

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

**CASE NO: J 2987/99**

In the matter between:

Applicant

**and**

1<sup>st</sup> Respondent

2<sup>nd</sup> Respondent

**PROVINCIAL COMMITTEE OF THE**

3<sup>rd</sup> Respondent

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**JUDGMENT**

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**LANDMAN J**

1. Mr Edwin Shimange has filed an application to review and set aside a decision of the Bonitas medical Fund. He has also cited the Council and the Provincial Committee of the Northern Province of the Fund. I will refer to the respondents as the Fund.
2. The Fund has not filed an answering affidavit. Instead it has, with leave of this court, filed a notice of exception. The first ground of the exception may be disposed of on a simple basis. The exception taken was that there was no employment relationship between Mr Shimange and the Fund. Mr Van Jaarsveld sought to convince me that the allegations made in the application were incorrect. This he may not do. This is appropriate where a special plea is lodged. For purposes of an exception I must accept the pleader's version of the facts. The affidavit alleges and provides facts stating that there was an employment relationship. The first leg of the exception must be dismissed.
3. Although the application does not state in terms of which law the review is brought, Mr Moshwana's head of argument, filed for the applicant, relies on s 158(1)(g) of the LRA.
4. The second leg of the exception is that the act in question is the dismissal of the applicant is not susceptible to review in terms of s 158(1)(g) of the Labour Relations Act 66 of 1995. This section provides:  
(1) The Labour Court may -  
...  
(g) despite s 145, review the performance or purported performance of any function provided for in this Act or any act or omission of any person or body in terms of this Act on any grounds that are permissible in law.

5. In my opinion the reference to a function or an act or omission is a reference to any person or body exercising an “official activity”. An exercise of administrative power such as where the CCMA decides on the condonation of a late referral to it. A dismissal although it may correctly be described as an act is not an official act. It is a private law act which is governed by the LRA. It follows that an employer who dismisses an employee is not performing a function, act or omission which is susceptible to review under s 158(1)(g).

6. In the premises the exception is dismissed with costs.

SIGNED AND DATED AT JOHANNESBURG ON THIS 26<sup>TH</sup> DAY OF JUNE 2000.

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Landman J

22 June 2000.

26 June 2000.

Mr Moshwana of Mohlaba & Moshwana Inc.

Mr B van Jaarsveld of Matlala Inc.