**IN THE LABOUR COURT OF SOUTH AFRICA**
**(HELD AT CAPE TOWN)**

Not Reportable

Case no: **C282/2019**

In the matter between:

**VICTORY PARADE TRADING 227 (PTY)**

**LTD T/A OMEGA SELECTION** Applicant

and

**LOUISE CARELSE** First Respondent

**C M BENNETT** Second Respondent

**THE COMMISSION FOR CONCILIATION,**

**MEDIATION AND ARBITRATION** Third Respondent

**Date heard:**

**Summary:** Application to review and set aside arbitration award - review test- reasonableness of arbitrator's decision – dispute of constructive dismissal.

**Date of Judgment:** This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on the Labour Court website and release to SAFLII. The date and time for handing down judgment is deemed to be 15:00pm on the 29 April 2022.

## JUDGMENT

**R. PARKER AJ**

Introduction

[1] This is an application for the review and setting aside of the arbitration award handed down by the Second Respondent dated 13 March 2019, whilst acting under the auspices of the Third Respondent (the CCMA) in terms of terms of Section 145 of the Labour Relations Act[1], read together with Section 158(1)(g)[2].

Factual Background

[2] The First Respondent ("the Employee") was employed with the Applicant ("the Employer") as a Quality Assurance Manager from 20 January 2015 up until 22 August 2018, when she resigned.

[3] At the time of her resignation, the First Respondent earned a basic monthly salary of R 19 000.00 (Nineteen thousand rand).

[4] The Applicant's business involves the manufacturing and distribution of smoked salmon and trout products.

[1] Act 66 of 1995 (as amended)

[2] Labour Relations Act 66 of 1995 (as amended)

[5] At the outset, the Applicant and First Respondent enjoyed a good working relationship, to such an extent, that the First Respondent ("the Employee") took on extra responsibilities / duties in addition to her contractual obligations and duties.

[6] The First Respondent had such a good relationship with the Applicant and its Directors, that she confided in Julia Medcalf ("a Director") in respect of her private life, relationship woes, and the abuse she suffered at the hands of her boyfriend. The relationship / friendship between Julia Medcalf and the First Respondent was so evolved, that Julia Medcalf assisted the First Respondent in finding alternative accommodation after she has abused by her boyfriend.

[7] In and during May 2018, the First Respondent's boyfriend had undergone hip surgery which impeded his mobility severely. As a result, thereof, the First Respondent was required by her boyfriend to assist with care and maintenance during the healing and recovery process.

[8] On 10 May 2018, the First Respondent requested annual leave, however, Julia Medcalf ("a Director") declined the First Respondent's annual leave request, with the exception of the day she needed to collect her boyfriend from the hospital post-surgery.

[9] The First Respondent did not indicate the reasons for her wanting to take annual leave in her application.

[10] The reasons tendered by the Applicant for declining the annual leave request, was due to the fact that both Directors would be out of the country and a crucial Hazzard Analysis and critical control points, or "*HACCP*[3]*"* inspection needed to be conducted.

[3] Hazzard Analysis and critical control points.

[11] One of the First Respondent's main employment duties / responsibilities, was to ensure that the Applicant passed the "*HACCP*[4]" inspection, as the Applicant had passed this inspection for the first time ever during the First Respondents first year of employment.

[12] On 14 May 2018, the First Respondent re-applied for annual leave, this time mentioning the reasons as to why she required annual leave for the specific dates. One again, Julia Medcalf declined the annual leave request, stating *"you will not take time off for that arsehole, he can take care of himself"*. She also further stated that she was *"glad that you lost your baby last year".*

[13] Later on 14 May 2018, Julia Medcalf sent the First Respondent an apology via WhatsApp message, but the First Respondent was unwilling to accept the apology, and regarded the statements by Julia Medcalf as insincere.

[14] On 15 May 2018, the First Respondent submitted a written grievance to the Applicant, to which she received no response.

[15] The relationship between the Applicant and the First Respondent took a downward turn and came to an end in August 2018 when a public verbal outburst occurred between another director of the Applicant (Michael Boell) and the First Respondent in relation to the amendment of the First Respondent's working hours and clocking in and out.

[16] On 22 August 2018, the Applicant confronted the First Respondent about not clocking in, despite their earlier conversation. The First Respondent went outside to compose herself. Upon her return, the First Respondent was issued with a written warning for not clocking in, leaving the building without permission, and refusing to train staff. Immediately the next day, the First Respondent handed in her

[4] Hazzard Analysis and critical control points.

resignation letter stating that she regarded herself as having been constructively dismissed.

[17] The matter continued in the CCMA. Following unsuccessful conciliation, the First Respondent referred her constructive dismissal dispute for arbitration on 25 November 2018. The arbitration proceedings convened before the Second Respondent acting under the auspices of the Third Respondent ("the CCMA") on 6 February 2019 and reconvened on the 5 March 2019. The arbitration award followed on 13 March 2019.

[18] During arbitration, the Second Respondent was tasked with determining whether there was in fact a dismissal of the First Respondent as contemplated by Section 186(1)(e) of the Labour Relation Act[5], and if so, whether such dismissal was fair.

[19] The onus of proving such dismissal, was with the First Respondent as per Section 192(1) of the Labour Relations Act[6]

[20] In his award, the Second Respondent found that the First Respondent was indeed constructively dismissed, and that such dismissal was unfair. The Applicant was ordered to pay the First Respondent compensation in the amount of R 100 000.00 (One hundred thousand rand), being an amount equivalent to 5 (five) month's salary, by no later than 29 March 2019.

[21] Dissatisfied with this award, the Applicant served a review Application on the Respondents on 13 May 2019, seeking to review and set aside the arbitration award.

Issues in Dispute

[5] At 66 of 1995 (as amended)

[6] Act 66 of 1995 (as amended)

[22] The issues in dispute are twofold:

22.1 Was there a dismissal of the First Respondent; if so,

22.2 Was such dismissal substantively fair

Test for review

[23] In light of the issues in dispute, the jurisdiction of the CCMA and the Second Respondent to entertain this matter was at stake, because if there was no dismissal of the First Respondent ("the Employee"), then the CCMA would have no jurisdiction.

[24] In *Mnguti v Commission for Conciliation, Mediation and Arbitration and Others*[7], the Court held as follows –

> "*The issue whether or not a dismissal exists concerns the jurisdiction of the CCMA. If there is no dismissal, then the CCMA has no jurisdiction to entertain an unfair dismissal claim. Where a commissioner thus finds that no dismissal exists, that commissioner in essence determines that the CCMA does not have jurisdiction and the matter is then dismissed on that basis".*

[25] This means that where the issue to be determined on review relates to the jurisdiction of the CCMA, it is not about a reasonable outcome. The Labour Court is obliged to determine the issue of jurisdiction of its own accord, and in so doing, the Labour Court determines the issue *de novo* in order to decide whether the determination by the arbitrator (Second Respondent) is right or wrong[8].

[7] (2015) 36 ILJ 3111 (LC) at para 14.

[8] See Trio Glass t/a The Glass Group v Molapo NO and Others (2013) 34 ILJ 2662 (LC) at para 22.

[26] In *SA Rugby Players Association and Others v SA Rugby (Pty) Ltd and Others*[9], the Court stated as follows -

> "*The issue that was before the commissioner was whether there had been a dismissal or not. It is an issue that goes to the jurisdiction of the CCMA. The significance of establishing whether there was a dismissal or not is to determine whether the CCMA had jurisdiction to entertain the dispute. It follows that if there was no dismissal, then, the CCMA had no jurisdiction to entertain the dispute in terms of s 191 of the Act.*
>
> *The CCMA is a creature of statute and is not a court of law. As a general rule, it cannot decide its own jurisdiction. It can only make a ruling for convenience. Whether it has jurisdiction or not in a particular matter is a matter to be decided by the Labour Court…"*

[27] The above approach, also known as the 'right or wrong' review approach, has been consistently applied in judgments and instances where the issue for determination on review concerns the jurisdiction of the CCMA, and where the arbitrator had to decide whether a dismissal had in fact occurred[10].

[28] In light of what is stated above, I shall proceed to decide this matter *de novo* on the basis of determining whether the Second Respondent's determination that a constructive dismissal existed was right or wrong, and not whether the outcome the Second Respondent arrived at was reasonable.



Grounds for review

---

[9] (2008) 29 ILJ 2218 (LAC) at paras 39 – 40.

[10] See De Milander v Member of the Executive Council for the Department of Finance: Eastern Cape and Others (2013) 34 ILJ 1427 (LAC) at para 24; Hickman v Tsatsimpe NO and Others (2012) 33 ILJ 1179 (LC) at para 10; Protect a Partner (Pty) Ltd v Machaba-Abiodun and Others (2013) 34 ILJ 392 (LC) at paras 5–6; Gubevu Security Group (Pty) Ltd v Ruggiero NO and Others (2012) 33 ILJ 1171 (LC) at para 14; Workforce Group (Pty) Ltd v CCMA and Others (2012) 33 ILJ 738 (LC) at para 2; Stars Away International Airlines (Pty) Ltd t/a Stars Away Aviation v Thee NO and Others (2013) 34 ILJ 1272 (LC) at para 21; Mnguti (supra) at para 20.

[29] The Applicant's case and the grounds for review must be contained in the founding affidavit, and supplementary affidavit[11].

[30] In *Northam Platinum Ltd v Fganyago NO and Others[12],* the court stated as follows -

> *"The basic principle is that a litigant is required to set out all the material facts on which he or she relies in challenging the reasonableness or otherwise of the commissioner's award in his or her founding affidavit".*

[31] Because this review application entails a *de novo* consideration as to whether the decision of the Second Respondent is right or wrong, the reasoning of the Second Respondent as contained in his award is of lesser importance. What is of paramount importance here, is the grounds for review as stated by the Applicant in its founding and supplementary affidavit, as this sets out the basis as to why the Applicant contends the finding of the Second Respondent as being incorrect (wrong).

The legal position

[32] The best point of departure in deciding this matter is to examine the phrase '*constructive dismissal*", and determine what exactly it means. This is because it is not a term which emanates from the Labour Relations Act[13], but rather a term / phrase which was adopted from English Law.

[33] The phrase *"constructive dismissal",* was summarized in *Murray v Minister of Defence[14]* as follows -

---

[11] See Brodie v Commission for Conciliation, Mediation and Arbitration and Others (2013) 34 ILJ 608 (LC) at para 33; Sonqoba Security Services MP (Pty) Ltd v Motor Transport Workers Union (2011) 32 ILJ 730 (LC) at para 9; De Beer v Minister of Safety and Security and Another (2011) 32 ILJ 2506 (LC) at para 27. The supplementary affidavit is filed in terms of Rule 7A(8).

[12] (2010) 31 ILJ 713 (LC) at para 27.

[13] Act 66 of 1995 (as amended)

[14] (2008) 29 ILJ 1369 (SCA) at para 8

*"The term used in English law, 'constructive dismissal' (where 'constructive' signifies something the law deems to exist for reasons of fairness and justice, such as notice, knowledge, trust, desertion), has become well-established in our law. In employment law, constructive dismissal represents a victory for substance over form. Its essence is that although the employee resigns, the causal responsibility for the termination of service is recognized as the employer's unacceptable conduct, and the latter therefore remains responsible for the consequences. When the labour courts imported the concept into South African law from English law in the 1980s, they adopted the English approach, which implied into the contract of employment a general term that the employer would not without reasonable and proper cause conduct itself in a manner calculated and likely to destroy or seriously damage the relationship of confidence and trust with the employee: breach of the term would amount to a contractual repudiation justifying the employee in resigning and claiming compensation for dismissal".*

[34] Today, the phrase *"constructive dismissal"* forms part of the definition of dismissal in Section 186 of the Labour Relations Act[15]. In Section 186(e)[16], which changed to Section 186(1)(e) in 2002[17], a dismissal was defined as an instance where -

*"an employee terminated a contract of employment with or without notice because the employer made continued employment intolerable for the employee".*

[35] When considering the provisions of Section 186(1)(e)[18], three specific issues emerge for determination, as set out in *Solid Doors (Pty) Ltd v Commissioner Theron and Others*[19] . Here the court stated as follows -

---

[15] Act 66 of 1995 (as amended)

[16] Act 66 of 1995 (as amended)

[17] By way of Act 12 of 2002, with effect from 1 August 2002.

[18] By way of Act 12 of 2002, with effect from 1 August 2002.

[19] By (2004) 25 ILJ 2337 (LAC) at para 28. See also Agricultural Research Council v Ramashowana NO and Others (2018) 39 ILJ 2509 (LC) at para 11; Conti Print CC v Commission for Conciliation, Mediation and

*"there are three requirements for constructive dismissal to be established. The first is that the employee must have terminated the contract of employment. The second is that the reason for termination of the contract must be that continued employment has become intolerable for the employee. The third is that it must have been the employee's employer who had made continued employment intolerable. All these three requirements must be present for it to be said that a constructive dismissal has been established. If one of them is absent, constructive dismissal is not established".*

[36] From the *dictum* in *Solid Doors*[20], it is clear that the first determination is that it must be the employee that brought the employment relationship to an end, either by way of submitting an actual resignation, or by way of other form of clear and unequivocal conduct showing an intention on the part of the employee to unilaterally bring the employment relationship to an end.

[37] Once it is established that the employee had terminated the employment relationship, the second step in the enquiry, is to establish whether the reason for that termination is based on the employer's conduct. In other words, there must be a proper *nexus* between the intolerability, and the employee's termination of employment.

[38] In *Solidarity on behalf of Van Tonder v Armaments Corporation of SA (SOC) Ltd and Others*[21] the Court dealt with the meaning of '*intolerability*' as follows -

---

Arbitration and Others (2015) 36 ILJ 2245 (LAC) at para 9; Bandat v De Kock and Another (2015) 36 ILJ 979 (LC) at para 49; Johnson v Rajah NO and Others (JR33/15) [2017] ZALCJHB 25 (26 January 2017) at para 38.way of Act 12 of 2002, with effect from 1 August 2002 [Labour Relations Act]

[20] (2004) 25 ILJ 2337 (LAC) at para 28. See also Agricultural Research Council v Ramashowana NO and Others (2018) 39 ILJ 2509 (LC) at para 11; Conti Print CC v Commission for Conciliation, Mediation and Arbitration and Others (2015) 36 ILJ 2245 (LAC) at para 9; Bandat v De Kock and Another (2015) 36 ILJ 979 (LC) at para 49; Johnson v Rajah NO and Others (JR33/15) [2017] ZALCJHB 25 (26 January 2017) at para 38.

[21] (2019) 40 ILJ 1539 (LAC) at para 39

*"the word 'intolerable' implies a situation that is more than can be tolerated or endured; or insufferable. It is something which is simply too great to bear, not to be put up with or beyond the limits of tolerance".*

[39] Similarly, *in Bakker v Commission for Conciliation, Mediation and Arbitration and Others*[22] the Court defined the term intolerable as follows -

*'" Intolerable' is not defined in the LRA, but it is a strong word which suggests a high threshold: In this regard, Grogan, in his Workplace Law, states:*
*'the requirement that the prospect of continued employment be "intolerable" ... suggests that this form of "dismissal" should be confined to situations in which the employer behaved in a deliberately oppressive manner".*

[40] The onus to prove the existence of intolerability rests solely with the employee. The subjective view of the employee is of no consequence in discharging this onus, as the enquiry to establish whether intolerability exists is always an objective one.

[41] The third and final requirement is that the employer must have caused the intolerability. It is of paramount importance that the employer in some way be culpable. Culpability does not mean that it must be proven that the employer had the intent to get rid of the employee, but it must be shown that the employer acted without '*reasonable and proper cause*[23].

[42] In *Albany Bakeries Ltd v Van Wyk and Others*[24], the court stated that –

*"the decision of an employee to leave because of the intolerable work relationship has to be a last resort".*



---

[22] (2018) 39 ILJ 1568 (LC) at paras 12 – 13.

[23] Murray (supra) at para 13; Metropolitan Health Risk Management v Majatladi and Others (2015) 36 ILJ 958 (LAC) at para 30; Bandat (supra) at para 53.

[24] (2005) 26 ILJ 2142 (LAC) at para 27. See also Jordaan v Commission for Conciliation, Mediation and Arbitration and Others (2010) 31 ILJ 2331 (LAC) at 2336A-B; Foschini (supra) at para 32.

[43] In *Bandat v De Kock and Another*[25] the Court considered the *dicta* above in *Albany Bakeries*[26], and came to the following conclusion -

> *"in order to show that a continued working environment was intolerable, the employee has to convince the court that the employee had a genuine belief that the employer would never change its ways. An important component of establishing such a genuine belief then has to be the use of suitably available alternative remedies, such as raising a grievance or using the remedies provided for in the LRA. As the court said in Albany, it can be considered to be opportunistic for an employee to resign out of the blue, so to speak, without even raising an issue with the employer and giving the employer the opportunity to remedy the cause of complaint, thus giving it a chance to remedy any errant ways".*

[44] In other words, where there is a grievance process available to the employee, which could if utilised, possibly resolve the dispute between the parties, the employee has to raise such grievance with the employer. If the employee opts not to follow the grievance route, the employee cannot as a matter of principle claim constructive dismissal, unless the employee proves that there are exceptional circumstances that may serve to absolve the employee from this obligation[27].

[45] For an employee to simply subjectively claim that he or she has no confidence in the grievance process, or that the employer would not reform, cannot suffice as exceptional circumstances[28].



---

[25] (2015) 36 ILJ 979 (LC) at para 52.

[26] (2005) 26 ILJ 2142 (LAC) at para 27. See also Jordaan v Commission for Conciliation, Mediation and Arbitration and Others (2010) 31 ILJ 2331 (LAC) at 2336A-B; Foschini (supra) at para 32.

[27] In *Foschini* (*supra*) at para 37 the Court said: *'… Where an employee resigns and claims a constructive dismissal under circumstances where he did not avail himself of an available grievance procedure or the mechanisms for dispute resolution provided for in the Labour Relations Act, he will have to show very compelling reasons why he failed or refused to follow these procedures available to him prior to resignation …*'

[28] See *Armaments Corporation* (*supra*) at para 46; *Sampson Associates (Pty) Ltd t/a Interbrand Sampson v Cities Shepherd and Others* [2010] JOL 25430 (LC) at para 65.

[46] In *Bakker supra*[29] the Court stated as follows –

> *"The Labour Court has held that if an employee is too impatient to wait the outcome of the employer's attempts to find a solution to the perceived intolerable situation and resigns, then constructive dismissal is almost always out of the question".*

[47] In *Foschini Group v Commission for Conciliation, Mediation and Arbitration and Others*[30] the Court held that –

> "*It has also become fairly trite law that an employee should make use of the employer's grievance procedure where such is in place to resolve the problem before resigning and alleging constructive dismissal. If an employee fails first to lodge a grievance before resigning and alleging constructive dismissal, she may very well be precluded from claiming to have been constructively dismissed*".

[48] Similarly, in *Johnson v Rajah NO and Others*[31], the court held that –

> "*an employer should be made aware of the alleged intolerable conditions and be afforded an opportunity to address and rectify it. An employee cannot merely resign and claim constructive dismissal while other options are available and as I already alluded to the test is whether a reasonable alternative existed. An employee cannot resign without affording the employer an opportunity to rectify the causes of his or her complaints and successfully claim constructive dismissal*".

Case analysis

---

[29] Id at para 13.

[30] (2008) 29 ILJ 1515 (LC) at para 33. See also para 37 of the judgment.

[31] (JR33/15) [2017] ZALCJHB 25 (26 January 2017) at para 74.

[49] In determining whether the Second Respondents award was right or wrong, it will first have to be established, whether continued employment was made intolerable for the First Respondent, and whether the Applicant was the cause of such intolerability.

[50] When one considers the above two requirements, the First Respondents case of constructive dismissal faces considerable difficulty for following reasons.

[51] It is common cause that there were incidents of displeasure, verbal outbursts, and an exchange of harsh words between the Applicant and the First Respondent on more than one occasion. It is furthermore common cause that although these harsh comments by the Applicant, namely Julia Medcalf ("a director") was insensitive and unnecessary in the circumstances, the findings of the Second Respondent are wholly unassailable. Regard must be had to the fact that Julia Medcalf had acknowledged her wrongdoing and took reasonable steps to apologise to the First Respondent in order to remedy her actions. This is not uncommon in friendships and relationship similar to the one that existed between the First Respondent and Julia Medcalf.

[52] When one further looks at the confrontation that occurred between the First Respondent and Michael Boell on 22 August 2018, the circumstances are once again not of such an extreme nature that warrants resignation justifiable.

[53] However, it goes without saying, that even if one accepts the conduct and verbal outbursts by Julia Medcalf and Michael Boell as being *"intolerable conduct and/or behaviour",* it does not automatically render the continued employment relationship intolerable, and such, resignation is not justifiable in the circumstances.

[54] Cognisance must be taken of what followed thereafter, and what further steps the First Respondent took to remedy the situation and bring the "*intolerable conduct and/or behaviour"* of Julia Medcalf and Michael Boell to the attention of the

Applicant, as envisaged by *Albany Bakeries Ltd v Van Wyk and Others*[32] and *Bandat v De Kock and Another*[33] and what the Applicant then did upon being informed thereof.

[55] There is an appropriate comparison that can be drawn with this kind of situation, and the circumstances under which an employer / the Applicant can be held liable for the conduct and/or verbal outbursts of an individual employee upon another employee. This is found in Section 60 of the Employment Equity Act ('EEA')[34], which requires that the conduct must first be brought to the attention of the employer and that the employer be afforded an opportunity to deal with it, before the employer can be held liable[35]. It is imperative to note here that intolerable conduct by one employee upon another can only render the employer culpably responsible and liable, if the employer is aware of the conduct and/or behaviour, and was given an opportunity to address it and has failed to properly do so in the circumstances.

[56] When one analysis the evidence by the First Respondent, cognisance must be taken of the fact that all the incidents the First Respondent complains of are isolated incidents which occurred at separate intervals at various stages in her employment career. As such, these incidents cannot be said to have rendered the continued employment relationship between the First Respondent and the Applicant intolerable, as she continued working way after the 2017 incident and still managed

---

[32] (2005) 26 ILJ 2142 (LAC) at para 27. See also *Jordaan v Commission for Conciliation, Mediation and Arbitration and Others* (2010) 31 *ILJ* 2331 (LAC) at 2336A-B; *Foschini* (*supra*) at para 32.

[33] (2015) 36 ILJ 979 (LC) at para 52.

[34] Act 55 of 1998 (as amended).

[35] Section 60 reads *'(1) If it is alleged that an employee, while at work, contravened a provision of this Act, or engaged in any conduct that, if engaged in by that employee's employer, would constitute a contravention of a provision of this Act, the alleged conduct must immediately be brought to the attention of the employer; (2) The employer must consult all relevant parties and must take the necessary steps to eliminate the alleged conduct and comply with the provisions of this Act; (3) If the employer fails to take the necessary steps referred to in subsection (2), and it is proved that the employee has contravened the relevant provision, the employer must be deemed also to have contravened that provision. (4) Despite subsection (3), an employer is not liable for the conduct of an employee if that employer is able to prove that it did all that was reasonably practicable to ensure that the employee would not act in contravention of this Act*'. See *Moatshe v Legend Golf and Safari Resort Operations (Pty) Ltd* (2015) 36 ILJ 1111 (LC) at para 29, and the authorities referred to in paras 30 – 31 of the judgment; *TFD Network Africa (Pty) Ltd v Faris* (2019) 40 ILJ 326 (LAC) at para 51; *Liberty Group Ltd v M* (2017) 38 ILJ 1318 (LAC) at para 37.

to maintain a good working relationship with the Applicant, despite the May 2018 verbal outburst with Julia Medcalf up until August 2018, when she chose to resign.

[57] Wherefore, it cannot be said that dismissal was an option of last resort, and that the First Respondent had completely exhausted the internal grievance process as envisioned in *Bakker supra*[36] and *Johnson v Rajah NO and Others*[37]

[58] In light of the above, it is my belief that the First Respondent was not dismissed.

Conclusion

[59] The Second Respondents believe that the CCMA would not have provided a solution to the First Respondent grievance is over cynical.

[60] The incidents the Second Respondent refers to are isolated and separate, and as such cannot be seen as one.

[61] In the premises, the following order is hereby made

Order

1. The Applicant's review application is granted.
2. The Arbitration award of the Second Respondent acting under the auspices of the Third Respondent, under case number WECT15983—18, dated 13 March 2019, is reviewed and set aside.

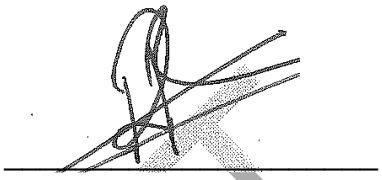


[36] Id at para 13

[37] (JR33/15) [2017] ZALCJHB 25 (26 January 2017) at para 74.

3. The arbitration award is substituted with a determination that the First Respondent was not dismissed by the Applicant, and therefore the Second and Third Respondents had no jurisdiction to entertain the dispute.

4. There is no order as to costs.



**R. Parker**

**Acting Judge of the Labour Court of South Africa**

**APPEARANCES**

For the Applicant: Mr Reynhard Carelse Khan Attorneys

For the Respondents: Mr Brett , Aarninkhof Attorneys