

IN THE LABOUR COURT OF SOUTH AFRICA

(Held at Cape Town)

Case No:

C 98/98

In the matter between:

Applicant

and

S UNION

Respondent

JUDGEMENT

REVELAS J

[1] The applicant had been in the employ of the respondent, a trade union, as an organiser since February 1986 until he was dismissed on 10 October 1997, following charges of *inter alia*, misappropriating and making unauthorised

deductions from an employee's settlement award.

[2] A disciplinary hearing was held on 26 August 1997 at the premises of the respondent. Both parties were legally represented and the chairman of the hearing was an independent third party with no interest in the matter.

[3] The chairman of the disciplinary enquiry found that "a complete breakdown of the employment relationship and breach of trust" had occurred and recommended the dismissal of the applicant.

[4] It was the case for the applicant that the respondent had initiated a process of victimisation and discrimination against him on the basis of his views and beliefs in the union. The applicant saw the institution of disciplinary action against him as a mere part of the greater process of victimisation and discrimination. The applicant challenged the fairness of his dismissal and referred his dispute to the Commission for

Conciliation, Mediation and Arbitration ("CCMA"), where conciliation failed. Thereafter the matter was referred to the Labour Court for adjudication.

[5] It was part of the applicant's case that Mr Noel Maart, the respondent's Secretary-General, perceived him as a rival candidate for the position held by him. The applicant contended that he was a better candidate for the position of Secretary-General since he was their incumbent for that position at the time and had more experience than Mr Maart.

[6] The facts which gave rise to the dispute are the following:

It is common cause that the applicant represented a certain Mr A Dush, who was dismissed from the employ of a company called Wynberg Joinery Works (Pty) Ltd. Mr Dosh challenged the fairness of his dismissal and the dispute was referred to the Building Industry Bargaining Council for

conciliation. Mr Dush was represented by the applicant at the conciliation meeting. A settlement agreement agreement was reached between the parties.

[7] At the time of his dismissal, Mr Dush was not a member of the respondent. The applicant did not have Mr Dush sign up as a member of the respondent, as was the normal practice in the respondent.

[8] The settlement agreement reached at the Building Industry Bargaining Council was to the effect that Wynberg Joinery Works would pay Mr Dush R 2 177-30 (plus holiday fund stamps) in full and final settlement of the dispute between the parties.

[9] It is common cause that the applicant insisted that the cheque to be paid in full and final settlement of the dispute, be made out to him personally. It is also common cause that the applicant gave Mr Dush only R 1 000-00 on 1 July

1997, being the day after the conciliation meeting and the day upon which Mr Currie, of Wynberg Joinery Works, handed over the cheque to the applicant.

[10] The cheque for R 2177-30 was deposited into the applicant's personal account held at ABSA Bank. At the trial the applicant gave evidence that he deposited the cheque in the presence of Mr Dush and at the same time withdrew R 1 000-00 and gave it to Mr Dush. According to the applicant he deposited the cheque at an ABSA branch in Cape Town. During the disciplinary he testified that the cheque was deposited at Paarl, where he lives, also in the presence of Mr Dush. In other words, Mr Dush had travelled all the way from Cape Town where the cheque was received, to Paarl to have it deposited in the applicant's account and have his money withdrawn from the Paarl branch according to the applicant.

[11] The applicant explained that he insisted that the

cheque in question, be made out to him personally, because he feared that Mr Currie, who was hostile to Mr Dush and with whom Mr Dush had a bad relationship, would stop the cheque. The applicant also gave evidence to the effect that Mr Dush was physically barred from entering the Wynberg Joinery Works premises by Mr Currie during that time. This was denied by Mr Curried who gave evidence who also disputed any hostility on his part.

[12] The applicant further explained that he could not withdraw from his own account the full amount in cash, to hand over to Mr Dush, as was his intention, because he only had R 1 000-00 in his bank account at the time and he had to wait for the cheque to be cleared by his bank before he could pay out the remainder of the amount to Mr Dush, who desperately needed the money to pay his creditors and who was facing eviction.

[13] The applicant also testified that Mr Dush insisted

that the applicant should keep R 100-00 of the total amount for himself, as a gift to show Mr Dush's gratitude for the services rendered to him by the applicant.

[14] Mr Maart, testified that the matter of Mr Dush came to his attention when he received a letter from a Mr H Tepper, the labour consultant for Wynberg Joinery Works (Pty) Ltd. In this letter Mr Tepper expressed his concern about the fact that the applicant insisted on the settlement cheque, being made out to him personally. This letter relates that when Mr Currie who negotiated the settlement, wanted an explanation from the applicant for this strange arrangement, the applicant contended, that if the cheque was made out to the respondent, certain union fees would become payable which he wanted to save Mr Dush. Mr Tepper did not seem to know that Mr Dush was not a union member.

[15] Attached to Mr Tepper's letter was a copy of the

settlement agreement in question and a copy of the cheque.

[16] The letter was dated 7 July 1997. Mr Tepper also requested Mr Maart to contact him directly on his cell phone and provided the telephone number. Thereafter Mr Maart phoned Mr Tepper because he said he was also concerned and he reported the matter to the police. Upon the advice of the police Mr Maart contacted his attorneys of record. About two days later, he managed to get hold of Mr Dush with whom he made an appointment to come and see him on 11 July 1997.

[17] Mr Maart testified that when settlement agreements are reached between an employer and an employee, negotiated by a union official, the normal practice would be that any cheque made out in terms of the settlement agreement, would be payable to the employee personally or to the union. The employee would thereafter collect a cheque from the union and this would occur on the

same day or at the very latest the following day. The respondent kept two bank accounts. This evidence was confirmed by Ms Chantal Motto, Mr Maart's personal secretary.

[18] Mr Maart also testified that the normal practice when a non-union member, such as Mr Dush was, approached the union for assistance, such a prospective member would immediately be signed up as member. The only administration fees for which such a member would be liable, would be a joining fee of R 7-00 and the normal subscription fee of R 2-50 and any arrears. There were no arrears applicable since Mr Dush was represented by the applicant, and never was a member.

[19] When Mr Dush visited Mr Maart at the respondent's offices on 11 July 1997, Mr Maart questioned and listened to Mr Dush's version of events, which he took down in writing. He requested Mr Dush to rewrite, in his own handwriting, his version. Mr Dush wrote down his version in a letter addressed

to "whom it may concern".

[20] In this letter, Mr Dush confirms that the applicant went to a bank and gave him R 1 000-00 of which he gave R 100-00 to the applicant and they went their separate ways.

[21] He stated further that on 9 July 1997 he was phoned by Mr Maart who requested him to attend at the respondent's offices urgently. An arrangement was then made to meet with Mr Maart on 11 July 1997. When he arrived at the respondent's offices he found the applicant waiting for him. He stated that he was very surprised. Mr Dush stated that he and the applicant then went to the applicant's car where the applicant allegedly told him that the R 1000-00 was not the amount that he was supposed to receive and that the "real amount" was R 2 177-30.

[22] According to Mr Dush, the applicant then gave him the "rest of the money" which was R 1 177-30.

[23] He stated that he then came back to the respondent's office with the applicant who requested him to sign a document which he refused to sign since he felt that Mr Maart was not in the office and he was the person that he came to see about the money.

[24] Mr Dush also says the following in his letter:

" I do think that what Mr Matthew did was wrong, because he tried to swindle me out of my money. I think he is truly regret (sic) what he has done. I plead with you not to be hard on Mr Matthews."

[25] According to the testimony of Mrs Motto, Mr Dush visited the offices of the respondent, and requested to see Mr Maart who was not in the office at the time. She was requested him to wait for Mr Maart. However he was approached by the applicant who wanted Mr Dush to sign a document, which Mr Dush refused to sign.

[26] According to Mrs Motto, Mr Dush was very nervous and wanted to know from her whether he had done something wrong. He had also requested her to speak to her in private which they did when the two of them left the office. Mr Dush also told Ms Motto, according to her evidence, that the amount reflected on the document, was not the amount which he received from Mr Dush.

[27] She also saw Mr Dush get into a car with the applicant and Mr Poni, a union official who also gave evidence at the trial on behalf of the applicant.

[28] On 23 July 1997, Mr Dush wrote a letter to the executive of the respondent, in the form of an affidavit which was attested to at the South African Police in Strand Street. In sharp contrast to the relatively unsophisticated statement written at the union's offices on 11 July 1997, the relevant part of this letter reads as follows:

“(1) On Friday, 5 July 1997, Mr Maart in the offices of S A Woodworkers Union put extreme pressure on me to write the attached letter.

(2) I knew what settlement amount I should receive from Wynberg Joinery Works and further swear that the settlement amount was paid out to me.

(3) I hereby swear that Mr R C Matthews never asked for any compensation for duties performed but that I begged him to take the R 100-00 because I was grateful for what the had done for me.

(4) Due to the fact that I was not a member of S A Woodworkers union at the time I lodged the complaint to Mr R Mathews on instructions of the shop steward Mr I . Belelie, and due to the gross maltreatment by the management of Wnyberg Joinery Works...

After taking all the above-mentioned factors into account and the hostility shown by Mr Curries towards me I, Mr Able Dush gave Mr R Matthews a full mandate to represent me which include negotiating and receive settlements on my behalf.

I, Mr Able Dush, hereby withdraw the statements made in the attached letter and swear that the contents of this letter is a true reflection of the proceedings.

I further apologise to Mr R C Matthews for any harm done.

Signed on 23 July 1997 at Cape Town"

[29] Attached to the aforesaid letter, was the previous letter or statement made by to Mr Maart, which was written, according to Mr Maart, on 11 July 1997, and not on 5 July 1997 as suggested in the second letter.

[30] According to the applicant, his meeting with Mr Dush was not on 11 July 1997, but some days earlier, on 5 July 1997. He testified that Mr Dush always knew that he would receive the remaining R 1 177-30 at the respondent's offices.

[31] Mr Dush did not testify at the hearing.

[32] Much evidence was led as to the alleged arbitrary discrimination against the applicant.

[33] The applicant gave evidence that at a meeting held in Elsie's Rivier, a Mr Opperman, on the instructions of Mr Maart arrived to disrupt the meeting and had threatened the applicant that his employment with the respondent would be terminated. He also swore at the applicant.

[34] The applicant also complained of the fact that the respondent's attorney phoned him at home and told him that if he did not resign, disciplinary steps would be taken against him and criminal charges would be laid against him. The respondent's attorney, who appeared on behalf of the respondent during the trial, put it to the applicant that he never said so.

[35] According to the applicant and Mr Poni, Mr Poni

was also threatened by a member of the respondent's executive that he would be dismissed if he represented the applicant. This was also denied..

[36] It was further the applicant's case that Mr Maart and those members of the executive committee who were loyal to Mr Maart, convened a special meeting of the respondent for the purpose of deciding on the institution of disciplinary action against the applicant, and excluded branch committees. The respondent known by Mr Maart to be loyal to the applicant and in doing so Mr Maart had acted contrary of the respondent's constitution. This was a further factor which illustrated the respondent's determination to get rid of the applicant, according to the applicant.

[37] It was further contended on behalf of the applicant that Mr Maart had at various times accused the applicant of inciting other of the respondent's members against him.

[38] It was further the applicant's case that the chairman failed to take into account relevant and material mitigating factors when deciding on the sanction and that the factors that should have been taken into account, and which were brought to his attention at the disciplinary hearing included :

(1) The personal circumstances of the applicant.

(2) The long service and experience of the applicant.

(3) The otherwise clean record of the applicant.

[39] The further argument was that any breakdown in the relationship of trust between the applicant and Mr Maart was immaterial when viewed against the relationship of the applicant to the respondent as a whole.

[40] The applicant does not seek to be reinstated but

seeks compensation in terms of section 194(3) of the Labour Relations Act, No 66 of 1995 ("the Act"), alternatively he wants compensation in terms of section 194(2) as read with section 194(1) of the Act.

[41] It was argued on behalf of the applicant that the chairman of the disciplinary enquiry erred in his findings of guilt as well as sanction, in as much as the applicant was not in fact found guilty of any of the charges proffered against him.

[42] It was argued that a finding of a breach of trust, such as found by the chairman during the disciplinary enquiry, was not a competent finding to make on the charges levelled against the applicant since he purported to find the applicant "not guilty of fraud or theft". It was also argued that his finding, of the trust relationship being broken down was not supported by any evidence led at the disciplinary enquiry.

[43] In so far as an attack is launched on the chairman's findings, I believe it necessary to quote the relevant passages from his recommendations:

"After hearing the witnesses for and on behalf of both Mr Matthews and SAWU I made the recommendation that I found Mr Mathews guilty of a breach of trust. I therefore called for both parties to lead any argument or lead any witnesses, with regard to mitigation or aggravation, before making recommendations to the Committee of the Union.

I stated that I would let both parties know in writing why I believed that there was a breach of trust in this matter and I outlined as follows:

- (1) Firstly, it appears that Mr Matthews represented an employee who was not a member of the union, but did so purely on the basis that this employee would eventually become a member of the union. However, when the time came for this person to become a member of the union and to have all his dues deducted Mr Matthews specifically avoided these deductions ;

- (2) Mr Matthew then entered into a strange arrangement whereby he would receive the cheque in his own account and would thereafter account to the employee;
- (3) Furthermore, Mr Matthews then chose to divide the payouts of these monies in two pay outs to the employee with another strange explanation;
- (4) The employee thereafter complained and ...thereafter... discussions with Mr Matthews, withdrew the complaint."

All the abovementioned factors very convincingly lead me to believe that there is a complete breakdown of the employment relationship and a reach of trust.

After hearing the evidence in mitigation, as follows:

- (1) Mr Matthews had ten years service;
- (2) Mr Matthews had no previous warnings;
- (3) Mr Matthews was married with five children and his wife was not working and he was the sole bread winner;

his house.

Furthermore, after hearing the argument such as the fact

that Mr Matthews was not found guilty of theft or fraud and other arguments stating that the union, being a political animal, has a change of executive and therefore the trust would maybe not stretch into the next era, I still have enormous difficulty in seeing how all the above could mend the employment relationship...

I, despite the evidence in mitigation, recommend that the union dismiss Mr Matthews on two months calender notice."

[44] A proper reading of the above shows that the chairman, although he found that there was a breach of trust, he did not, as argued by the applicant, find that the applicant was not guilty of any of the charges proffered against him. There appears to be no reasoned finding as to specific facts which make up the different charges, but there is certainly not a finding of "not guilty"as suggested.

[45] The issue which I have to decide is whether the dismissal of the applicant was for a fair reason and whether the applicant was discriminated

against on an arbitrary basis by the respondent. If I find that there was arbitrary discrimination against the applicant, the dispute over the dismissal of the applicant falls to be decided under section 187(1)(f) of the Act, as an automatically unfair dismissal.

Alleged Misconduct

[46] The applicant himself conceded that it was highly unusual for a union member to accept a gift of R 100-00 from an employee for services rendered.

[47] He also stated that it was not the normal practice for employers to write out settlement cheques in favour of the union officials who conduct the settlement negotiations.

[48] In my opinion, it would be highly undesirable if union officials were permitted to accept cheques made out to them, personally, on behalf of the employee whom they represented. It is only logical

that there would be a normal fear that such practices could lead to employees being exploited. Consequently opportunities for such exploitation are limited.

[49] For the same reason, there are strict Bar Council rules pertaining to advocates, and strict legislation in respect of the management of trust monies by attorneys. Strict liability is applicable in most breaches of this nature. Although there is no legislation in place with regard to the representation of employees by trade unions, the same principles should apply, in my opinion.

[50] The applicant's excuse for his conduct was that he had a special arrangement with Mr Dush, who had given him a mandate to accept the money in the manner which took place. The reason behind this special arrangement, was that Mr Currie, the manager of Mr Dush's erstwhile employer, would have stopped the cheque.

[51] Mr Currie's undisputed evidence was that he retrenched Mr Dush for operational requirements. He denied that he barred Mr Dush from entering his premises. There was no allegation of any misconduct on the part of Mr Dush according to Mr Currie. On the probabilities there is no reason why I should believe that Mr Currie would have stopped a cheque made out to Mr Dush, but not one made out to the applicant.

[52] It is very significant that the applicant did not sign up Mr Dush as a union member before representing him as is the usual practice. By not involving the respondent, the applicant was clearly in a better position to make clandestine arrangements with Mr Dush.

[53] I also find it very curious that the applicant should enter into an arrangement were he draws the last R 1 000-00 in his account to give to a man, whom he just met, when on his own version, his salary was less than R 4 000-00 per month. On

the evidence before me the applicant's wife was unemployed and he had five children to support.

[54] According to the applicant, he did not request the cheque to be made out to the union, because he believed that there would not be a person available to sign a cheque made out to Mr Dush, once the cheque which has been made out to the respondent union, is deposited. It was common cause that two signatories were required for such a cheque. Mr Maart stated that there would have been someone to sign such a cheque.

[55] The applicant says that because Mr Dush was in dire straits financially and had been threatened with eviction, he therefore needed the money urgently, and couldn't wait until the following day.

[56] On the probabilities Mr Dush's best interests would have been best served if the cheque had been made out to the respondent. Even if Mr Dush

received his money only the following day, he would then at least have received the full amount with which he could pay his creditors, immediately avoid eviction. The method of payment allegedly followed by the applicant, would cause Mr Dush to wait at least for another four or five days for the greater part of his money. Therefore this arrangement makes no sense to me.

[57] Although there was evidence that Mr Dush was present at the conciliation meeting where the settlement agreement was reached, Mr Currie's evidence was that Mr Dush was not present when the cheque was handed to the applicant. Apparently Mr Dush waited outside while the conciliation meeting was in progress.

[58] The settlement agreement is not signed by Mr Dush, but by the applicant himself. The agreement appears to have been concluded in the absence of Mr Dush. This evidence together with the evidence with Ms Motto, leads me believe that Mr Dush did

not know at the time what the amount on settlement was. If he did know, the probabilities dictate that it is doubtful whether he would have entered into the type of payment arrangement described by the applicant. It is also highly improbable that an unemployed, indigent man, facing eviction, who had just received only R 1 000-00, would wish to part with R 100-00 (10% thereof) as an expression of gratitude for services rendered.

[59] Mr Dush did not testify, and there are indeed two conflicting versions by him in two different letters. Yet my opinion, it is significant, that the second letter, retracting his former statements, alleges that Mr Maart had pressurised him to make a statement on 5 July 1997, which was denied. The applicant contends that Mr Dush came to the respondent's offices on 5 July 1997. In his first letter, Mr Dush states that Mr Maart phoned him on 9 July 1997 and a meeting was arranged for 11 July 1997.

[60] Mr Maart testified that Mr Dush visited him after receiving Mr Teppers letter dated 7 July 1997.

[61] On the probabilities, Mr Maart would have phoned Mr Dush after 7 July 1997, the date on which the incident in question came to his attention through Mr Tepper's letter. There was only one visit by Mr Dush to the respondent's offices on the versions of both parties.

[62] There was also nothing about Mr Maart's evidence which led me to believe that he was not telling the truth about Mr Dush's visit.

[63] On the other hand, the applicant had a motive to create the impression that the incident occurred on 5 July 1997. That would support the view that he had made an arrangement with Mr Dush to the effect, that as soon as the cheque cleared, which would be approximately five days after it had been deposited, he would pay Mr Dush his money. Furthermore, it would bolster the applicant's case

if it would appear that Mr Dush was paid his money prior to Mr Tepper raising the question in his letter dated 7 July 1997.

[64] This reference to 5 July 1997, leads me to believe that the applicant had a greater hand in Mr Dush's second statement, than he would like to admit. The applicant also testified that he promised Mr Dush that he would help to find him a job. This evidence and the evidence of Ms Motto to the effect that Mr Dush appeared very scared, and the fact that Mr Dush indicated in his first statement, that he did not want the respondent to be "hard" on the applicant, supports the view that Mr Dush's second letter contains false statements.

[65] Mr Dush did not give evidence. According to Mr Maart he could not get hold of Mr Dush. The applicant proffered no explanation as why he did not call Mr Dush as a witness.

[66] A further indication that the applicant

misconducted himself, is that the applicant did not bring it to the union's intention that he had entered into this extraordinary arrangement with Mr Dush. In my view, this is just another aspect of the clandestine nature of the arrangement. It also remains unexplained why Mr Currie, whose evidence I have no reason to disbelieve, testified that the applicant's reason for insisting on personal payment was to circumvent union deductions, and then accepts R 100-00 as a gift from Mr Dush. Mr Dush's alleged financial difficulties also flies in face of the applicant's version that Mr Dush wanted to give him a gift.

[67] On the evidence before me, it appears more probable that the only reason why the applicant handed over to Mr Dush the full amount of money in the end, was when he realised that an investigation was in progress.

[68] He probably did not expect Mr Tepper, upon being informed by Mr Currie of what happened, would

write a letter to the respondent.

[69] Mr Dush was not a member of the union when he was represented by the applicant and because the applicant had his own arrangement with Mr Dush he probably never expected that there would be any further communication between Mr Dush and the respondent about the money.

[70] The charges levelled against the applicant at the disciplinary enquiry were the following :

- “(i) Misappropriation of an employee’s funds in that on or about 1 July 1997 you unlawfully and intentionally withheld an amount of R 1 177-30 from one A Dush;**
- (ii) Bringing the union’s name into disrepute by withholding A Dush’s settlement award from Wynberg Joinery without authorization; and**
- (iii) Making unauthorised and unlawful deduction from A Dush’s aforesaid settlement award by withholding R100-00 for services rendered.”**

[71] In my view, the explanation offered by the applicant for his actions is highly improbable.

[72] The applicant could not explain why he led evidence at the disciplinary enquiry that he deposited the cheque in the presence of Mr Dush, at Paarl, whereas he later testified that it occurred in Cape Town. There were also other contradictions.

[73] The probabilities in this matter indicate to me that the applicant attempted to defraud an employee whom he represented and who trusted him. His conduct was dishonest at the least.

[74] Mr Dush did not give evidence to confirm his later statement, whereas Mr Maart gave evidence that the version contained in Mr Dush's first statement, was conveyed to him personally. He actually penned down what Mr Dush told him and this information was repeated in a letter written by Mr Dush in his own handwriting, at Mr Maart's behest. Therefore I

attach greater weight to the first statement.

[75] No trade union who represents employees can be expected to keep in its employ a person, who represents employees, who are often illiterate, and who then conducts themselves in a manner such as the applicant had done.

[76] The applicant's explanation for his actions, is
fraught with improbabilities.

[77] In my opinion, the applicant was guilty of serious misconduct which in fact led to a total breakdown of the trust relationship between himself and the respondent. Where there is dishonesty on the part of the employee, the trust relationship is invariably destroyed.

[78] The fact that Mr Maart said that he believed that the trust between himself and the applicant could be restored doesn't mean there was no breakdown of

trust. This breach of trust which the chairperson correctly found to exist, does not pertain solely to Mr Maart, but to the respondent as a whole, because it is the respondent's duty to protect all of its members from being exploited by its own officials.

[79] Insofar as the allegation is concerned that the applicant was discriminated against in an arbitrary fashion, this allegation, is not supported by the evidence before me.

[80] Mr Maart explained that he could not obtain the presence of all the executive branch members for the meeting where it was decided that disciplinary action should be taken against the respondent. The constitution of the respondent makes no provision for a specific quorum for such a meeting. It is not necessary, in my opinion, for any employer, to obtain the presence of an employee at the meeting where the decision is to be taken, whether or not to introduce disciplinary action.

[81] The applicant was duly notified of the charges levelled against him and had ample time to prepare his defence. The fact that he, as a senior member of the respondent, was not informed of the aforesaid decision in a meeting, in my view, does not constitute discrimination.

[82] In fact, what the applicant wants me to find, is that, because he was a senior member, he should be treated differently from anyone else. There apparently has also been no similar case such as the one in question, where such a high ranking member of the union was involved.

[83] Insofar as the comments of Mr Opperman at the Elsie's Rivier meeting were concerned, Mr Opperman later resigned. In any event the applicant did not persuade me that it was Mr Maart who instructed Mr Opperman to disrupt the meeting.

[84] I gained a strong impression from the evidence that there were problems between Mr Mart and the

applicant.

[85] On the applicant's own version, he felt that he was better qualified and more suited for the position of Secretary-General of the respondent. This position had been taken by up by Mr Maart. Clearly the applicant felt aggrieved about this. It is therefore understandable that such a situation would lead to conflict between the applicant and Mr Maart and their respective supporters within the respondent. The applicant's general demeanour and his evidence on this aspect, led me to believe that he harboured more ill feelings towards Mr Maart, than Mr Maart towards him.

[86] Insofar as the phone call from the respondent's attorney is concerned, the respondent's attorney denied that he threatened the applicant in any way. No discriminatory action can be attributed to the respondent for having its attorney phone the applicant. The respondent was going to take

disciplinary steps against the applicant. That was decided at a meeting. To give an employee the option of resigning before with proceeding with a disciplinary enquiry regarding allegations of a very serious nature, does not constitute discrimination.

[87] The applicant committed a serious offence by withholding an employee's money from him. The fact that the respondent chose to discipline him for this offence, does not constitute discrimination either.

[88] The respondent, in my view had a fair reason to dismiss the applicant. Accordingly, the application falls to be dismissed.

[89] There is also no reason why costs shouldn't follow the result in accordance with the normal principles which pertain to the aspect of costs. There are no circumstances indicating that the applicant should not pay the costs of this

application. Consequently, I make the following order:

The application is dismissed with costs.

E REVELAS

applicant:

Mr van der Schyff of Van der Schyff, Roelf &
Associates

respondent:

Mr J Whyte of Chennels Albertyn

Date of Judgement: 22 February 1999

This Judgement is also available on the Internet

at the following Website:

<http://www.law.wits.ac.za/labourcrt>