THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Reportable

Case no: JR2189/13

In the matter between:

GEGI JOSEPH SIBEKO **Applicant**

and

XSTRATA COAL SOUTH AFRICA **First Respondent**

GLENCORE HOLDINGS (PTY) LTD **Second Respondent**

WILFRED NOKA NKGOENG N.O. **Third Respondent**

COMMISSION FOR CONCILIATION,

MEDIATION AND ARBITRATION (CCMA) **Fourth Respondent**

Heard: **15 January 2016**

Delivered: **03 February 2016**

Summary: CCMA finding employee's dismissal substantively unfair. Notwithstanding that the employee seeks reinstatement as primary remedy, CCMA finds that the employee/employer trust relationship has

broken down as a result of the employee's conduct during the CCMA arbitration and orders 6 months compensation.

Held that Sections 193 (1) and (2) of the Act, are peremptory. None of the situations set out in Section 193 (2) (a) – (d) were present, and the CCMA erred in law in not reinstating the employee in terms of Section 193 (1) (a).

Held that the CCMA cannot sanction an employee for his conduct during CCMA proceedings by not granting reinstatement in terms of Section 193 (1) (a) where it is sought as primary remedy for a substantively unfair dismissal. There are other remedies such as costs orders and contempt proceedings.

Held that the CCMA in not reinstating the Applicant, having found that his dismissal was substantively unfair, but instead ordering that he be paid compensation of six months, was not a decision that a reasonable decision maker could have come to and it should be set aside, and substituted with an order that the Applicant be reinstated in terms of Section 193 (1) (a) of the Act, retrospective for 15 months.

JUDGMENT

HARDIE, AJ

[1] This is an application for review brought in terms of section 145 of the Labour Relations Act 66 of 1995 ("the Act") on 10 October 2013, in which the Applicant seeks to review and set aside the award as it relates to relief, which was handed down by the Third Respondent ("the Commissioner") under the auspices of the Fourth Respondent under CCMA case number MP2937-13 on 10 September 2013. In terms of the said award, notwithstanding that the Applicant sought reinstatement should he be found to have been substantively unfairly dismissed, the Commissioner ordered the First Respondent to pay the Applicant six months' compensation in the amount totalling R72 087.00 (i.e. R11 696.00 X 6 months = R72 087.00).

[2] In essence, the Applicant's grounds of review are that instead of retrospectively reinstating the Applicant following his finding that the dismissal was substantively unfair, the Commissioner came to a decision that no reasonable decision maker would have reached in his award, namely, to award compensation and that this decision stands to be set aside.

[3] At the commencement of the arbitration before the Commissioner, he assisted the parties to narrow down the issues. Arising from this process, the Commissioner read into the record, the result of these efforts which are found at page 2, lines 7- 20 of the transcript of the arbitration proceedings, as follows:

> 'Okay. Off the record I have assisted the parties to narrow down the issues. The date of employment, the 5th of January 2012. Date of dismissal, 25 of March 2013... (inaudible) operator. Salary, R11 969.00. **Remedy, reinstatement**. Reason for dismissal misconduct. Both the procedure and substance are placed in dispute. The Respondent will call four witnesses while the Applicant will testify by himself. Respondent has submitted a bundle of documents marked Exhibit A while that of the Applicant is marked Exhibit B.'

[4] In paragraphs 63- 65, the Commissioner found that the Applicant's dismissal was procedurally fair. In paragraphs 67- 71 of his award, the Commissioner found that the dismissal was substantively unfair because the First Respondent had failed to discharge the onus on a balance of probabilities, that the Applicant was guilty of the misconduct levelled against him. Thereafter, the Commissioner turned to deal with the appropriate remedy. His reasoning, in this regard, is contained in paragraphs 72-74 of the award. It reads as follows:

> '72. I now turn to the appropriate remedy. The Applicant sought for retrospective reinstatement. Section 192 of the Labour Relations Act, No 66 of 1995 provides reinstatement as a primary remedy in case of the dismissal that was found to be substantially unfair. However, in this case I am inclined to deviate from the primary remedy based on the following reasons:

> 73. The manner in which the Applicant conducted himself throughout the proceedings leaves much to be desired. If he was not the only witness to his case, and for the purposes of finalising this matter, I could have shown him the door. He accused the Respondent's representative of bribing witnesses but could not substantiate his allegation. He further accused not only the representative but the whole HR personnel in attendance to the proceedings of talking to each other through legs. This was later extended to me as a Commissioner. I had to stop the proceedings on numerous occasions due to his unbecoming conduct. He said in his own words that this was just the beginning of a bigger battle between him and the Respondent.
>
> 74. Given the above, it is my conclusion that the employer/employee trust relationship has been broken irretrievably. It is in this context that I believe six months compensation would be appropriate remedy as opposed to reinstatement.'

[5] The First Respondent opposed the review application, firstly, on the basis of a point *in limine*, namely, that of the doctrine of peremption. The First Respondent argued that because it had complied with the award in having paid the Applicant the compensation ordered in terms thereof and that the award had therefore, already been fully complied with and that such compliance had unequivocally been accepted by the Applicant, the Applicant had perempted his right to challenge the award on review.

[6] In dealing with this issue in argument before me, the Applicant's attorney pointed out that as soon as the Applicant became aware that the compensation award has been paid into his bank account, he wrote to the First Respondent's attorney on 29 April 2015, advising that the money was still in his bank account and tendered to pay it back to the First Respondent. The First Respondent's attorney thereafter indicated before me that they were abandoning this point *in limine*, and would oppose the review application only on the merits.

[7] The First Respondent's case is that the award is not reviewable. The Commissioner's conclusions regarding the appropriate remedy are ones

that a reasonable decision maker could have reached having regard to the material properly before him. Further, the award is properly founded on the considerations that unfolded before him during the arbitration of the matter, which considerations, it is submitted that the Commissioner was fully entitled to rely upon in the exercise of his powers in terms of section 193(2) of the Act. The Commissioner's award is also not reviewable because the Commissioner's decision on compensation as an appropriate remedy is judicially correct having regard to the facts and circumstances of the case and the considerations that unfolded before him during the arbitration of the matter.

[8] In advancing argument on the applicability of section 193(2) of the Act, the First Respondent relied upon the Labour Appeal Court judgment of *Maepe v CCMA and Another.*[1] This case dealt with allegations of sexual harassment by a convening senior commissioner of the CCMA. After a full disciplinary enquiry, the said convening senior commissioner was found guilty and dismissed for sexual harassment and for disgraceful conduct. Arising from the arbitration conducted under the auspices of the Fourth Respondent, the convening senior commissioner's dismissal was held to be unfair and the CCMA was ordered to reinstate him but to give him a final written warning on condition that, if he was found guilty of similar misconduct in a period of twelve months, he would be dismissed.

[9] At the disciplinary enquiry and more importantly under oath in the proceedings before the CCMA, the convening senior commissioner gave false evidence about the events for which he had been dismissed and his version was rejected. The CCMA subsequently brought a review application in the Labour Court to have the arbitration award reviewed and set aside on the basis that the convening senior commissioner had given false evidence both in the disciplinary enquiry and in the arbitration proceedings, and that in not considering these factors, the Commissioner who arbitrated the case, had committed a gross irregularity. In bringing this application for review, the CCMA drew attention to the position in

[1] [2008] 8 BLLR 723 (LAC).

which the convening senior commissioner had been employed and the special position of the CCMA as a dispute resolution institution. The Labour Court granted the review application, set the award aside and declared that the convening senior commissioner's dismissal had been fair.

[10] The convening senior commissioner then appealed this Labour Court decision. In considering the appeal, Zondo, JP of the Labour Appeal Court set out the law as follows:

> '[13] In considering Counsel's submission on the issue at hand, it is important to have regard to the provisions of Section 193(1) and (2) of the Act insofar as they relate to reinstatement and the powers of the CCMA (in arbitrations) and the Labour Court (in adjudications). Section 193(1) and (2) read as follows:
>
> "(1) If the Labour Court or an arbitrator appointed in terms of this Act, finds that a dismissal is unfair, the Court or the arbitrator may –
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> (a) order the employer to reinstate the employee from any date not earlier than the date of dismissal;
>
> (b) order the employer to re-employ the employee, either in the work in which the employee was employed before the dismissal or in any other reasonably suitable work on any terms and from any date not early than the date of dismissal; or
>
> (c) order the employer to pay compensation to the employee.
>
> (2) The Labour Court or the arbitrator must require the employer to re-employ the employee unless –
>
> (a) the employee does not wish to be reinstated or re-employed;

(b) the circumstances surrounding the dismissal are such that the continued employment relationship would be intolerable;

(c) it is not reasonably practical for the employer to reinstate or re-employ the employee; or

(d) the dismissal is unfair only because the employer did not follow a fair procedure."

Section 193(2) of the Act obliges – it uses the word "must" – the Labour Court or an arbitrator to order the employer to reinstate or re-employ the employee whose dismissal he had found to be unfair for lack of a fair reason or whose dismissal he had found to be automatically unfair, unless one or more of the situations set out in Section 193(2)(a) – (d) applies.

[14] The situation envisaged in paragraph (a) is "where the employee does not wish to be reinstated or re-employed" and it does not apply in this case. The situation envisaged in paragraph (b) is "where the circumstances surrounding the dismissal are such that the continued employment relationship would be intolerable". It is possible that insofar as the giving of false evidence under oath may have occurred in the disciplinary hearing before the dismissal, it could be said that it is one of the circumstances surrounding dismissal, particularly where it was one of the factors to be taken into account in making the decision to dismiss. However, it does not appear that the same can be said of the situation where the giving of false evidence only occurs in the arbitration or at the trial subsequent to the dismissal. Paragraph (c) envisages a situation where "it is not reasonably practicable for the employer to reinstate or re-employ the employee". Paragraph (d) is a situation where "the dismissal is unfair only because the employer did not follow a fair procedure". Paragraph (d) does not apply in this case.

[15] The effect of Section 193(1) and (2) is that in those cases in which the arbitrator or the Labour Court has found the dismissal to be either automatically unfair or unfair for lack of a fair reason

and none of the situations contained in Sections 193(2)(a) – (c) is present, the arbitrator or the Labour Court has no discretion to order the employer to reinstate the employee but is obliged to do so. I am here not referring to a case where the Court or arbitrator must decide whether to grant the relief of reinstatement or that of re-employment. I am referring to a situation where the issue is whether to order the employer to reinstate the employee or to order the employer to pay compensation to the employee. In those cases where the Court or the arbitrator has found that dismissal is automatically unfair or is unfair for lack of a fair reason, and one or more of the situations set out in section 193(2)(a) – (c) is present, the Labour Court or the arbitrator has no power to order the employer to reinstate the employee. The same applies if the dismissal is unfair only because the employer did not follow a fair procedure.

[16] What I have just said in the preceding paragraph means that if a case falls under one or other of the situations listed in Section 193(2) (a) – (d), it is not competent for the Labour Court or an arbitrator to order reinstatement or re-employment. This is because Section 193(2) makes provision as to when reinstatement or re-employment must be ordered and when it must not be ordered. In effect, it says that reinstatement or re-employment must be ordered in all cases except those listed in Section 193(2)(a) – (d). This is mainly because of the words "must require the employer to reinstate or re-employ the employee", which appear at the beginning of Section 193(2) of the Act. The Act uses the word "must" in many areas and it is clear from an analysis of most parts where "must" is used, it is used to impose an obligation. In the cases which fall under Section 193(2)(a) – (d), the Labour Court or arbitrator may order relief other than reinstatement or re-employment, such as the payment of compensation to the employee, as envisaged in Section 193(1)(c) of the Act.'[2]

[2] Ibid at paras 13-16.

[11] It is not clear from the Commissioner's reasoning, which of the provisions contained in section 193 (2) he utilised to exercise his powers not to award reinstatement. In attempting to bring the Commissioner's reasoning within that section's prescripts, the First Respondent submitted that the Commissioner had exercised his powers not to order reinstatement either in terms of Section 193(2) (b) or (c).

[12] Dealing first with section 193 (2) (b), it is clear from the *Maepe* judgment and more particularly paragraph [14] thereof, about when it is permissible for a Commissioner not to award reinstatement because "the circumstances surrounding the dismissal are such that a continued employment relationship would be intolerable". As appears from that paragraph, the circumstances which can be taken into account are those which prevailed at the time of the dismissal and not thereafter. That is what is meant by "the circumstances surrounding the dismissal". Thus, an employee's conduct at the arbitration conducted under the auspices of the Fourth Respondent is not a ground upon which the Commissioner could have exercised his powers not to award reinstatement to the Applicant.

[13] Dealing now with section 193 (2) (c), namely, where "it is not reasonably practicable for the employer to reinstate or re- employ the employee", the Labour Appeal Court in the *Maepe* judgment sets out its application in paragraphs [18] and [19] thereof:

> '[18] Let me illustrate the point made by way of an example. If the evidence before an arbitrator or the Labour Court in an unfair dismissal dispute between A and B, where A would be employed by B as a driver, established that his driver's license was withdrawn after his dismissal with the result that he could no longer drive lawfully, it would definitely be reasonably impracticable within the meaning of that phrase in Section 193(2)(c) for the employer to reinstate such employee because in such a case the employer would not be able to require the employee to perform his duties without requiring the employee to commit a criminal offence....

[19] In my view, the same principle applies in this case. The Appellant gave false evidence under oath. Reinstatement was going to mean that he was reinstated to a position in which he had to expect others to respect an oath when he himself had been found to have shown no respect for the same oath. In my view, it was going to be reasonably impracticable for the First Respondent to reinstate the Appellant to such position. On what basis could he expect parties and witnesses giving evidence before him, to show respect for the oath they would take before giving evidence, when he had shown no respect for such oath himself? In my view, that state of affairs would be such that the Appellant could not perform his duties effectively and when an employee cannot perform his duty effectively, it seems to me that it is reasonably impracticable within the meaning of that phrase in Section 193(2)(c) of the Act to order the employer to reinstate the employee. And when it is reasonably impracticable to order the employer to reinstate an employee, an order of reinstatement is incompetent. Once the Commissioner had become satisfied, as he obviously became at some stage, the Appellant had given false evidence under oath, he ought to have considered what the effect thereof, if any, was in regard to the relief in the light of the type of institution that the First Respondent is, the position which the Appellant in the First Respondent and the Appellant's functions or duties in the position he was employed.'

[14] At paragraph [27], the learned Zondo, JP goes on to state the following:

'[27] Before I conclude, I wish to point out that the circumstances of this case are very unusual because of the nature and function of the First Respondent as an institution, the position that the Appellant held in the First Respondent and the duties or functions that went with that position. The fact that in this case we have concluded that the Appellant's conduct in giving false evidence under oath in the arbitration rendered it "reasonably impracticable for the employer" to reinstate him does not mean that this will be the conclusion in each case in which an employee is found to have given false evidence under oath in an unfair dismissal matter. Each case will have to be decided on its

> own merits. Indeed, in my view in many cases which come before the CCMA, bargaining councils and the Labour Court, that would not often be the result because it will not follow in many such cases that it is reasonably impracticable for the employer to reinstate such employee. I think cases where the giving of false evidence under oath will lead to it being reasonably impracticable for the employer to reinstate an employee will be relatively rare.'

[15] In determining whether this is an exception as envisaged in section 193(2)(c) which renders the reinstatement of the Applicant reasonably impracticable, the Commissioner was bound by the law as set out in paragraphs [13] and [14] of this judgment, above.

[16] Arbitrations under the auspices of the Fourth Respondent are litigious proceedings and thus adversarial in nature. During the course of such proceedings, it is not uncommon for parties to behave irrationally. Such irrationality can manifest in the show of emotions, a personal attack on an opponent, wild and unsubstantiated allegations, paranoia and defensiveness. Indeed, even seasoned legal practitioners in the course of the fray are known to vent. More so, lay litigants caught up in litigious proceedings. From a reading of the opening statements made by the Applicant and the First Respondent before the Commissioner in the arbitration, it was apparent that both parties came out all guns blazing in promoting their cases. The First Respondent stated that they would like to prove that the Applicant was a "habitual liar" whilst the Applicant ventured that all the allegations in the disciplinary process were a conspiracy against him. Accusations of conspiracies and lies abound in litigious proceedings and alas in these ones, the Commissioner found that there was neither a conspiracy to get rid of the Applicant nor that he was a habitual liar rather that the First Respondent had simply failed to discharge the onus of proof, on a balance of probabilities, that the Applicant had committed the acts of misconduct complained of.

[17] It is apparent from the transcript of the arbitration proceedings before the Commissioner that both the Applicant and the First Respondent's

witnesses became emotional at times. This happens in the heat of the fray. It is the Commissioner's task to guide the process back to rationality in the pursuit of resolving the issues in dispute.

[18] It is not uncommon for unrepresented employees to irrationally feel that they are up against it, particularly, when they are faced with multiple employer witnesses who they believe are conspiring against them. At one stage, during the arbitration proceedings, the Applicant raised an objection that the First Respondent's witnesses were assisting each other under the table by kicking each other and passing notes to each other while giving evidence. Further, that they were laughing at him and that the Commissioner was doing nothing to stop this, with the result that it was the Applicant's view that the First Respondent would "win the award". His perception was that not only were they kicking each under the table but that the Commissioner himself was also kicking certain of the First Respondent's witnesses that way. The Commissioner acknowledged that when one of the witnesses sitting next to him had moved her leg and he had stretched his, there had been an inadvertent touch, and that there was nothing sinister in this. This precipitated the Applicant challenging the Commissioner as to his objectivity and the perception that he was biased towards the First Respondent. It was in this context that the Applicant mentioned variously that that arbitration process was the start of the battle and that, ultimately, the case would be decided by Judges and that he would have the last laugh. This exchange between the Commissioner and the Applicant became heated. The Commissioner indicated that because of his conduct, the Applicant should address him as to why costs should not be awarded against him for his disrespect of the Commissioner. At no stage, during the arbitration, did the Commissioner indicate that as a result of the Applicant's conduct, he would exercise his powers in terms of Section 193(2) not to reinstate him and nor were costs ordered against the Applicant by the Commissioner in the award.

[19] Under cross-examination, the Applicant alleged that the representative, who represented him, during his disciplinary enquiry, had been bribed by

the First Respondent. He alleged that he could substantiate this allegation but was not given an opportunity to do so.

[20] The First Respondent, in its heads of argument, referred me to various portions of the transcript of the arbitration which necessitated the Commissioner having to admonish the Applicant to conduct himself in a manner calculated to progress the matter to expeditious finalisation. One example referred to, is to be found at page 106, line 10 where the Commissioner states as follows:

> *'Listen Sir, I am controlling the process. Don't make a lengthy speech. If you want to make a statement, then make a statement and make a statement and afford the witness to respond.*'

This kind of intervention by the Commissioner is not uncommon when a lay litigant is cross- examining a witness.

[21] The Constitutional Court in both *Equity Aviation Services (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and Others*[3] and *Billiton Aluminum SA Ltd t/a Hillside Aluminium v Khanyile and Others*[4] have held that reinstatement is the primary remedy in unfair dismissal disputes.

[22] Applying the facts to the law, to the extent that as is alleged by the First Respondent, the Commissioner exercised his powers in terms of section 193 (2) (c) of the Act in not awarding Applicant the primary remedy of reinstatement, he committed an error in law. The Labour Appeal Court in the *Maepe* judgment makes it clear that "not reasonably practicable" relates to whether it is practically feasible at the workplace for the dismissed employee to resume his functions and duties. This will usually be influenced primarily by a substantive change in the employer's operational requirements since the dismissal such as the genuine abolition of the dismissed employee's position or the dismissed employee's inability to perform his duties in terms of his contract of employment such as the example quoted in paragraph 18 of the *Maepe* judgment where the

[3] [2008] ZACC 16; 2009 (1) SA 390 (CC); 2009 (2) BCLR 111 (CC)

[4] [2010] ZACC 3; 2010 (5) BCLR 422 (CC); 2010 31 ILJ 273 (CC); [2010] 5 BLLR 465 (CC)

employee employed as a driver had his driver's license revoked subsequent to his dismissal or that where it was an inherent requirement of the job for the convening senior commissioner to administer the oath to witnesses and he had shown no respect for that oath by lying under it. These are exceptional circumstances. As was held in, *inter alia*, *Manyaka v Van de Wetering Engineering (Pty) Limited*[5], the fact that the dismissed employee's position has been filled by a new employee does not even constitute valid grounds to render reinstatement "not reasonably practicable". Section 193 (1) (c) also mentions reemployment as an alternative to reinstatement. This means that if reinstatement is "not reasonably practicable", the Commissioner must consider ordering re-employment in other reasonably suitable work. That is how far the Commissioner is required to go, in order to comply with the peremptory nature of sections 193 (1) and (2) of the Act.

[23] Because the Commissioner's reasoning for not awarding reinstatement in terms of sections 193 (1) and (2) of the Act, as contained in paragraphs 73 and 74 of the award, is not in compliance with the law and more particularly sections 193 (2) (b) and (c) of the Act, it is also a decision that a reasonable arbitrator could not have reached. It was not open to the Commissioner in terms of the law not to order reinstatement because he found that the Applicant had mis- conducted himself during the arbitration before him. He had other remedies to address that. Indeed, he made mention of one in the arbitration which is an adverse costs award in terms of Section 138 (10) of the Act read with Rule 39 of the Rules for the Conduct of Proceedings in the CCMA and, more particularly, Rule 39 (1) d) which states:

> '(1) In any arbitration proceedings, the commissioner may make an order for the payment of costs according to the requirements of law and fairness and when doing so should have regard to-
>
> d) whether a party or the person who represented that party in the arbitration proceedings acted in a frivolous and vexatious manner-

[5] [1997] 11 BLLR 1458 (CC)

i) by proceeding with or defending the dispute in the arbitration proceedings, or

ii) in its conduct during the arbitration proceedings.'

[24] In terms of the CCMA Guidelines: Misconduct Arbitrations published by the CCMA in terms of section 115 (2) (g) of the Act and at paragraph 141 thereof, the CCMA gives guidelines to Commissioners as to the circumstances when costs should be awarded. Instances which may justify a costs order include if the conduct of a party or their representative has been dishonest, reprehensible or unreasonable. If indeed the Applicant had conducted himself in a reprehensible or unreasonable manner, this is a remedy that could have been imposed by the Commissioner. He also had another remedy, namely, contempt proceedings as found in Sections 142(8)(f), (g), (h), (i) of the Act, which provides:

'(8) A person commits contempt of the Commission –

(f) if the person wilfully hinders a Commissioner in performing any function conferred by or in terms of this Act;

(g) if the person insults, disparages or belittles a Commissioner, or prejudices or improperly influences the proceedings or improperly anticipates the Commissioner's award;

(h) by wilfully interrupting conciliation or arbitration proceedings or misbehaving in any other manner during those proceedings;

(i) by doing anything else in relation to the Commission which if done in relation to a Court of law, would have been contempt of court.'

[25] Given that there are other remedies as set out above, it is not open to a Commissioner to use section 193 of the Act to sanction employees for their conduct during CCMA arbitration proceedings by denying them

reinstatement when they seek it as their primary remedy, where they are found to have been substantively unfairly dismissed.

[26] In the result, I find that the Commissioner in not reinstating the Applicant, having found that his dismissal was substantively unfair, but instead ordering that he be paid compensation of six months, such a finding was not a decision that a reasonable decision maker could have come to and it should be set aside and substituted with an order that the Applicant be reinstated in terms of section 193 (1) (a) of the Act.

[27] I now turn to deal with the retrospectivity of the reinstatement order. I am mindful of the fact that the Applicant was dismissed on 25 March 2013, that the Commissioner's award dates back to 10 September 2013 and that there have been various delays in the processing of the application for review occasioned by the constraints of the Court system. I am also cognisant of the fact that this is not a situation where the First Respondent as employer has brought the application for review but that it did elect to oppose the said Application. Had it not done so, the said Application would have been heard on the unopposed roll and its finalisation expedited. In all the circumstances, I find that it would be fair and equitable for the Applicant's reinstatement to be limited to a period of 15 months. In other words, the Applicant is to be remunerated for only 15 months since his unfair dismissal on 25 March 2013. In all other respects, his service is to be regarded as unbroken since 5 July 2012, the date of the commencement of his service with the First Respondent.

[28] Given that there is an ongoing employment relationship between the Applicant and the First Respondent, and that the Applicant was represented by Legal Aid South Africa, I am not persuaded that costs should follow the result.

[29] I hereby make the following order:

1. The Third Respondent's arbitration award made under the auspices of the Fourth Respondent on 10 September 2013 under CCMA case number MP2937-13 in which Third Respondent

ordered that the First Respondent should pay the Applicant six (6) months compensation in the amount of R72 087.00 is hereby reviewed and set aside;

2. The Third Respondent's award of six (6) months compensation is substituted with an order that the Applicant is hereby reinstated retrospectively, such retrospectivity being limited to a period of 15 months.

3. There is no order as to costs.

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Hardie, AJ

Acting Judge of the Labour Court

APPEARANCES

For the Applicant:	Ms A Roestorf
Instructed by:	Legal Aid South Africa,
For the First Respondent:	Mr D Cithi
Instructed by:	Mervyn Taback Inc