

**IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT BRAAMFONTEIN**

CASE NO JR 1363/09

In the matter between:

BAKONE MINERALS

Applicant

and

NANDU MALUBETE N.O.

First Respondent

**COUNCIL FOR CONCILIATION, MEDIATION
AND ARBITRATION (CCMA)**

Second Respondent

FRANS MAKGOPA & 1 OTHER

Third Respondent

JUDGMENT

COETZEE AJ:

Introduction

1. The Applicant, the Employer, seeks to review and set aside an arbitration award dated 19 April 2009 in terms of which the Commissioner found that the dismissal of the Third Respondents (both are cited together as the Third respondent) were procedurally and substantively unfair and ordered compensation to be paid to them.
2. The application is unopposed.

Background and Facts

3. There are factual disputes as to whether the Third Respondents left of their own accord, or were dismissed.
4. No disciplinary enquiries were held.
5. The Applicant (employer) denies that it dismissed the Third Respondents.
6. It is not the Employer's case that they deserted. The Employer contends that for reasons of their own they decided to leave their employment with the Applicant.
7. The Applicant attacks the arbitration award both in respect of the finding that the dismissal was unfair and, in the alternative, that the compensation awarded equal to eight months' wages is excessive.

Finding

8. I do not intend to repeat the evidence and the grounds for review.
9. I am of the view that it is clear from the record of the arbitration proceedings that only one reasonable conclusion could be drawn from the facts. That conclusion is that the two employees had failed to discharge the onus that they had in fact been dismissed.
10. If required to I shall furnish my reasons for the order.
11. That being the case there is no reason to refer the matter back for arbitration before a different Commissioner.

Order

12. The arbitration award issued on 19 April 2009 under case number: LP 4569 – 07 is hereby set aside.
13. It is ordered that the Third Respondents were not dismissed by Applicant.

14. There is no order as to costs.

COETZEE AJ
ACTING JUDGE OF THE LABOUR COURT

DATE OF HEARING: 21 DECEMBER 2010

DATE OF JUDGMENT: 21 December 2010

APPEARANCES:
FOR APPLICANT: S U Roeloffs

FOR THE RESPONDENTS: No appearance