IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT JOHANNESBURG

Case number: J1897/98
J1900/98

In the matter between:

JOHANNES GROENEWALD First Applicant

CORNELIUS FLORIS JOHANNES JACOBS
Second Applicant

and

THE MINISTER OF LABOUR First Respondent

DIRECTOR GENERAL DEPARTMENT OF LABOUR
Second Respondent

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JUDGMENT

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Landman J

1. Johannes Groenewald and Cornelis Floris Johannes Jacobs were employed as security officers by the Department of Labour. They were retrenched and their services terminated on 31 July 1996. Neither they nor the Department of Labour was aware that a moratorium on retrenchments had been agreed to at the Central Chamber of the Public Bargaining

Council.

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2. On 8 July 1997 the employees became aware of the moratorium and wished to complain about the fairness of their dismissal. An application was launched in the Labour court for relief. The Department of Labour contends that the dispute arose prior to 11 November 1996 ie the date that the Labour Relations Act 66 of 1995 (the LRA of 1995) came into operation and that accordingly the Labour Court does not have jurisdiction to entertain the matter. This is the point which this court is required to decide.

3. The dismissal of the employees took place while the Labour Relations Act 28 of 1956 and the Public Service Labour Relations Act Proc 105 of 1994 were current. These Acts were repealed as from 11 November 1996 when the LRA of 1995 came into operation. Items 21, 22 and 22A of the 7th Schedule to the LRA of 1995 deal with disputes contemplated in the "Labour relations laws" (the LRA of 1956 and the PSLRA are included in this concept). Disputes which arose before 11 November 1996 are to dealt with as if the LRA of 1956 and the PSLRA had not been repealed.

4. But strikes and lock-outs that commenced after 11 November 1996 are to be dealt with in terms of the LRA of 1995 "even if the dispute giving rise to the strike or lock -out arose " before the LRA of 1995 came into operation.

5. The LRA of 1995, in my opinion deals with disputes cognizable under this Act which arose on or after 11 November 1995. This means, I apprehend, that the event giving rise to the cause of action and a dispute concerning that event must arise after the date of commencement of the new LRA. The LRA of 1995 does not operate with retrospective effect. There is one exception. That relates the strikes and lock-outs as has been explained above. Had the legislator intended there to be further exceptions to the presumption that a law is not intended to be retrospective it would have said so. See G E Devenish **interpretation of Statutes** (1992) at 189 and **Bartman v Dempers** 1952 (2) SA 577 (A).

6. In my opinion, it is of no moment whether the dismissal of the employees arose before or after the commencement of the LRA of 1995 as dismissals would have to be judged, in the absence of any other statutory provision such as item 21(2), by the PSLRA. The Labour Court has no jurisdiction in terms of the PSLRA. It was not even in existence when the PSLRA was in force. It follows that the Labour Court has, in my view, no jurisdiction to entertain the applicants' separate applications.

7. However, if I am wrong and this court has jurisdiction if the dispute arose after 11 November 1996, I find that the dispute arose before the LRA of 1995 came into operation. I arrive at this conclusion by applying the law as stated by the Labour Appeal Court in **Edgar Stores Ltd v SA Commercial Catering and Allied Workers Union and others** (1989) 19 ILJ 771 (LAC) which held that the crucial date is the date that the cause of action (an alleged unfair labour practice) arose.

8. Mr Teessen argued very strongly that **SA Commercial Catering and Allied Workers Union and another v Shakoane and others** (2000) 21 ILJ 1963 (LAC) had overruled the **Edgar** decision. The two majority decisions, those of Zondo JP and Nugent AJA do not go this far. The **Edgars** case is still good law and I am bound by it.

9. In the premises the Department of Labour's jurisdictional point must be upheld. The application is dismissed. There is no reason why costs should not follow the cause. The applicants are ordered to pay the respondents costs jointly and severally.

Signed and dated at PORT ELIZABETH on this 5th Day of February 2002.

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AA Landman
Judge of the Labour Court of South Africa

Counsel for Applicants	**Adv JJ Teessen**
Attorneys for 1st and 2nd Applicants Attorneys	**Walters**
Attorneys for the Respondent Attorney	**The State**