IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT JOHANNESBURG

JS 838/06

In the matter between:

CONSTANCE MUTALE **APPLICANT**

and

LORCOM TWENTY TWO CC **RESPONDENT**

JUDGMENT

Cele AJ

Introduction

1. This is a bifurcated claim of the applicant. Firstly, she alleged that the respondent committed an unfair labour practice by racially discriminating against her in the computation of her salary. Secondly, she alleged that she was subjected to an automatically unfair dismissal after she had indicated to the respondent that she wanted to take an action against it by exercising a right conferred by the Labour Relations Act 66 of 1995 ("the Act"). Both claims were vehemently opposed by the respondent.

Background Facts

2. The applicant commenced her employment with the respondent on 31 May 2004 in the position of a Bookkeeper. The respondent was a close corporation belonging to a Mrs Emelly Smith, its General Manager. Her husband, Mr Smith owned another company but he frequently came to the premises of the respondent to render some help.

3. At the commencement of her employment, the applicant earned a gross salary of R3000-00 per month. By 4 June 2005 her gross salary had been increased to R4000-00 per month. She handled salary payments for all staff in respondent's business. As such, she came to know the earnings of each. She later took over the entire book keeping, some of which had been done by Ms Lobby Combrinck who worked for the respondent for 2 or 3 days in a week. A Ms Christine Schuurman also worked for the respondent as its Sales Manager. She held no particular qualifications and in fact had not passed matriculation. She was given a company car to use in the execution of her duties. Her initial salary was R1800 per week. In October 2004 the applicant was earning a gross salary of R6200-00. In October 2006 it had increased to about R10 000 per month.

4. In September 2005 the respondent published an advertisement for the position of a Girl Friday. It was stated in the advertisement that salary would be negotiable. The applicant was instructed to interview the candidates. She discussed the salary range which she had to offer to the candidates with Mrs Smith. According to the applicant she was to offer R1000-R3000 to Black candidates but was to accept what White candidates wanted. That discussion, according to her left her deeply hurt as it made her reflect on her position as well. She did not report for

duty on the following two days. She returned to work on 16 October 2006, a Monday. She began to discuss with other staff members what she perceived were discriminatory practices of the respondent. She then called for a meeting with Mrs Smith, Mr Marco Behrtel who was a member of the close corporation owning the respondent, Mr Majozi, a Manager and Mr Human. She wanted to know the reason underlying a lower salary she earned when compared to that of Ms Schurman. She asked whether Ms Schurman's earnings were higher to hers merely because she was White and the applicant was Black. The meeting ended without any agreement being reached. Still on that day, 16 October 2006, Mrs Smith sent an email to the applicant, the body of which reads:

> "I hereby wish to inform you that should you ever disrespect me again, I will have no alternative action but to dismiss you as my employee. Please regard this letter as your first warning."

5. A Black Male, Mr William was subsequently hired in the position of a Girl Friday, at a salary of R3000 per month. He worked for about a week and thereafter left. On the following Monday, a White female was employed in the position of a Girl Friday at the salary rate of R30 per hour; on weekly basis.

6. On 23 October 2006 the applicant had obtained a form for the referral of a dispute to a bargaining council. She discussed it with some of the staff. She then considered whether to refer an unfair labour practice dispute, concerning an alleged racial discrimination by the respondent, with the relevant bargaining council, for conciliation. Some of the weekly paid employees had also lodged a grievance of a wage discrepancy with the

Department of Labour and the matter was being investigated. Still on 23 October 2006, Mrs Smith asked the applicant to give her some petty cash files. Some of the files had been removed from the applicant's office by a General Assistant, Linah to the archives. The applicant asked Linah to fetch the petty cash files to give to Mrs Smith. At the end of that day, no petty cash files had been given to Mrs Smith. When the applicant returned to work on 24 October 2006, she found an e-mail which Mrs Smith had sent to her on the previous day. It reads:

> "I hereby wish to inform that this letter saves you as your second warning should I again asked for anything concerning your work and not get proper respond from you. I mean how can you tell me that you will have to ask Linah for the petty cash, since when is now Linah the book keeper the third warning will be your dismissal." (sic)

7. On the same day she convened a meeting of the workshop staff to speak about the implications to the respondent, of referring an unfair labour dispute. Messrs Majozi and Behrtel attended that meeting. After that meeting she was called by Mrs Smith to bring the petty cash file. She took a current file and submitted it to her. Mrs Smith examined the file and asked the applicant some questions pertaining to the petty cash.

8. The applicant then presented a form for the consideration of Mrs Smith. At that time, Mrs Smith had a meeting with Mr Behrtel. There is a dispute between the parties about whether it was soon after the applicant had brought the petty cash file or some time later. Mrs Smith felt that the applicant was rudely interrupting the meeting and told her to leave her office. An argument ensued between them the applicant retreated to her

office. Mrs Smith came rushing after her into her office and told her to leave the business premises. She grabbed the applicant's briefcase lying on her table, demanding the applicant to surrender her cellular telephone, saying it was respondent's property. The applicant resisted with her bag and a struggle ensued between them resulting in some files being strewn on to the floor. The applicant telephoned Mr Majozi to come and help her. On his arrival and with other staff members the physical encounter ended. Mrs Smith ordered the applicant to leave the premises. She instead telephoned Mr Smith and thereafter reported to Mrs Smith that she was told not to leave but to wait for Mr Smith.

9. On his arrival at the respondent's premises, Mr Smith convened a meeting attended by the complainant and Mrs Smith. The meeting ended with the two ladies reconciling, or so it was thought. The applicant went back to her office and continued with her work for the remainder of the day.

10. On the following day the applicant went to the police station to lodge a charge of assault against Mrs Smith. The police telephoned Mrs Smith about the case and told her to come to the police station to make her statement. They threatened to come to her work place to arrest her, in the event that she did not come by herself. She went to the police station and submitted her statement. Mr Behrtel thereafter telephoned the applicant, informing her not to report for duty on that day but instead to give him the work's computer password. He further told her to leave the office keys, being the safe and petty cash box keys in a postbox at his house which was within the residential area of the applicant. She did not agree to do that,

saying she wanted to know what her position was by then with the respondent.

11. A Ms Thantaswa Mnyatheli was then employed by the respondent that day. She then telephoned the applicant and told her to report for duty on the next day, that is 26 October 2006. She duly reported for duty and was served with a letter of suspension. While the letter was dated 26 October, it said that the suspension was effective from 24 October 2006. She surrendered the office keys. The letter informed her that she would be called to a disciplinary hearing to be held on 1 November 2006. The charges were described as:

> "1. Refusal to obey a direct order given by Mrs Emily Smith (Main Member).
> 2. Refusal to divulge the company code for the Pastel Accounting System.
> 3. Disruption of workforce during office hours on 24 October 2006."

12. Another notice of suspension, informing her that she was suspended with all benefits until Friday 17 November 2006, was delivered to her house. It instructed her to report at the office of the General Manager of the respondent on 17 November 2006. A further charge sheet was similarly delivered to her house. The particulars of what is therein termed: "Transgression Definition" are that 24 October 2006 the applicant :
    - was instructed to leave the premises, which she refused to do,
    - was instructed to give the computer password which she also refused to give,

- showed total disrespect to top management by shouting and making false allegations against top management.

13. The applicant was found to have committed the misconduct with which she was charged and was dismissed on 24 November 2006. Her internal appeal was not successful. She then referred an unfair dismissal dispute which had arisen, for conciliation. When it could not be resolved, she referred it to this court for trial.

The Trial Issues

14. The applicant conducted her own proceedings while the respondent was represented by Mr Harmse from the Employers' Organisation. Some of the evidence led by the parties, which had no bearing to the issues that call for a resolution, will be left out. It became necessary to advise Mr Harmse to present the version of the respondent, where it differed from that of the applicant, to her for her to comment on, but all was in vain. Therefore, some of the evidence led by Mrs Smith had not been presented to the applicant. It has to be said even now that, the presentation of the case by the applicant was better structured, purposeful and chronological. Only the substantive fairness of the dismissal was challenged.

15. The evidence of the parties pertaining to various incidents and issues will now be dealt with.

The Girl Friday

16. According to the applicant it was an instruction given to her by Mrs Smith to offer a low salary rate to Black applicants and to accept the rate tendered by White candidates that caused her great consternation. While she had had some suspicions about the respondent being racist, she could not have tangible proof until the instruction by Mrs Smith. What added salt to the injury was the fact that Mrs Schuurman, a White employee was getting an extra staff unit being added, to come and help her, yet the applicant whose work was increasing received no such help. The understanding of the applicant was that Mrs Schuurman was a receptionist who was earning more than her. She regarded that arrangement as unfair in that she had a degree but Mrs Schuurman earned more salary even though she had not acquired even a matriculation. She could not gainsay Ms Schurman's evidence that she as a Sales Manager as the applicant had called her as her witness.

17. Mrs Smith testified that the employment of Mr William was done by the applicant and had not been authorized by the respondent. She would often see him with the applicant, in her office, where he spent most of his time. She asked the applicant about him and was told that he was employed as a Girl Friday, to do the data capturing. She first saw him on a Thursday. On Monday he worked for half of the day as he went to collect the applicant's son. On Tuesday she told the applicant that Mr William had to resign. She later learnt that he was her boyfriend. On the following Thursday and Friday the applicant did not come to work. Then on Monday the applicant called a meeting because of her unhappiness. When she was cross-examined she conceded that she had told the applicant that she needed

an incumbent to take the position of the Girl Friday and not a data capturer.

The petty cash issue

18. As part of her duties, the applicant was in charge of petty cash. The respondent entrusted her with the responsibility of paying its creditors and collecting its revenue from its customers. Mrs Smith often left her with blank cheques to effect payments where necessary. She had to keep a proper record of transactions executed and to do banking when necessary. The respondent had a filing system for the keeping of its financial records. The applicant was placed in a trusted position with the finances of the respondent as Mrs Smith spent a lot of her time outside of South Africa. She frequently visited Zambia. According to Mrs Smith, petty cash was supposed to be about R2000 per month. She noticed though that it had increased to R5000-00. At the beginning of October 2006 she asked the applicant to bring to her petty cash files that were in use from the beginning of March 2006. She noticed that everything from March balanced well in the books. Later she found that petty cash was wrongly posted or wrongly recorded. When she asked the applicant about it, the applicant was very arrogant as she told her that she had been to a university. She asked her to produce the then current petty cash file but the applicant took some time before she could bring it to her. When she asked her to bring both the petty cash and the petty cash files, the applicant told her that Linah had put the files away. According to the applicant there was firstly, no urgency in submitting the petty

cash box and files to Mrs Smith. Secondly, it was Mrs Smith who instructed Linah to remove the petty cash files that were not in use to be stored in the archives.

The workshop meeting

19. The respondent's case is the same as of the applicant that the applicant had requested permission to convene a meeting of the workshop staff. Mr Behrtel consented to such a meeting being held. The applicant did address the workshop staff and she claimed that the respondent was practicing racism in its business. It was the concern of Mr Behrtel and Mr Majozi that the issue raised by the applicant was not appropriate in that she was part of management when the workshop employees were union members. Mr Majozi said that he had warned the applicant, in a meeting the two had had on the previous day, against pursuing the issue of racism at the respondent's business for fear of reprisal. All agreed that the applicant presented a form for the referral of a dispute to the bargaining council, in that meeting. The meeting however failed to deal with and to resolve the issue raised by the applicant.

Applicant's complaint to management

20. It was the version of the applicant which was later confirmed by Mrs Smith that on 16 October 2006 a management meeting was convened at the instance of the applicant. Mrs Smith confirmed that the talk was about the applicant's grievance that she (Mrs Smith) was racist. The discussion pertained also to the salary earned by the applicant. Mrs Smith admitted that the applicant

had asserted that she (the applicant) was told by Mrs Smith that she would pay a Black employee less than a White employee. Mrs Smith said that the applicant was furious then as she was in court when cross examining her. She said that the allegations raised by the applicant surprised her and she had asked her why they had to talk about the issue. Mrs Smith had great difficulty in answering a question by the applicant whether she was paid less on account of her colour. Mrs Smith had to be warned by court to answer the simple questions put to her by the applicant. No clear answer came from her for this question.

21. When asked by the applicant why the warning dated 16 October 2006 sent to her by e-mail, was a subject of disrespect, Mrs Smith said that the applicant had accused her in front of her staff and that she had called for a meeting to disrespect her for the mishaps in the petty cash. She conceded though that after the petty cash incident, she would not have wanted to have a meeting with the applicant alone. She conceded too that the applicant was entitled to have a meeting with the witnesses, as was the case in that meeting in the event that the applicant subsequently lodged a formal grievance. It was applicant's case that, as a result of racial discrimination, she earned much less than she ought to have. It was common cause that in her curriculum vitae, she had asked for a start of R5000 per month.

22. It is also common cause that on 24 October 2006 the applicant presented a dispute resolution council (DRC) form to Mrs Smith for her to consider the applicant's allegation of an unfair labour practice. That was in the presence of Mr Behrtel who attempted to accept the form from the applicant but the verbal reaction of Mrs Smith dissuaded him from taking the form. The attempts by

the applicant to have the attention of management on that referral form came to naught.

The fracas of 24 October 2006

23. Mrs Smith admitted that she was the one who followed the applicant to her office. Once there, she grabbed the briefcase of the applicant who held it back and a struggle ensued between the two. It is either, both had the clothes they were wearing wrinkled, or one suffered such indignation as a result of the incident. Mrs Smith admitted that Messrs Majozi and Behrtel told her that she was not supposed to have gone after the applicant, as they pulled her out of the applicant's office. It is also common cause that the attendance at the scene by Majozi was at the instance of the applicant who had telephoned him to come and help her.

24. The version of Mrs Smith on the fracas was that she found the applicant behind the desk in her office. She told the applicant to leave the office premises. The applicant said that she had a few things to pick up. She asked for the company cellular telephone. The applicant said it was in her briefcase. She picked it up to open it to get the cellular telephone out. The applicant screamed at her and they struggled over the briefcase and its handle snapped.

The closing submission

25. The submission by the parties basically amounted to a summary of their evidence. In support of a submission that the applicant failed to prove that she was discriminated against, Mr Harmse referred me to a book 'Dismissals' by John Grogan, the 2002 Edition on page 76 where he discussed discrimination and says:

> "Discrimination in its neutral sense arises when an employee is treated differently from his or her colleagues in circumstances which, on the face of it, indicate that the employee should not be treated differently. So, for example a sweeper is not the victim of discrimination because he is paid less than an accountant; the work performed by the accountant is traditionally accepted as more complex, and thus remunerated more generously than the work of a sweeper."

Analysis

26. In this trial the dismissal of the applicant remained common cause between the parties. The respondent would have had then to prove that the dismissal was based on a fair reason. However the matter was referred to this court on the allegations by the applicant that she was unfairly discriminated against, on the basis of her race, when her salary was computed and that she was subjected to an automatically unfair dismissal after she had shown an intention to take an action against the respondent, in the exercise of a right conferred by the Act. The onus rested on her to prove her allegations. If she succeeds in proving that she has been discriminated upon, the respondent will have to show that such discrimination was based on fair grounds and is not justified by the Constitution Act.

27. In respect of discrimination based on race the Supreme Court of Appeal in the case of *Raol Investments (Pty) Ltd t/a Thekwini Toyota v Madlala (2008) 29 ILJ 267 (SCA)* had, inter alia the following to say.

> "[8] Discrimination against an employee on the grounds of race or other arbitrary grounds clearly has no place in employment practices, quite apart from being unlawful. But while a court must be vigilant to ensure that that does not occur, equally it must be weary of concluding too hastily that an employee has been discriminated against on grounds of race merely because disparity of treatment coincided with racial disparity."

28. Again, in *Mahlangu v Amplats Development Centre (2002) 23 ILJ 910 LC* this court per Jammy AJ had an occasion to comment on racial discrimination and it said:

> "[20] Perceptions of racial discrimination in the employment environment, endemic in the aftermath of the apartheid era, are not uncommon and are frequently justified. Those are causes which, if proved and established upon application of the relevant legal principles, will justify the award of the maximum relief which the Labour Relations Act 1995, recognizing the absolute unacceptability of that form of conduct on the part of employers, prescribes. What is however a phenomenon also of not infrequent occurrence, although perhaps equally understandable in the historical context, is a hyper-sensitivity to a perceived state of affairs in which, upon objective analysis, the true facts are distorted."

29. Section 187 of the Act provides that: "A *dismissal* is automatically unfair if the employer, in dismissing the employee, acts contrary to section 5 or if the reason for the *dismissal* is-

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(d) that the employee took action, or indicated an intention to take action, against the employer by-

(i) exercising any right conferred in *this* Act; or

……..

```(f) that the employer unfairly discriminated against an employee directly or indirectly, on any arbitrary ground including, but not limited to race, gender, sex, ethnic of social origin,……..”

30. With all this in mind, I return to the disputed facts of the case before me. The parties were in dispute as to what the origin of the conflict between Mrs Smith and the applicant was. According to the applicant, the conflict originated from a discriminatory remark by Mrs Smith to limit the salary of an incumbent of a post Girl Friday, if it was a Black and to accept the salary range requested, if the candidate was White. According to Mrs Smith the conflict was a result of a failure by the applicant to carry out an instruction to submit petty cash and files to her.

31. In the presentation of evidence in this case, the applicant succeeded in presenting her version through her testimony, through that of her witnesses and through cross examination of the respondent’s witnesses. When she presented her version of events to the witnesses of the respondent, she succeeded in getting concessions from them in support of her case. Mr. Harmse was advised by Court to do the same but failed. The applicant testified first and called her witnesses. Mr Harmse was repeatedly advised to present that version of events which the
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respondent's witnesses would testify to. His response was that he understood the advice but he failed to put it into practice. He cannot therefore expect that this court will reject the uncontested evidence of the applicant, in favour of the respondent's version, in instances where such version was not put to the applicant and her witnesses so as to give them a fair chance to comment thereon.

32. The applicant produced an advertisement of the respondent for the position of a Girl Friday. Mrs Smith's evidence was initially to deny that the respondent authorized the appointment of a candidate for this post. She referred to the post of a data capturer. She later corrected herself. It is not clear why she made that mistake. After Mr William had been employed by the respondent, he worked for about a week and his services were terminated. The respondent did take another employee into the position of Girl Friday. The applicant's testimony in this regard was always consistent.

33. The probabilities on the evidence favour the version that the first incident to have taken place was the complaint of the applicant that she was paid less because of her colour. Then followed the petty cash issue. The only complaint by Mrs Smith on the petty cash issue was that more petty cash, up to R5000 instead of R2000 was left in the petty cash box. She did not testify to any irregular entries she would have found in any of the files. Mrs Smith's evidence was that her instruction was not complied with in time, to produce the petty cash files. The applicant answered that by saying that her instruction was not clear on which files she was to produce as Mrs Smith was the one who had told Linah to transfer the petty cash files to the archives. She did not

come across as denying that she had told Linah to transfer some petty cash files to the archives. Nor did she make it clear that the instruction she gave pertained to the then current petty cash files. It must be borne in mind that there was compliance by the applicant even though it was delayed compliance. She asked Linah to take petty cash files to Mrs Smith. Linah had just transferred them to the archives and would probably know the files in question. The second written warning given to the applicant supports this defective compliance by the applicant. In my view the written warning was uncalled for. It leaves me to conclude therefore that the origin of the conflict between Mrs Smith and the applicant was the allegation that the applicant was paid less because of her colour.

34. On 16 October 2006 the applicant articulated her concerns on how her salary had been computed. That was in a management meeting convened at her instance. No evidence was led on her contemptuous behavior in that meeting. Messrs Majola and Behrtel confirmed that the applicant queried the basis of her salary computation. It was on that very day that Mrs Smith then issued the first written warning to the applicant. When she was cross-examined on the misconduct for which the applicant had to be warned, Mrs Smith said that the applicant accused her in front of the staff. Her concession that the applicant was entitled to have staff in attendance as witnesses, in the event there was later a grievance filed, showed that the applicant had committed no misconduct for which she had to be given a written warning. The first written warning was clearly a sham.

35. The undisputed evidence on the fracas of 24 October 2006 leaves no doubt that Mrs Smith initiated the physical

confrontation when she followed the applicant to her office. Once there, she instructed the applicant to leave the premises. Again, Mrs Smith issued a vague instruction. It remains unclear whether she was dismissing or suspending the applicant. The reaction of the applicant, that she had a few things to pick up, was reasonable in the circumstances. It further shows that she was in charge of her temperaments. While it is unnecessary to decide the ownership of the cellular telephone demanded by Mrs Smith, even if it was the respondent's telephone, the applicant was entitled to be given a reasonable time to return it to the employer, after she would have extracted from it her personal information. The applicant is the one who called for help. As Mrs Smith was pulled out of the applicant's office, she was admonished by her own staff that she ought not to have behaved as she did. On that occasion, Mrs Smith had undoubtedly lost control of herself. It was common cause that Mr Smith had some hand in the running of the affairs of the respondent. The applicant telephoned him and on his arrival, he made peace between the two ladies. The applicant's behaviour in not leaving the premises of the respondent when instructed by Mrs Smith, cannot reasonable amount to an act of misconduct for which she had to be found guilty.

36. At the end of the day on 24 October 2006, the applicant was entitled to assume that she was still an employee of the respondent. In the computer usage, it is normal practice that a password is assigned to a particular employee, who takes full responsibility for computer entries made when that password is used. On 25 October 2005 no basis had been laid by the respondent to justify the applicant supplying the password she used, to any other employee of the respondent. She had made

peace with Mrs Smith on the previous day and was entitled to assume that she was still the employee of the respondent.

37. Again, the refusal by the applicant to divulge the password can not reasonably found an act of misconduct for which she ought to have been found guilty.

38. The applicant had sought and had been given a prior approval to convene the workshop meeting. Messrs Behrtel and Majozi, who gave her that indulgence attended the meeting as well. They could have intervened and stopped the meeting if they deemed its purpose to have been against the best interest of the respondent. In fact, the undisputed evidence of the applicant was that she spoke for a fairly short period of time as the rest of the time was used to discuss workshop issues. It might very well have been inappropriate for the applicant to have addressed that group. They were mostly members of a union and she might have been part of management. As it was common practice to hold workshop meetings, that the one in question was at her instance, did not amount to an abnormal disruption of workforce duty for which she had to be found to have committed an act of misconduct.

39. From the foregone, it is manifestly clear that the respondent has failed to counter the evidence of the applicant with a credible version. The probabilities of this case favour the acceptance of the applicant's version on the issues raised by the parties. I accordingly accept the evidence of the applicant that:

- Mrs Smith used race as a yardstick to determine which salary range was to be offered to which candidate for the position of a post Girl Friday.

- The applicant was genuinely concerned that her own salary was computed on the basis of her race.
- When she took issue with the racially based salary computation of the respondent's employees, Mrs Smith took offence at it, developed resentment towards her and designed an exit mechanism for her from the employment.
- The salary earned by the applicant was computed on the basis of her race. She started with a salary of R3 000 and it was increased to about R10 000 per month in a period May 2004 to October 2006. She was still holding the same position. Mrs Smith would decide what increment and when to give it to the applicant. The computation of applicant's salary was therefore based on arbitrary grounds.
- The applicant was entitled to refer an unfair labour practice dispute pertaining to the computation of her salary, to the relevant bargaining council.

40. It has to be remembered that discrimination of an employee on the grounds of race or other arbitrary grounds clearly has no place in employment practices even apart from the fact that it is unlawful-Raol Investment case. There is no other ground on which the disparity of the computation of her salary was founded other than her race. Initially, the applicant earned much less than the salary earned by Mrs Schuurman. She had a degree and Mrs Schuurman had not attained matriculation. The difficulty in the comparison of their earnings however, is that Mrs Schuurman said that she was a Sales Manager while the applicant said she was a receptionist. Mrs Schuurman was called by the applicant as a witness and the applicant could therefore not cross-examine her witness. I have to accept that she was probably a Sales Manager. They earned more or less

the same amount in October 2006 after the applicant's salary had been periodically adjusted. In this case it is not necessary to compare the applicant's salary with that of another colleague. When it is seen alone, it was clearly based on arbitrary grounds when its progression in about 30 months of her employment with the respondent is considered. The respondent chose to deny its racist practice instead of leading evidence to prove the fairness thereof. I have to conclude therefore that the racial discrimination practices at the respondent's workplace were not based on fair grounds. I further find that there was no justification for unfair discrimination, in the absence of evidence to that effect. I find also that the applicant was indeed subjected to an automatically unfair dismissal after she had indicated to the respondent that she wanted to take an action against it by exercising a right conferred by the Act. She had a right not to be unfairly discriminated against and had a right to refer an unfair labour practice to a bargaining council for conciliation. The respondent realised what she wanted to do and attempted to frustrate her through trump charges of misconduct. The conduct of the respondent calls for a high sanction. The applicant was willing to work for the respondent at a commencement salary of R5 000 per month. In that instance, the respondent would have accepted a commencement salary which the applicant had a part in computing as was the case with the White employees employed by the respondent. The difference in the amounts between R5 000 and R3 000 per month for the first year clearly constitutes the compensation to which she is entitled.

41. I conclude by making the following order:

1. In terms of section 194 of the Act, the respondent is ordered to compensate the applicant in an amount equivalent to twenty (20) months of the salary she was earning on the date of her dismissal, being R10 500 x 20 = R210 000.

2. In terms of section 195 of the Act, the respondent is ordered to compensate the applicant in an amount of R24 000 (R2 000x 12 months).

3. Both payments are to be made within twenty one (21) days from the date hereof.

4. The respondent is to pay the costs of this claim as taxed.

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Cele AJ

Date of Last Hearing 28 March 2008.
Date of Judgment 30 September 2008

Appearances:

For the Applicant: In person
For the Respondent: Mr. Harmse (Employers' Organisation)