REPUBLIC OF SOUTH AFRICA

Not reportable

Of interest to other judges

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

JUDGMENT

Case no: C 514/14

In the matter between:

Deanne GORDON	Applicant
and	
J P MORGAN EQUITIES SA (PTY) LTD	First respondent
Vicky SMITH N.O.	Second respondent
CCMA	Third respondent

Heard: 4-5 May 2017.

Delivered: 6 June 2017

SUMMARY: Review – dismissal. Arbitrator found dismissal substantively fair but procedurally unfair and ordered no compensation. Four grounds of review: Did commissioner fall asleep? Was employee's attorney prevented from adequately cross-examining main employer witness? Did commissioner ignore material facts? And, should commissioner have ordered compensation for procedural unfairness. Three of the four grounds of review dismissed. Applicant successful on merits. Award reviewed and set aside. Dismissal unfair.

JUDGMENT

STEENKAMP J

Introduction

[1] The applicant, Ms Deanne Gordon, worked for the first respondent, J P Morgan, as an equity strategist for more than 20 years. She had a clean disciplinary record. Her father fell ill, she resigned on 27 June 2013, and from 1 July to 30 September 2013 she was put on “gardening leave”. She sent certain information to her husband’s computer in June 2013. J P Morgan says it was confidential; she says it was public information. Ten days before she was to leave JP Morgan’s employ, she was disciplined and dismissed.

[2] She referred an unfair dismissal dispute to the CCMA. Conciliation failed. The arbitrator, Ms Vicky Smith, found that the dismissal was substantively fair but procedurally unfair. She did not order any compensation. The employee did not seek reinstatement or compensation for substantive unfairness. She merely wanted to clear her name.

[3] The employee seeks to have the award reviewed and set aside. She has raised four grounds of review. In essence, she argues that she did not get a fair hearing. And on the merits, she argues that the arbitrator’s conclusion was unreasonable.

Background facts

[4] The employee emailed 36 spreadsheets and reports from JP Morgan to her husband’s home email account. The employer says that her conduct was in violation of a global code of conduct which forbade employees from taking proprietary or confidential information from their employer. The employee says that the equity reports were not confidential but were freely available to JP Morgan’s key local competitors. And the Excel spreadsheets were available from a public source on Bloomberg.

[5] The employee was dismissed for misconduct on the basis that the information belonged to JP Morgan and was confidential.

Arbitration award

[6] The arbitrator found that the employee did commit misconduct and that her dismissal was substantively fair. She found that it was procedurally unfair but did not award compensation.

Grounds of review

[7] The employee raises four grounds of review:

7.1 The Commissioner fell asleep during the arbitration, denying the employee a fair hearing.

7.2 The employee's attorney, Mr Haffegee, was prevented from adequately cross-examining the employer's main witness, Mr Kern.

7.3 The Commissioner ignored material facts sufficient to render the award reviewable on the merits.

7.4 The Commissioner should have awarded compensation for procedural unfairness.

Evaluation

[8] The first two review grounds are based on the contention that the employee did not get a fair hearing. If the *audi alteram partem* principle is violated, the employee was deprived of a fair hearing and the reasonableness test in *Sidumo*[1] does not come into play.[2]

[9] Should the employee be successful on either of the first two review grounds, the dispute should be remitted for a fresh hearing. If not, the remainder of the award must be decided on the reasonableness test.

Commissioner falling asleep

[10] The employee's attorney says the Commissioner fell asleep during a crucial part in the proceedings when he was cross-examining J P

[1] *Sidumo v Rustenburg Platinum Mines Ltd* [2007] 12 BLLR 1097 (CC).

[2] *Portnet v Finimore* [1999] 2 BLLR 151 (LC) [per Landman J].

Morgan's main witness, Mr Christian Kern. In her award, she denies it and says that she "momentarily lost concentration".

[11] Unfortunately the attitude of the attorneys for the respective parties towards each other was fairly acrimonious throughout the proceedings, and culminated in them making various allegations and counter allegations as to their respective conduct in the affidavits filed in these review proceedings. But fortunately Messrs *Ackermann* and *Fourie* agreed that it is not necessary for the court to make any findings in this regard.

[12] Mr Haffegee, who appeared for the employee in arbitration, states that the Commissioner fell asleep during the proceedings. In his answering affidavit, Mr Gwaunza, for the employer, said: "Save to deny the merits of the two review grounds, the contents hereof are admitted". In the condonation application heard before these proceedings commenced, I took that as an admission from Mr Gwaunza that the Commissioner did fall asleep, although he denied that that merited the reviewing and setting aside of the award. And at the arbitration, when Mr Haffegee asked for the Commissioner's recusal, Mr Gwaunza responded by arguing that "falling asleep at what I think is a limited point of arbitration that has run for a day and a half [does not result] in such a reasonable apprehension of bias such as to conclude there will not be impartiality in the adjudication of the matter…. That issue of a Commissioner falling asleep, the facts establish that there are more possibly grounds for possible not for recusal [*sic*]… So in the circumstances Commissioner the submissions are simply that given the totality of facts the limited variance [*sic*] of commissioner having fallen asleep at a particular point during the proceedings, existence of record and transcript…"

[13] What Mr Gwaunza did not say -- and as Mr Haffegee pointed out in his application for recusal – is that the Commissioner did <u>not</u> fall asleep.

[14] As Mr *Ackermann* pointed out in his heads of argument, it has been held by this court in *Value Logistics (Personnel) Services v Letsoalo*[3] that falling asleep at arbitration was a reviewable irregularity that made the entire award reviewable.

[3] [2014] 10 BLLR 1018 (LC).

[15] Commissioner Smith filed an affidavit some two years after the review application had been served on her, and after Mr Gwaunza had written to the Senior Convening Commissioner (after the condonation application had been granted, and without copying the employee's attorney in):

> "Our client kindly requests that Senior Commissioner Smith deposes to an affidavit addressing the allegation that she fell asleep during the arbitration in light of the findings in paragraph 28 of the judgment and, in addition, in light of the findings in *Value Logistics (Personnel Services) Ltd v Letsoalo* [2014] 10 BLLR 1018 (LC) where the Court pointed out that an allegation that an arbitrator was sleeping during the arbitration is serious, and would normally require a response from the arbitrator and bargaining council concerned.
>
> …
>
> "In the review application, the applicant persists that Commissioner Smith fell asleep. In due course, once the record has been supplemented and/or reconstructed, our client intends filing an affidavit in which the allegation will be denied."

[16] In her award, the Commissioner said that she had momentarily lost concentration. In her ruling on the recusal application, she said that her eyes were closed but she was listening. In the affidavit, she says that she had eyes closed and was concentrating. Both in her award and in her affidavit she says that there was no prejudice to the employee because she "could have listened" to the recordings. What she does not say, is that she did listen to the recordings.

[17] Having regard to the transcript and the affidavits, it appears to me on a balance of probabilities that the Commissioner did fall asleep. Even though the rule in *Plascon-Evans*[4] applies, the Court must sometimes take a robust approach, as Mr *Ackermann* submitted with reference to *Mahala v Mkombonini*[5]:

> "That approach [in *Plascon-Evans*] is possibly not entirely satisfactory for a matter such as the present. As was pointed out in *Trollip v Du Plessis en 'n Ander* 2002 (2) SA 242 (W) at 245 E-F, a more robust approach is

[4] *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 620 at 634 H-I.

[5] 2006 (5) SA 524 (SE) at 528 par 9.

> sometimes required, and the court should then ground the order if it is satisfied that there is sufficient clarity regarding the issues to be resolved for the court to make the order prayed for."

[18] And, in *Dhladhla v Erasmus*[6] the court said:

> "if, on the papers before the court, the probabilities overwhelmingly favour a specific factual finding, the court should take a robust approach and make that finding. The same applies when the denial by a respondent of the fact alleged by the applicant is insufficient to give rise to a real, genuine and bona fides dispute of fact. This approach should, however, be followed with some circumspection."

[19] In *Wightman*[7] the court noted:

> "A real, genuine and bona fides dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the facts it to be disputed."

[20] In this case, the employer and the Commissioner have not, in their affidavits, "seriously and unambiguously" taken issue with the allegation by the employee and her attorney that the Commissioner fell asleep. As Mr *Ackermann* pointed out, the Commissioner's version is contradictory and that of the employer is contradictory and ambiguous. In his answering affidavit in the condonation application and in his response to the recusal application the employer's attorney did not deny the factual allegation that the Commissioner had fallen asleep; in the answering affidavit in this application, he says that he "did not see her" falling asleep. And the Commissioner says that she had her eyes closed.

[21] On the probabilities, and taking a robust approach, it seems clear to me that the Commissioner did fall asleep. But that is not the end of the enquiry. If she only momentarily lost concentration, the employee may not have been prejudiced.

[22] Unlike *Value Logistics*, where the arbitrator "appeared drowsy and at times fell fast asleep during the course of the arbitration proceedings" the

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[6] 1999 (1) SA 1065 (LCC) par 13.

[7] *Wightman t/a JW Construction v Headfour (Pty) Ltd* 2008 (3) SA 371 (SCA) par 13.

Commissioner in this case appears to have nodded off on a single occasion. Apart from *Value Logistics* there is – perhaps happily – little case law on this issue in our law. Mr *Fourie* cited an obiter remark by the SCA[8] where the following was said:

> "Although it is not necessary to decide the matter it is interesting to note briefly how the problem has been dealt with in other jurisdictions. In (1997) 71 *Australian Law Journal* 745, a case note was published which said that the English Court of Appeal had held that when a judge fell asleep, it was the duty of counsel to wake him or her up, not just to note an appeal point for later. The same result was reached in *Queensland in Stathooles v Mt Isa Mines Ltd* [1997] 2 Qd R 106 at 113. See (2001) 75 *Australian Law Journal* at 4-5."

[23] In this case, Mr Haffegee asked the Commissioner to recuse herself after she had fallen asleep. She refused. Clearly, she had woken up and it was not necessary for him to do so.

[24] It does not appear from the record that Commissioner Smith had nodded off for more than a few seconds or perhaps minutes of evidence. As Mr *Fourie* pointed out in his oral argument, a comparison of the Commissioner's handwritten notes and the transcript of evidence indicate that she probably missed two lines or so of the recorded evidence. And despite Mr Ackermann's "frog in boiling water" analogy, I do not think this momentary lapse deprived the employee of a fair hearing.

[25] This incident is not, in my view, sufficient to have the entire award reviewed and set aside.

Cross-examination of Kern

[26] Mr Haffegee did not complete his cross-examination of one of the employer's key witnesses, Mr Kern. As this court explained in its ruling in the condonation application[9], this arose from an odd set of circumstances. Mr Haffegee had started cross-examining Mr Kern on 12 February 2014. The arbitration was postponed to 13 March. On that day, neither Mr Kern

[8] *Sager v Smith* 2001 (3) SA 1004 (SCA) par 19.

[9] *Gordon v J P Morgan Equities (Pty) Ltd* [2016] ZALCCT 11.

nor Mr Gwaunza was initially available. JP Morgan was represented by a junior attorney from the same firm, Edward Nathan Sonnenbergs. The CCMA refused another postponement. Mr Gwaunza flew from Johannesburg to Cape Town. In the meantime, the Commissioner instructed Mr Haffegee to commence with the employee's case, despite him not having completed his cross-examination of Kern. He led the evidence of Ms Gordon in chief; and when Mr Gwaunza arrived, he cross-examined her until 20:00. The matter was then postponed to continue for another three days in April 2014. It was set down on short notice and was again postponed to two days in May 2014. Mr Gwaunza completed Ms Gordon's cross-examination and both parties closed their respective cases and made arrangements to file written argument. Kern's cross-examination was never completed.

[27] As this court pointed out in the ruling on condonation, if Mr Haffegee's cross-examination of Mr Kern was curtailed by the commissioner, the applicant may well have been deprived of a fair hearing. For example, in *Lippert v CCMA*[10] Rabkin-Naicker J pointed out that the commissioner having interrupted the employee's cross-examination of a witness deprived him of a fair trial of the issues. A similar point was made in *Ngwathe Local Municipality v SALGBC*[11]:

> "By disallowing the employer's witness to complete his evidence in chief and also disallowing cross- and re-examination, the arbitrator infringed on the employer's right to natural justice and specifically the employer's right to have its case fully and fairly determined. In the words of the LAC, the process that the arbitrator employed did not give the employer 'a full opportunity to have their say in respect of the dispute'.
>
> The right of a party to give and adduce evidence is regarded as a fundamental right to a fair trial. This right cannot be dispensed with lightly. It is true that this right is not absolute but it can only be departed from in exceptional circumstances."

[10] [2014] ZALCCT 42 para [16].

[11] [2015] ZALCJHB 55 paras [19] – [20] (footnote omitted).

[28] Mr *Ackermann* also referred to *Dairybelle*[12], where the court reviewed an award because the Commissioner had pressurised one of the parties into completing its case by applying undue and unfair pressure. He submitted that, in this case, the Commissioner had pressurised Mr Haffegee to commence with the employees case, despite vigorous protest, without having finished his cross-examination of Kern, and stated that the case had to finish "today".

[29] It is so that even the employer concedes that the events of 13 March 2014 took "absurd and bizarre twists", were "dramatic and farcical" and that the Commissioner had "clearly lost control of the process". It was unusual and inadvisable of the Commissioner to instruct Mr Haffegee to start leading Ms Gordon's evidence before he had concluded his cross-examination of Kern. But was he in fact prevented from completing the cross-examination of Kern? I think not.

[30] Kern was present when the arbitration continued in May (and in April, when it was postponed). In May, Mr Gwaunza completed his cross-examination of Ms Gordon. Then both parties closed their cases and made arrangements to file written heads of argument. What is glaringly absent is any indication from the employee's representative that he still needed to complete his cross-examination of Mr Kern. In those circumstances, the Commissioner cannot be blamed for the fact that Kern's cross-examination had not been completed. She did not refuse; the employee's representative did not ask. Neither did he remind her that he still needed to complete the cross-examination of Kern. This is despite the fact that an arbitrator – perhaps even more so than a court of law – has a discretion to allow a witness to be recalled for further examination or cross-examination.[13]

[31] This ground of review must fail.

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[12] *Dairybelle (Pty) Ltd v CCMA* [1999] 10 BLLR 1033 (LC) par 15.

[13] *Hladhla v President Insurance Co Ltd* 1965 (1) SA 615 (A); *Johannesburg Metropolitan Council v Ngobeni* [2012] ZASCA 55 at par 37.

The merits: equity reports and spreadsheets

[32] JP Morgan dismissed the employee on the basis that the documents she sent out were confidential. Mr Kern deposed to a comprehensive "confirmatory affidavit" comprising some 200 pages in which he elaborated at great length on his evidence at arbitration. The employee has asked for this affidavit to be struck out in its entirety.

Striking out

[33] Kern's "confirmatory affidavit" was filed on 24 November 2016, more than a month after J P Morgan had delivered its answering affidavit and on the day that the employee's attorney deposed to a replying affidavit. Kern attaches reams of Excel spreadsheets that did not serve before the arbitrator. He attempts to lead new evidence, presenting "a detailed explanation of the concept of spreadsheets and, in particular, how it is that the spreadsheets can… embody significant confidential information, such as the financial models". And he goes so far as to "reserve the first respondent's rights to undertake such an exercise, at any stage, should it be considered necessary or advisable".

[34] This is an extraordinary step. An additional affidavit will only be allowed in exceptional circumstances, and the applicant in this case objected to Kern's unilaterally doing so. As this Court held in *Bafokeng Rasimone Platinum Mine (Pty) Ltd v CCMA*[14]:

> "Review applications by their nature give the applicant party ample time to consider the merits of its case before filing a supplementary affidavit. No reasons were advanced why the matters raised in the additional affidavit could not have been raised in the supplementary affidavit. The fact that an applicant subjects the record to more careful scrutiny after pleadings have closed and discovers a further point it could have raised previously but did not, does not amount exceptional circumstances justifying the reopening of the pleadings.… Insofar as the admission of additional affidavit is a matter of fairness to both parties, there is nothing fair about allowing a party to add to its case in the absence of a very satisfactory explanation for the earlier omission."

[14] (2015) 36 *ILJ* 3045 (LC) par 4.

[35] The same holds true for a respondent. JP Morgan had ample opportunity to respond to the applicant's founding affidavit. It does not set out any exceptional circumstances why Kern should be allowed to file a further affidavit, moreso where he attempts to place evidence before this court that was not before the arbitrator.

[36] Mr Kern's "confirmatory affidavit" is struck out in its entirety.

The equity reports

[37] The employee was dismissed on the basis that the information she sent out, including the equity research reports (in pdf form), were confidential. The arbitrator found that they were. But Kern himself admitted that they were not. He went so far as to "set the record straight" in this regard, as appears from the transcript:

> "Mr Haffegee: know your evidence was that only qualified clients of JP Morgan who are subscribers of Bloomberg can have access to the reports.
>
> Christian Kern: I just want to mention.
>
> Mr Haffegee: You set the record straight. So what is in your affidavit is no longer an accurate reflection of the reality?
>
> Christian Kern: I learnt things last night pointed out by your bundle.
>
> Mr Haffegee: yes.
>
> Christian Kern: which we referred to earlier this morning, which triggered further investigation from my side which put the record right this morning.

[38] In his evidence in chief, Kern made a distinction between publicly available documents and those that are proprietary to JP Morgan. But under cross examination, he "set the record straight".

[39] The arbitrator also took into account that the employee sent two files from Alexander Forbes to herself and that she "could not in did not explain why she has them." Yet Kern concedes in his evidence in chief that there is "no harm with that. That is a publicly available document."

[40] Kern was surprised to learn that key competitors had access to these reports:

> "However our key global competitors do not and I was surprised and that is what I learned last night that SBG as a local competitor has access to our research."

[41] The reference to SBG is to Standard Bank Global Securities. These concessions put pay to the one crucial leg of JP Morgan's decision to dismiss the employee, and of the arbitrator's award that the dismissal was fair, i.e. that the reports were confidential. They were not. The arbitrator's finding to the contrary could not be based on the evidence before her. And her consequential finding that the dismissal was fair is so unreasonable that no other arbitrator could have reached the same conclusion.

The Excel spreadsheets

[42] The employee's case with regard to the Excel spreadsheets – essentially financial models -- rest on three legs:

42.1 The data for spreadsheets were available from a public source, and the spreadsheets did not contain complicated formulas that were proprietary to JP Morgan.

42.2 The employee had no access to live links necessary to use the spreadsheets.

42.3 The demonstration by Mr Kern at the arbitration hard to use the spreadsheets was irrelevant – he was using different Excel spreadsheets, and not the ones that the employee sent to her husband.

[43] The data from the spreadsheets was taken from public sources such as Bloomberg. Yet the Commissioner found that it was proprietary to JP Morgan. There is no indication in the award that the Commissioner had regard to the evidence that it was taken from public sources. Nor is there any indication in the award that she had regard to the employee's evidence that there was nothing about the formulas that was proprietary; and that they were in fact "bog standard", taught at university, or could be obtained from Google.

[44] It is common cause that one needed a live link to activate the Excel spreadsheets. Without this they were useless. Gordon never had access

to live links. Her evidence that “none of the links to the formula have ever been available to me” was not disputed. When she explained that one had to have XLink, which she didn’t have, under cross examination, Mr Gwaunza responded: “Okay, accepted.” And it is common cause that she never opened either the reports or the spreadsheets. It was therefore entirely unreasonable for the Commissioner to have come to the conclusion that it is more probable that, as the spreadsheets have live links and are “interactive”, they “would be very useful for an experienced analyst such as the applicant who is changing jobs in the same field”.

[45] At the arbitration, Kern used Excel spreadsheets to demonstrate how they work. However, the ones he used were not the same ones that the employee had sent to herself or to her husband. They were examples. The onus was on JP Morgan to prove that the spreadsheets that the employee sent out were proprietary and capable of exploitation by her. It could not do so by using different spreadsheets. Having regard to this evidence, the Commissioner could not reasonably have come to the conclusion that she did.

Procedural unfairness and compensation

[46] The Commissioner found that the employee’s dismissal was procedurally unfair. Despite this she did not award compensation. [Inexplicably, she now says in her affidavit that she did award compensation for procedural unfairness].

[47] The employee says that she deserves compensation. The Commissioner did not take into account that the disciplinary hearing proceeded despite the fact that the employee informed the employer of the public availability of the documents in question. They did not bother to verify this. And she was not granted her right to be represented by a colleague of her choice.

[48] The difficulty with this argument is, firstly, that Ms Gordon stated at arbitration that she did not seek any compensation. She does so now for the first time. The Commissioner cannot be faulted for not awarding compensation when the employee did not ask for any in the first place. In fact, Mr Haffegee stated that upfront at the beginning of the arbitration:

> "Madam Commissioner, what we do wish to put on record is that our proposal for the resolution of this dispute and why I want to place it on record is because at the end of these proceedings are will ask that this be taken into account in your considering costs. We will and we have held before, we will retain that this case is one of a classic example of both being frivolous and vexatious. What we seek and we are putting on record as a resolution would be either the reinstatement of the employee or a retraction of the dismissal. So we do not seek any monetary gain from them, we do not seek any monetary compensation. We are talking about a period of less than a week or so, 10 days."

[49] Secondly, an arbitrator has a broad discretion whether to grant any compensation, and if so, for what amount. The court will not readily interfere in that discretion, especially not on review. That much has been stated by this court, by the SCA[15] and recently by the Constitutional Court:[16]

> ""To compensate or not to compensate, and, if compensation is to be awarded, for what period, is a function of the judicious exercise of the discretionary power that an arbitrator or the court has in terms of section 194(1) of the LRA."

Conclusion

[50] The award is not reviewable on the first two review grounds, i.e. that the employee was deprived of a fair hearing; or on the fourth ground, i.e. her refusal to award any compensation for procedural unfairness.

[51] On the merits concerning the substantive fairness of the dismissal, though, the arbitrator reached a conclusion that no reasonable arbitrator could reach on the evidence before her. The documentation that the employee sent out was simply not confidential nor proprietary to JP Morgan. The dismissal was unfair.

[15] Cf *Kemp t/a Centralmed v Rawlins* (2009) 30 *ILJ* 2677 (LAC); *Rawlins v Kemp t/a Centralmed* (2010) 31 *ILJ* 2325 (SCA).

[16] *SARS v CCMA* [2016] ZACC 38 at para 50.

[52] In *Gold Fields*[17] the LAC refined the *Sidumo*[18] test by introducing a two-stage enquiry. In short, this requires the Labour Court to consider two issues: The first is whether the applicant has established an irregularity. This irregularity could be a material error of fact or law, the failure to apply one's mind to relevant evidence, or misconceiving of the enquiry or assessing factual disputes in an arbitrary fashion. The second is whether the applicant has established that the irregularity is material to the outcome by demonstrating that the outcome would have been different having regard to the evidence before the arbitrator. An arbitration award will, therefore, be considered to be reasonable when there is a material connection between the evidence and the result.

[53] In this case, the arbitrator did not apply her mind to relevant evidence concerning the confidentiality and proprietary nature of the records and spreadsheets. That failure was material to the outcome. Had she considered the evidence properly, she could not have found that the dismissal was fair. As the LAC recently stated in *SAB v Hansen*[19]: "But for these irregularities, the Commissioner would have arrived at a different conclusion."

[54] On this basis, the award must be reviewed and set aside. The dismissal was substantively unfair.

Costs

[55] I take into consideration that the employee was successful on three of the four grounds of review raised. She did not ask for any compensation for the substantive unfairness of her dismissal and will receive none. In law and fairness, though, she should be entitled to the costs of this application.

[17] *Gold Fields Mining South Africa (Pty) Ltd (Kloof Gold Mine) v CCMA* [2014] 1 BLLR 20 (LAC).

[18] *Sidumo v Rustenburg Platinum Mines Ltd* [2007] 12 BLLR 1097 (CC).

[19] *South African Breweries (Pty) Ltd v Hansen* [2017] ZALAC 29 (25 May 2017).

Order

[56] I therefore make the following order:

56.1 The confirmatory affidavit of Christian Kern is struck out in its entirety.

56.2 The arbitration award of the second respondent, Ms Vicky Smith, is reviewed and set aside. It is replaced with a finding that the dismissal of the employee, Ms Deanne Gordon, was substantively and procedurally unfair. The employee is not awarded any compensation.

56.3 The first respondent, JP Morgan, is ordered to pay the costs of the review application, including the costs related to the application to strike out and to Kern's affidavit.

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Anton J Steenkamp
Judge of the Labour Court of South Africa

APPEARANCES

APPLICANT:	Lourens W Ackermann
Instructed by	Haffegee Roskam Savage.
FIRST RESPONDENT:	Greg A Fourie
Instructed by	Edward Nathan Sonnenbergs.