Reportable and of interest to other Judges

THE LABOUR COURT OF SOUTH AFRICA

(HELD IN CAPE TOWN)

CASE NO: C490/2009

In the matter between:

CITY OF CAPE TOWN	**APPLICANT**
v	
SOUTH AFRICAN LOCAL GOVERNMENT BARGAINING COUNCIL	**1ST RESPONDENT**
D WOLLFREY NO	**2ND RESPONDENT**
SOUTH AFRICAN MUNICIPAL WORKERS UNION	**3RD RESPONDENT**
NS NCAMANE	**4TH RESPONDENT**

JUDGMENT

AC BASSON, J

1] This was an application to review and set aside an award by the 2nd respondent ("the arbitrator") in terms of which it was found that the

dismissal of the 4th respondent – Ms. M N Ncamane (hereinafter referred to as "the respondent") was procedurally fair but substantively unfair. The arbitrator ordered the reinstatement of the respondent in her previous position despite a finding that the respondent was found guilty for gross dishonesty in having obtained a false driver's license some 9 years earlier.

2] On 19 August 2010 this court reviewed and set aside the award and replaced it with an order that the dismissal was substantively fair.

3] The sole basis upon which the dismissal was found to be substantively unfair was the fact that the arbitrator was of the view that although the respondent was guilty as charged, dismissal was unjustified and unfair. The review of the applicant was thus primarily directed against the finding of the arbitrator in respect of sanction.

4] The applicant (the City of Cape Town) argued that the award was one which no reasonable arbitrator could make in that he (the arbitrator) had failed to apply his mind to various important and relevant considerations in aggravation of sanction.

The award

5] The arbitrator found that the respondent was guilty in that she had presented a fake Namibian driver's license to the South African licensing authorities for conversion to a South African license. The criminal offence of the respondent (and of four other employees of the applicant) was uncouvered after the Scorpions had conducted investigations in various parts of the public service into such licensing fraud. The arbitrator

concluded that the respondent was a party to the fraudulent issuing of a driver's license.

6] The arbitrator further held that, although the misconduct was committed outside of the workplace, there is a sufficient nexus between the employer's business and the respondent's conduct. The arbitrator was also of the view that, given the respondent's senior management position and the fact that her misconduct involved the subversion of a system in which the authorities and public place their trust in her, the applicant (the City of Cape Town) was entitled to discipline her. The arbitrator, however, concluded that, although the applicant had been warranted in taking disciplinary action against her, it was not fair to impose a sanction of *dismissal* on her. In reinstating her (although not retrospectively), the arbitrator "*permitted*" the applicant to consider imposing a lesser sanction upon the respondent.

7] In respect of sanction the applicant, *inter alia*, argued that this award had presented the applicant with a problem in that it was now faced with two conflicting judgments of the same bargaining council on virtually the same facts. In the other arbitration an employee was dismissed and her dismissal was held to be fair although the said employee was employed as a cashier and at a more junior level to the respondent.

Relevant facts

8] It appears that the applicant had submitted documentation to the Kuils River Driving License Testing Centre on 21/22 June 2000 which indicated

that she was the holder of a Namibian driver's license. The relevant authorities accepted the documentation in good faint and issued the respondent with a South African credit card type driver's license. The Namibian Roads Authority confirmed that the said license was issued to a certain A Awala on 6 May 1998 and not to the respondent. The respondent was thereafter traced and interviewed. She admitted that she had never obtained a driver's license in Namibia and instead averred that she was tested in the prescribed manner at the Kuils River Traffic Department. The E-Natis record system was accessed and it was determined that the origin for the issuing of the respondent's driver's license was a conversion of the driver's license that was issued by the Namibian Roads Authority. There is no authority of the respondent ever having been tested nor was there any record of the fact that the respondent had made an appointment for the driving test. It was also noted that the respondent had applied for a learner's license on no fewer than for occasions and that the learner's license was eventually issued to her on 13 December 1999 at Elliot Traffic Department. The arbitrator referred to the fact that it was found that the respondent had presented a false Namibian driver's license to the Kuils River authority for conversion and that that was contrary to section 68 of the National Road Traffic Act, act 93 of 1996. In paragraph [24] of the award the arbitrator concluded as follows:

"For the reasons set out above, I am satisfied that the City has

proven on a balance of probabilities that Ncamane [the respondent] was party to the fraudulent issue of a driver's license in or about June 2000."

9] The following finding by the arbitrator is also instructive. The arbitrator concluded as follows:

"[28] It is not disputed that Ncamane holds a senior management position requiring a high degree of trust. As head of contract administration Ncamane is responsible for managing contracts for the supply of goods and services within the City. The city's contention is that Ncamane has, by her conduct, rendered herself no longer trustworthy to do her job.

[29] I am persuaded by the employer's argument. The conduct in question involves the dishonest subversion of a system in which the authorities, and the public at large, invest their trust and need to be able to invest their trust. In her workplace Ncamane has control over a system in which, similarly, the employer must be able to place its confidence. An employee who holds such a potion of trust has a duty to refrain from conduct (both inside and outside of the workplace) that will undermine the trust placed in her.

[30] I am satisfied that on account of her position at the time the offence became known to the employer and the nature of the misconduct the employer had the necessary jurisdiction to discipline Ncamane."

10] The arbitrator, however, as already pointed out, decided that the sanction of dismissal was too extreme and for the following reasons:

(i) The fraud committed was not within the workplace or in relation to her duties. The employer did not suffer any loss and direct prejudice. The arbitrator acknowledged that although this did not disqualify her from disciplinary measures, it did have a bearing on the sanction that may be imposed.

(ii) The applicant did not consider whether a sanction short of dismissal would have been more appropriate especially where the misconduct took place outside of the workplace. The arbitrator was of the view that where a disciplinary offense involves conduct away from the workplace, the employer should, in fairness *"give even stronger consideration to whether alternatives short of dismissal would address its legimate interests".*

(iii) The misconduct took place 9 years again and it cannot be said that it could destroyed the trust relationship today.

11] As already pointed out, the arbitrator held that the sanction of dismissal was unfair. The respondent was reinstated and the question of a sanction short of dismissal was remitted back to the applicant for determination.

12] The applicant contended that it was not a reasonable sanction in light of

the fact that the relationship of trust had irretrievably broken down. More in particular, it was argued that reinstatement was inappropriate in the following circumstances:

(i) The respondent did not admit the conduct with which she was charged.

(ii) The respondent persisted during the disciplinary hearing and at arbitration with a version of events which was found to be untrue.

(iii) The arbitrator found that the applicant had proven the charge which was one of gross dishonesty.

(iv) The respondent had been employed in a position which demanded impeccable trust credentials.

Is the award reviewable?

13] As already pointed out, the review is principally against the reasonableness of the decision of the arbitrator to interfere with the employer's decision to dismiss. In essence it was argued on behalf of the applicant that the arbitrator had failed to apply his mind to a number of relevant facts and in the process attached undue weight to various irrelevant facts. As a result the arbitrator arrived at a conclusion that is so unreasonable that no reasonable arbitrator could have come to the same conclusion had he applied his mind to the evidence before him which the arbitrator failed to do.

14] The test of review is now firmly established in our law. See *Sidumo &*

Another v Rustenburg Platinum Mines Ltd & Others[1] where the Court held that the question be asked by the review court is the following: "*Is the decision reached by the commissioner one that a reasonable decision maker could not reach?*"[2]

15] In respect of sanction it is accepted that it is not the task of the commissioner or the arbitrator to merely rubberstamp the sanction imposed by the employer following a disciplinary hearing. The commissioner or arbitrator should apply his or her own sense of fairness in respect of whether or not dismissal is an appropriate sanction. Although it is the employer that dismisses, it is the commissioner who must decide whether or not the dismissal was fair. See in this regard *Sidumo* (*supra*), where the Constitutional Court held as follows in regards the elements of the employer's discretion, and fairness:

> *"[79] To sum up. In terms of the LRA, a commissioner has to determine whether a dismissal is fair or not. A commissioner is not given the power to consider afresh what he or she would do, but simply to decide whether what the employer did was fair. In arriving at a decision a commissioner is not required to defer to the decision of the employer. What is required is that he or she must consider all relevant circumstances.*
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> *…*
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> *[177] Equally true is that when an employer determines what is an*

1 (2007) 28 *ILJ* 2405 (CC).
2 *Ibid* at paragraph [110].

appropriate sanction in a particular case, the employer may have to choose among possible sanctions ranging from a warning to dismissal. It does not follow that all transgressions of a particular rule must attract the same sanction. The employer must apply his or her mind to the facts and determine the appropriate response. It is in this sense that the employer may be said to have discretion.

[178] But recognizing that the employer has such discretion does not mean that in determining whether the sanction imposed by the employer is fair, the commissioner must defer to the employer. Nor does it mean that the commissioner must start with bias in favour of the employer. What this means is that the commissioner, as the CCMA submitted, does not start with a blank page and determine afresh what the appropriate sanction is. The commissioner's starting-point is the employer's decision to dismiss. The commissioner's task is not to ask what the appropriate sanction is but whether the employer's decision to dismiss is fair.

[179] In answering this question, which will not always be easy, the commissioner must pass a value judgment. However objective the determination of the fairness of a dismissal might be, it is a determination based upon a value judgment. Indeed the exercise of a value judgment is something about which reasonable people may readily differ."

16] From this decision it is clear that the commissioner or arbitrator is not

required to defer to the decision of the employer. The arbitrator is, however, also not called upon to decide afresh what he or she would have done. The arbitrator must determine what is fair and base that on a consideration of all the evidence and the competing interest of the parties. Ultimately the test is whether or not the decision reached by the arbitrator is one that a reasonable decision maker could not reach. In considering whether or not the decision is reasonable, the reviewing court must be mindful of the fact that there exists a range of possible reasonable outcomes. The reviewing court must also be mindful of the fact that the question is not whether or not the reviewing court agrees with the decision by the commissioner. See *Fidelity Cash Management Services v CCMA & Others*[3] where the Labour Appeal Court said the following in respect of reviews:

> *"[98] It will often happen that, in assessing the reasonableness or otherwise of an arbitration award or other decision of a CCMA commissioner, the Court feels that it would have arrived at a different decision or finding to that reached by the commissioner. When that happens, the Court will need to remind itself that the task of determining the fairness or otherwise of such a dismissal is in terms of the Act primarily given to the commissioner and that the system would never work if the Court would interfere with every decision or arbitration award of the CCMA simply because it, that is the Court, would have dealt with the matter differently. Obviously,*

3 [2008] 3 BLLR 197 (LAC).

this does not in any way mean that decisions or arbitration awards of the CCMA are shielded from the legitimate scrutiny of the Labour Court on review.

[99] In my view Sidumo attempts to strike a balance between, two extremes, namely, between, on the one hand, interfering too much or two easily with decisions or arbitration awards of the CCMA and, on the other refraining too much from interfering with CCMA's awards or decisions. That is not a balance that is easy to strike. Indeed, articulating it may be difficult in itself but applying it in a particular case may tend to even be more difficult. In support of the statement that Sidumo seeks to strike the aforesaid balance, it may be said that, while on the one hand, Sidumo does not allow that a CCMA arbitration award or decision be set said simply because the Court would have arrived at a different decision to that of the commissioner, it also does not require that a CCMA commissioner's arbitration award or decision be grossly unreasonable before it can be interfered with on review – it only requires it to be unreasonable. This demonstrates the balance that is sought to be made. The Court will need to remind itself that it is dealing with the matter on review and the test on review is not whether or not the dismissal is fair or unfair but whether or not the commissioner's decision one way or another is one that a reasonable decision-maker could not reach in all of the

circumstances."

Off-duty misconduct

17] The respondent argued, *inter* alia, that the award is not reviewable and that it was reasonable to have arrived at the decision the arbitrator arrived at where the misconduct took place outside of the workplace. It was argued that the finding of the arbitrator that the misconduct that occurred outside of the workplace had no direct impact upon the applicant and therefore militated against the sanction of dismissal, was reasonable. The respondent further argued that misconduct against a third party is not qualitatively the same as misconduct directed against one's own employer particularly in light of the fact that the respondent did not attempt to deceive her own employer particularly as the use of a driver's license was not part of her duties. It was further submitted that the arbitrator properly considered the role of an alternative sanction, short of dismissal and properly took into account that the misconduct took place nine years ago. The Court was referred to, *inter alia, Hoechst (Pty) Ltd v Chemical Workers Industrial Union & Another*.[4] In respect of the latter case it should, however, be pointed out that the court (in that matter) held on the facts that there was not sufficient evidence to conclude that the misconduct had the potential of disrupting the future operations of the employer.[5]

4 (1993) 14 *ILJ* 1449 (LAC).

5 *Ibid* at 1460: *"Second respondent was guilty of unauthorized possession of a co-worker's radio-tape deck. The nature of the finding was such that second respondent's reliability as an employee was not put into doubt. Furthermore, the finding did not affect the nature of the work performed by second respondent and his capacity to perform such work. Neither the size of appellant nor the nature of the work done by appellant nor its position in the market necessitated any disciplinary steps being taken against second respondent. As far as the impact which the misconduct had on appellant's normal operations and on its capacity to perform and carry out its*

18] The court has also held in various cases that off-duty misconduct can constitute a valid reason for dismissal. See, *inter alia, Custance v SA Local Government Bargaining Council & Others*[6] where the Court held that off-duty racism impacted on the workplace.[7]

Appropriate sanction where dishonesty is an element of the misconduct

19] The important question to be considered in this matter is whether or not the arbitrator arrived at a reasonable decision when he arrived at the decision that dismissal was not an appropriate sanction in the circumstances of this case.

20] In evaluating the reasonableness of sanction it must, in my view, be borne in mind that the respondent had fraudulently obtained a South African driver's license by representing to the licensing authority that she had a valid Namibian driver's license. As such her actions entailed a high degree of dishonesty and also an element of corruption insofar as she could not have obtained her Namibian license without some complicity on the part of the relevant issuing authority. The respondent had been using this fraudulently obtained driver's license on an ongoing basis for 9 years until

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functions insufficient evidence was led to establish that second respondent's misconduct had a deleterious affect thereon. Such evidence as was presented merely indicated that a few employees (of which only three could be named) expressed concern about the safety of their property on this premises. The evidence does not suggest a disruption or potential disruption of the appellant's operations."

6 (2003) 24 ILJ 1387 (LC).

7 *"[29] In Crown Chickens (Pty) Ltd t/a Rocklands Poultry v Kapp & others (2002) 23 ILJ 863 (LAC); [2002] 6 BLLR 493 (LAC), the court found that calling a person a 'kaffir' was a dismissible offence. Mr Chetty submitted that the circumstances are distinguishable in this case. I accept that Kapp's conduct was more gross. However, in both cases the derogatory terms used manifest a deep-rooted racism which has no place in a democratic society. Whether the word was uttered on or off duty was immaterial as it is the attitude that persists which, when on duty, affects the employment relationship. "*

2008 when her fraud was uncovered. Had she not been caught out she probably would have continued to use this license.

21] Her actions should further be viewed against the fact that the respondent occupied a position in the workplace which requires her to be honest. The question which needs to be answered is whether or not her conduct impacted on her employment relationship in such a way that her actions resulted in the breakdown of the trust relationship between her and her employer.

22] Trust is considered to be an important element of the employment relationship whether or not the employee is employed in private business or within the public sector. Pillay, JA stated the following in this regard in *Miyambo v CCMA & others*:[8]

> *"[13] It is appropriate to pause and reflect on the role that trust plays in the employment relationship. Business risk is predominantly based on the trustworthiness of company employees. The accumulation of individual breaches of trust has significant economic repercussions. A successful business enterprise operates on the basis of trust. In De Beers Consolidated Mines Ltd v CCMA & others* [2000] 9 BLLR 995 **(***LAC) at paragraph [22], the court, per Conradie JA, held the following regarding risk management:*
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> > *"Dismissal is not an expression of moral outrage; much less*

8 [2010] 10 *BLLR* 1017 (LAC).

is it an act of vengeance. It is, or should be, a sensible operational response to risk management in the particular enterprise. That is why supermarket shelf packers who steal small items are routinely dismissed. Their dismissal has little to do with society's moral opprobrium of a minor theft; it has everything to do with the operational requirements of the employer's enterprise."

23] This court has also viewed dishonesty in a serious light and has come to the conclusion in most instances that it results in a breakdown of the trust relationship between the parties. In *Hoch v Mustek Electronics (Pty) Ltd*[9] the court held the dismissal of an employee to be fair where she had misrepresented her qualifications to her employer. The court held that this was sufficient to warrant dismissal notwithstanding the fact that she had a long service record and was honest in her work and notwithstanding the fact that she had misrepresented qualifications that were irrelevant to her position as a debtor's clerk.[10] In *Toyota SA Motors (Pty) Ltd v Radebe & Others*[11] the LAC went as far as to hold that certain acts of misconduct were so serious that no mitigating factor could save the employee from dismissal. One example would be where the employee is guilty of gross dishonesty which the Court defined as follows:

"… when it is said that the first respondent was guilty of gross

9 (2000) 21 *ILJ* 365 (LC).
10 *Ibid* at 371F-G.
11 (2000) 21 *ILJ* 340 (LAC) at 344D-G.

dishonesty, that must mean dishonesty of such a degree (if one can speak of degrees of dishonesty) as to be completely indefensible on any ground."[12]

In coming to a conclusion that the dishonesty was gross the court took into account the employee had shown no remorse for his misconduct and that he had persisted in lying to his employer in the legal proceedings that followed.[13]

24] In various other decisions the courts have similarly held that dismissal is appropriate in circumstances where the misconduct involved elements of dishonesty. See, *inter alia*, *Kalilk v Truworths (Gateway) & Others*[14] where the employee removed a make-up tester from a store without permission. In *Hullett Aluminium (Pty) Ltd v Bargaining Council for the Metal Industry & Others*[15] the employee was found guilty of unauthorized removal of scrap metal from the premises. In both of these cases the court was of the view that there was no scope for the application of mitigating factors. In *Shoprite Checkers (Pty) Ltd v CCMA & Others*[16] that mitigating factors such as length of service or the relatively insignificant value of items pilfered would not hold sway in assessing sanction. Once dishonesty is established, it is deleterious of the trust relationship. In *De Beers Consolidated Mines Ltd v CCMA & Others*[17] the LAC did, however, hold that mitigating factors could justify a sanction short of dismissal even

12 *Ibid* at 346G-H.
13 Ibid at 345F-G
14 (2007) 28 ILJ 2769 (LC).
15 (2008) 29 ILJ 1180 (LC).
16 (2008) 29 ILJ 2581 (LAC).
17 (2000) 21 ILJ 1051 (LAC).

where dishonesty was established. Conradie JA in a minority judgment, however, held that where an employee shows no remorse, that would be a factor in coming to a conclusion that the trust relationship cannot be mended:

> *"This brings me to remorse. It would in my view be difficult for an employer to re-employ an employee who has shown no remorse. Acknowledgment of wrongdoing is the first step towards rehabilitation. In the absence of a recommitment to the employer's workplace values, an employee cannot hope to re-establish the trust which he himself has broken. Where, as in this case, an employee, over and above having committed an act of dishonesty, falsely denies having done so, an employer would, particularly where a high degree of trust is reposed in an employee, be legitimately entitled to say to itself that the risk of continuing to employ the offender is unacceptably great."*[18]

The majority, however, held on the specific facts of that case that, although the employees had dishonestly claimed overtime for working on a public holiday, their misconduct could not be categorized as serious. In this case the arbitrator was allowed to take into account long service in deciding whether or not to impose a sanction short of dismissal.

25] In *Toyota SA Motors (Pty) Ltd v Radebe and others*[19] Zondo AJP (as he

18 Ibid at 1059D-E.
19 [2000] 3 BLLR 243 (LAC) at paragraph [15].

then was), however, held that certain acts of misconduct such as gross dishonesty warrants dismissal despite the fact that that employee has along service record with the employer:

> "*Although a long period of service of an employee will usually be a mitigating factor where such employee is guilty of misconduct, the point must be made that there are certain acts of misconduct which are of such a serious nature that no length of service can save an employee who is guilty of them from dismissal. To my mind one such clear act of misconduct is gross dishonesty*."

26] In *Hulett Aluminium (Pty) Ltd v Bargaining Council for the Metal Industry & Others*[20] the company had a policy allowing its employees to purchase scrap products from it. The employee did not comply with the specific procedure and dispatched a sealed box containing company property. At para 42 Molahlehi J held as follows:

> *"…the presence of dishonesty tilts the scales to an extent that even the strongest mitigating factors, like long service and a clean record of discipline are likely to have minimal impact on the sanction to be imposed. In other words whatever the amount of mitigation, the relationship is unlikely to be restored once dishonesty has been established in particular in a case where the employee shows no remorse. The reason for this is that there is a high premium placed on honesty because conduct that involves corruption by the employees damages the trust relationship which underpins the*

20 [2008] 3 *BLLR* 241 (LC).

essence of the employment relationship."

27] The LAC in *Miyambo* (*supra*) referred to various decisions of the Labour and Labour Appeal Court (*Shoprite Checkers* (*supra*); *Toyota SA Motors* (*supra*) and *Hulett Alliminium* (*supra*) and held that it is clear from those judgments that the courts place a high premium on honesty in the workplace. The court also took into account that the employee showed no remorse for what he did (the employee had stolen scrap metal). The court also referred to *Rustenburg Platinum Mines Ltd (Rustenburg Section) v NUM & Others*[21] where the LAC endorsed the sanction of dismissal where the employee was found guilty of misconduct in that she had taken cooked meatballs. She was subsequently dismissed. In that case the court concluded that Miyambo had undoubtedly breached the relationship of trust built up over many years of honest service and concluded that the dismissal was fair.

28] It would appear from a reading of *Sidumo*, that the Constitutional Court accepted that where dishonesty is not an element of the misconduct dismissal may not be an appropriate sanction and that progressive discipline may be appropriate.[22]

Was dismissal an appropriate sanction in the present matter?

21 [2001] 3 *BLLR* 305 (LAC).

22 "*[117] The absence of dishonesty is a significant factor in favour of the application of progressive discipline rather than dismissal. So too, is the fact that no losses were suffered. That Mr Sidumo did not own up to his misconduct and his denial that he received training are factors that count against him. His years of clean and lengthy service were certainly a significant factor. There is no indication that the principle of progressive discipline will not assist to adjust Mr Sidumo's attitude and efficiency. In my view, the commissioner carefully and thoroughly considered the different elements of the code and properly applied his mind to the question of the appropriateness of the sanction."*

29] In the present matter the respondent made herself guilty of dishonesty conduct. From the cases cited, it appears that dishonest conduct does go to the heard of the employment relationship and is destructive of it. Where misconduct involving dishonesty is considered to be gross or serious, there may not be scope for mitigating factors. The converse also applies. Where misconduct involves an element of dishonest conduct which is not gross or serious, mitigating factors may (and in fact should) be considered in determining a sanction short of dismissal. Whether or not the dishonest conduct is not relevant to the employee's duties is not necessarily decisive: The focus is on the effect of the conduct on the trust relationship between the parties. The fact that an employee shows remorse for his or her actions and takes responsibility for his or her actions may militate depending on the circumstances against imposing the sanction of dismissal. The converse also applies, dismissal may be an appropriate sanction where the employee commits an act of dishonestly, falsely denies having done so and then shows no remorse whatsoever for having done so.

30] In the present case the respondent was grossly dishonest. In procuring her driver's license she also committed an act of corruption. She deceived the State in order to obtain a false driver's license. Her misconduct also constitutes a criminal offence. What makes matters worse is the fact that she persisted with driving with a false driver's license for a period of 9 years. Had she not been caught out she undoubtedly would have

continued using the fraudulently obtained driver's license. It is also important to point out that the respondent had persisted with her lying not only in the course of the investigations but also at her disciplinary hearing and in her sworn testimony before the arbitrator. There is no cross review in these proceedings. The respondent therefore clearly accepts the findings of the arbitrator. She merely submitted that her criminal offence was "*very technical*" in nature.

31] I am of the view that the applicant as an organ of state is entitled to expect of an employee, especially where the employee is, as was the case in the present matter, employed in a position of trust. The respondent was entrusted with dealing with public funds and the applicant is, in my view, entitled to require her to be beyond reproach. The respondent's fraud was characterized by a high degree of dishonesty and corruption. She was prepared to deceive the State for her own ends and then benefit from her conduct on an ongoing basis. The respondent showed no remorse for her actions. The fact that there was no direct loss to the applicant is irrelevant. Also irrelevant is the fact that the respondent was only found out after nine years. The fact that she was only found out after nine years certainly cannot be a mitigating factor as was held by the arbitrator. The fact remains that the respondent benefited from her (criminal) conduct on an ongoing basis.

32] In the event the award is reviewed and set aside and replaced with a finding that the dismissal was substantively fair. I can find no reason why

costs should not be awarded against the third and fourth respondents jointly and severally, the one paying the other to be absolved.

AC BASSON, J

DATE OF ORDER: 19 Augustus 2010

DATE OF REASONS: 4 February 2011

FOR THE APPLICANT: Adv GA Leslie. Instructed by Webber Wentzel

FOR THE RESPONDENT: Adv J Whyte. Instructed by Cheadle, Thompson & Haysom