

Supreme Court of Appeal of South Africa

MEDIA SUMMARY– JUDGMENT DELIVERED IN SUPREME COURT OF APPEAL

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Transnet v Chirwa

In a judgment delivered today, the Supreme Court of Appeal by a majority of 3 to 2 has reversed an order of the Johannesburg High Court which set aside the dismissal of a Transnet employee, Ms Chirwa, and reinstated her in her post with nine months' back pay.

The appeal therefore had to succeed and Ms Chirwa's application for reinstatement therefore had to be dismissed.

The three judges of the SCA who agreed with the order upholding Transnet's appeal differed amongst each other as to the reasons. Mthiyane JA, in a judgment in which Jafta JA concurred, held that when Transnet dismissed Ms Chirwa, it was not engaged in 'administrative action' under the Promotion of Administrative Justice Act 3 of 2000: it was acting purely contractually. Ms Chirwa's only recourse was therefore under the LRA.

Conradie JA concurred in the order for different reasons. He considered that even if the dismissal constituted administrative action, the existence of the LRA meant that Ms Chirwa could no longer bring the cause of action arising from her dismissal in the ordinary courts: she had to go to the labour courts.

Mpati DP and Cameron JA dissented. They considered that Ms Chirwa was entitled to approach the high court about her dismissal. But in their view the high court should not have reinstated her – it should have sent the matter back to Transnet for

a fair and proper hearing. Transnet's appeal should therefore partly succeed.

The minority judges held, in a judgment by Cameron JA, in which Mpati DP concurred, that since Transnet was an organ of state, established by statute, its dismissal-related decisions constituted 'administrative action' under PAJA. The employee was therefore free to approach the ordinary courts for relief. The dissenting judges however held that the high courts should be careful not to usurp the remedial powers and expertise of the labour courts. The employee should therefore not have been reinstated.

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