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JUDGMENT

PILLAY J

- [1] This is a review of the decision of the second respondent made *in limine* in arbitration proceedings. It is not important for purposes of this case to distinguish whether the review is in terms of Section 145 or 158.
- [2] The second respondent had ruled on the basis of the decision in *Rustenburg Platinum Mines Ltd v CCMA & Others* 1998 (19) ILJ 327 (LC) that the signatures of the employees were required on the referral form in terms of Section 191(1). In the *Rustenburg Platinum* decision at page 328, the Court had rejected the view that the LRA contemplated someone other than an employee, such as a trade union, could be the referring party.
- [3] The employees omitted to bring to the attention of the second respondent the decision of Seady AJ in *Moolman Brothers and Gaylard N.O. & Others* 1998 (19) ILJ 150 (LC). That case dealt with whether Section 191(2) requires the employee party and not anyone else, even if it is a representative, to demonstrate good cause in an application for condonation. The Court disagreed with such a construction. At page 155 (D-F) it found the approach was:
- "overly technical and does not accord with the use of the word 'employee' in subsections 1, 3 and 5 of Section 191. It must be read to mean the party who refers a dispute because the Act clearly contemplated that someone other than an employee could be the referring party,

for example, a trade union that brings the application on its own behalf and on behalf on its members."

[4] The second respondent accordingly made a decision on the basis of the information properly before him. If the second respondent had been aware of the decision in the *Moolman Brothers* case, he should have alerted the parties to it. However, his failure to do so does not render the award reviewable. The fact that the ruling has generated an inequitable result in that the applicants are barred from pursuing their dispute through the CCMA, is not a sufficient basis on which the Court can set aside the ruling.

[5] In the circumstances THE APPLICATION IS DISMISSED WITH NO ORDER AS TO COSTS.

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PILLAY J

Date of hearing: 11 September 2000

Date of judgment: 11 September 2000-10-19

For the applicants: Mr N. Nkomo from J. Surju Attorneys.

For the respondents: Mr N F Kocks from Kocks Dreyer Attorneys

REVISED AND REPORTABLE

IN THE LABOUR COURT OF SOUTH AFRICA

SITTING IN DURBAN

CASE NO D1321/99

DATE 11 September 2000

In the matter between:

F A W U & OTHERS

Applicants

and

CLOVER SA LTD

Respondent

JUDGMENT DELIVERED BY
THE HONOURABLE **MS JUSTICE PILLAY**

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