the transaction without any of the measures set out by Campbell having been implemented and then approved, the applicant suffered an actual loss in excess of R100 000.00.

[29] Considering the above, the context of the instruction emanating from Campbell is clear. There were to be no processing of any upliftments without his written approval, or the approval of Reznik. To put the seniority of the required approval into perspective, they were the COO and CEO of the applicant's business. There is no dispute that the contents of this instruction were brought to the attention of all the employees, including the first respondent, and that they were fully aware of the same and what was required. It must follow, as a matter of common sense and logic, that the clear instruction is that there can be

no processing of any upliftment by any employee without this written approval.

- [30] However, and in the first respondent's department, headed up by Jansen, there was an additional process. Jansen required that all the employees reporting to her needed to print out the upliftment documents, bring the same to her, and she would then submit it to Reznik or Campbell for written approval. The first respondent as equally well aware of this instruction and what she was required to do.
- [31] These instructions were also quite current, so to speak, considering it was given only some two months prior to the first respondent choosing to process the Saania transaction in the manner that she did. It follows that whatever the practice may have been in the past where it came to how upliftments were dealt with, these practices were no longer extant, did not apply, nor could it serve as any justified basis for an alternative manner of processing upliftments.
- [32] Al the above being the undeniable facts, what was expected of the first respondent when asked to process the Saania upliftment is patently clear and obvious and really simple. No matter what Rawat may have told her, or instructed her, or directed her, however one may call it, she had to print out the upliftment request, take it to Jansen, and Jansen would then take it to either Campbell or Reznik for written approval. The first respondent did none of this. Instead, she simply proceeded to process the upliftment.
- [33] It is thus clear that on the facts, the applicant had therefore established the misconduct of the first respondent of her failing to carry out a reasonable and lawful work instruction, being what she had been charged with. She in essence disregarded the authority of her immediate manager, and the most senior managers in the applicant. In *Humphries and Jewell (Pty) Ltd v Federal Council of Retail and Allied Workers Union and Others*[8] the Court held as follows:

‘... In our view a disregard by an employee of his employer's authority, especially in the presence of other employees, amounts to insubordination and it cannot be expected that an employer should tolerate such conduct. The relationship of trust, mutual confidence and respect which is the very essence of a master servant relationship cannot, under these circumstances, continue. In the absence of facts showing that this relationship was not detrimentally affected by the conduct of the employee it is unreasonable to compel

either of the parties to continue with the relationship...’

- [34] Further, and in *Masscash (Pty) Ltd t/a Jumbo Cash & Carry v Mtsotsoyi and Others*[9] the Court had the following to say:

‘The offence of insubordination was described by this court in *Palluci Home Depot (Pty) Ltd v Herskowitz & others* as ‘a wilful and serious refusal by an employee to obey a lawful and reasonable instruction or where the conduct of an employee poses a deliberate (wilful) and serious challenge to the employer’s authority’. In *TMT Services & Supplies (Pty) Ltd v Commission for Conciliation, Mediation & Arbitration & others*, this court held that it is not

necessary for the instruction to be issued on numerous occasions for an act of insubordination to occur. A single act of defiance by an employee will be sufficient for insubordination to occur.'

- [35] It then fell on the first respondent to provide any kind of justification for this behaviour. In doing so, the first respondent never disputed that she did not take the Saania upliftment documents to Jansen, and that there was no written approval for the transaction by Campbell, despite what Rawat may have suggested in his e-mail. A simple reading of the e-mail exchange between Rawat and Campbell about the Saania upliftment leaves little room for any conclusion other than Campbell not approving the transaction, and instead requiring that certain conditions be met before it could be approved. If the first respondent believed that this e-mail exchange constituted any kind of approval, that would simply show complete indifference to her properly executing her duties. However, and on the evidence, the first respondent never suggested or placed any reliance on the fact that Campbell may have approved the transaction.
- [36] Instead, the principal defence of the first respondent, which defence was accepted by the second respondent in his award, is in essence that Rawat approved the transaction, and because he approved the transaction, she did not commit misconduct. In my view, however, this provides no answer to the clear current instructions by Campbell and Jansen as to what was in fact required. The first respondent was informed in writing, not once but twice, that only Campbell and Reznik could approve the processing of upliftments, and then those approvals had to be in writing. How the first respondent can rely on a purported approval by Rawat to justify her conduct is in my view inexplicable. The applicant, as employer of the first respondent, is entitled to determine how the processing of upliftments must be done, and the first respondent is obliged to follow this process to the letter.[10] The second respondent, in accepting any contrary proposition, clearly came to an unreasonable conclusion. The following conclusion in *TMT Services & Supplies (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and Others*[11] is apposite:

'Therefore, defiance of authority can be proven by a single act of defiance. There is no necessity for high drama and physical posturing to be present. The employer prerogative to command its subordinates is the principle that is protected by the class of misconduct labelled 'insubordination' and addresses operational requirements of the organisation that ensure that managerial paralysis does not occur....'

- [37] This leaves the issue Jansen having been copied by the first respondent in her e-mail notifying Rawat of the processing of the Saania upliftment transaction, but Jansen not taking any immediate action to intervene. As stated above, and according to the second respondent, this was a material consideration in his finding against the applicant. I believe this reasoning of the second respondent constitutes a misdirection on his part. The fact that Jansen may or may not have intervened is of no consequence. The failure by Jansen to intervene cannot exonerate the first respondent from her clear misconduct. And what the second respondent seems unable to see is that this e-mail notification by the first respondent is actually notice of a *fait accompli*. She is effectively telling everyone to whom

the notification is addressed what she has already done. The transaction has been processed, and has been conveyed to the customer. Any intervention would be futile. The second respondent was unduly influenced by irrelevant considerations, rendering the outcome he arrived at as being unreasonable.

- [38] The second respondent was also critical of the applicant not calling Jansen as a witness. However, and in my view, it is difficult to understand what Jansen could add to the equation. The instructions she gave to all the employees in her department, including the first respondent, was clear and never disputed. It was never disputed that the first respondent did not comply with these instructions. All that Jansen could possibly testify to was why she did not intervene when receiving the notification that the Saania upliftment had been processed by the first respondent. But this, as I have said, adds nothing to the enquiry and even if Jansen was somehow derelict or negligent in not doing so, it simply cannot exonerate the first respondent for her clear misconduct.
- [39] I may also mention that the first respondent never sought to suggest that she was confused or uncertain about whether Rawat would still give her instructions to process upliftments, after the written instructions from Campbell and Jansen. If this was her case, she would have apologised for her conduct, admitted that she wrongly and mistakenly processed the Saania upliftment, and then explained she mistakenly believed she could follow Rawat's instructions to process the upliftment. She would have showed contrition. But that is not what she did. She persistently denied any wrongdoing, in the face of what was clear instructions she simply failed to comply with. This, I believe, is a critical consideration that shows that she cannot be trusted to carry out what she is specifically instructed to carry out, which goes to the core of the employment relationship and renders it intolerable.
- [40] An important consideration in casu is a complete absence of remorse by the first respondent for what she actually did. In fact, she persisted with an approach that she did nothing wrong, right into the arbitration. In *De Beers Consolidated Mines Ltd v Commission for Conciliation, Mediation and Arbitration and Others*[12] the Court said:
- ‘This brings me to remorse. It would in my view be difficult for an employer to re-employ an employee who has shown no remorse. Acknowledgment of wrong doing is the first step towards rehabilitation. In the absence of a re-commitment to the employer's workplace values, an employee cannot hope to re-establish the trust which he himself has broken. ...’
- [41] What the first respondent needed to do in order to mitigate the seriousness of her misconduct was to at least acknowledge her wrongdoing, express regret for what had happened, tender an apology to the applicant, and undertake not to repeat any such offence going forward. The failure of the first respondent to have done so should have weighed heavily against her. But the second respondent had no regard to any of this at all. In *National Union of Metal Workers of South Africa (NUMSA) obo Motloba v Johnson Controls Automotive SA (Pty) Ltd and Others*[13] it was held as follows:

‘A simple apology may have resolved the issues. Instead, an obstinate trivialisation of the incident and a denial that the event was inappropriate pervade the record. The misconduct for which Mr Motloba was charged was serious. He showed no contrition. Although he intimated that he learned from his experience as a leader not to permit his constituency to approach matters in the manner that they did, he denied that he made a mistake in approaching Ms Bezuidenhout with the group of approximately 20 employees. I am satisfied that the sanction of dismissal meted out was appropriate in the circumstances of this case.’

[42] In the end, what one has in this case, on the facts, is a clear instruction the first respondent was obliged to follow. Without any cause or justification for such behaviour, she did not follow it, and did as she pleased. She did so by way of e-mail notification to a number of employees, including Jansen and Rawat. When confronted with the fact that she did wrong, she showed no remorse or contrition, and instead sought to dispute any wrongdoing, a position she maintained throughout. As a direct result of her misconduct, the applicant suffered substantial loss. In all these circumstances, the first respondent earned her dismissal, and the second respondent committed a gross and reviewable irregularity in deciding otherwise.

[43] For all the reasons as set out above, it is my view that the determination by the second respondent in his award to the effect that that the dismissal of the first respondent by the applicant was substantively unfair, is grossly irregular, and resorts well outside the bands of what may be considered to be a reasonable outcome.[14] As such, the award of the second respondent falls to be reviewed and set aside.

Conclusion

[44] Therefore, I conclude that the second respondent’s finding that the dismissal of the first respondent was substantively unfair cannot be sustained, and falls to be reviewed and set aside. It is clear that the only reasonable outcome the second respondent could have arrived at, considering the evidence as a whole and the applicable principles of law, is that the first respondent committed the misconduct of failing to comply with a reasonable and lawful work instruction, and that the misconduct was of sufficient magnitude in the circumstances to justify her dismissal, especially considering the destruction of the trust relationship and the complete lack of remorse on her part

[45] Having reviewed and set aside the award of the second respondent, I see no reason to remit this matter back to the third respondent again for determination de novo before another arbitrator. The entire factual matrix in this matter was mostly common cause or undisputed, properly presented in the arbitration, and fully available in the record which was in all respects complete. There is therefore simply no need to go through the whole exercise of arbitration again. Exercising the powers I have under section 145(4) of the LRA,[15] I therefore consider it appropriate to finally determine this matter. I shall accordingly substitute the arbitration award of the second respondent with an award that the dismissal of the first respondent by the applicant was substantively fair.

[46] As this matter is not opposed, the issue of costs does not arise.

[47] It is for all the reasons, as set out above, that I made the order that I did as set in paragraph 4 of this judgment, above.

S Snyman

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant:

Ms M Chenia of Cliffe Dekker Hofmeyr Inc Attorneys

For the First Respondent:

No appearance

[1] Act 66 of 1995 (as amended).

[2] (2007) 28 ILJ 2405 (CC).

[3] Id at para 110. See also *CUSA v Tao Ying Metal Industries and Others* (2008) 29 ILJ 2461 (CC) at para 134; *Fidelity Cash Management Service v Commission for Conciliation, Mediation and Arbitration and Others* (2008) 29 ILJ 964 (LAC) at para 96.

[4] See *Duncanmec (Pty) Ltd v Gaylard NO and Others* (2018) 39 ILJ 2633 (CC) at paras 43.

[5] (2013) 34 ILJ 2795 (SCA) at para 25. See also *Gold Fields Mining South Africa (Pty) Ltd (Kloof Gold Mine) v Commission for Conciliation, Mediation and Arbitration and Others* (2014) 35 ILJ 943 (LAC) at para 14; *Monare v SA Tourism and Others*

(2016) 37 ILJ 394 (LAC) at para 59; *Quest Flexible Staffing Solutions (Pty) Ltd (A Division of Adcorp Fulfilment Services (Pty) Ltd) v Legobate*

(2015) 36 ILJ 968 (LAC) at paras 15 – 17; *National Union of Mineworkers and Another v Commission for Conciliation, Mediation and Arbitration and Others*

(2015) 36 ILJ 2038 (LAC) at para 16.

[6] *Fidelity Cash Management Service* (supra) at para 102.

[7] See *Campbell Scientific Africa (Pty) Ltd v Simmers and Others* (2016) 37 ILJ 116 (LAC) at para 32; *Anglo Platinum (Pty) Ltd (Bafokeng Rasemone Mine) v De Beer and Others* (2015) 36 ILJ 1453 (LAC) at para 12.

[8] (1991) 12 ILJ 1032 (LAC) at 1037F-H. See also *Commercial Catering and Allied Workers Union of SA and Another v Wooltru Ltd t/a Woolworths (Randburg)* (1989) 10 ILJ 311 (IC).

[9] (2023) 44 ILJ 162 (LAC) at para 27. See also *Malamlela v SA Local Government Bargaining Council and Others*

(2018) 39 ILJ 2454 (LAC) at para 29; Palluci Home Depot (Pty) Ltd v Herskowitz and Others (2015) 36 ILJ 1511 (LAC) at para 22; Motor Industry Staff Association and Another v Silverton Spraypainters and Panelbeaters (Pty) Ltd and Others (2013) 34 ILJ 1440 (LAC) at para 31.

[10] Compare Legal Aid SA v Mayisela and Others (2019) 40 ILJ 1526 (LAC).at para 17.

[11] (2019) 40 ILJ 150 (LAC) at para 19.

[12] (2000) 21 ILJ 1051 (LAC) at para 25. See also Absa Bank Ltd v Naidu and Others (2015) 36 ILJ 602 (LAC) at para 46; Independent Newspapers (Pty) Ltd v Media Workers Union of SA on behalf of McKay and Others 2013) 34 ILJ 143 (LC) at 146; Greater Letaba Local Municipality v Mankgaba No and Others (2008) 29 ILJ 1167 (LC) at para 34.

[13] (2017) 38 ILJ 1626 (LAC) at para 53

[14] Compare Msunduzi Municipality v Hoskins (2017) 38 ILJ 582 (LAC) at para 30.

[15] Section 145(4)(a) reads: 'If the award is set aside, the Labour Court may – (a) determine the dispute in the manner it considers appropriate ...'.

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