REPUBLIC OF SOUTH AFRICA

THE LABOUR COURT OF SOUTH AFRICA, DURBAN

JUDGMENT

Case no: D 284/11

Reportable

In the matter between

J. S JACKSON **Applicant**

and

L WILLIAMS de BEER N.O **First Respondent**

SAFETY AND SECURITY SECTORAL

BARGAINING COUNCIL (SSSBC) **Second Respondent**

NATIONAL COMMISSIONER:

SOUTH AFRICAN POLICE SERVICE **Third Respondent**

A. DRAAI **Fourth Respondent**

Heard: **31 October 2013**

Delivered: **5 March 2014**

Summary: **Review application – promotional post in SAPS contested – highest scoring candidate not appointed – preferential list deviated from - White Males over represented in the rank of the contested post. No substantive unfairness found – reason not to appoint applicant not substantively unfair.**

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CELE J

Introduction

[1] The applicant has approached this Court with an application seeking to be granted an order in the following terms:

1. Reviewing and setting aside, in terms of the provisions of Section 145 of the Labour Relations Act, 66 of 1995, the arbitration award handed down by the first respondent under case number PSSS 151-10/11, dated 21 November 2011, but made known to the applicant on 28 November 2011.

2. Reviewing and correcting the arbitration award as follows:

   2.1. The applicant's non promotion was not only procedurally unfair but also substantively unfair, that the third respondent committed an unfair labour practice. The applicant ought to have been promoted to Captain – level 8, Kokstad Vehicle Identification System (VIS), and (Post 932).

   2.2. Granting protected promotion in a post advantageous to both the third respondent and the applicant.

   2.3. Praying for fiscal and benefits to be paid to the applicant retrospectively from the promotion date, difference salary level 7 to level 8 Captain.

3. Granting the applicant condonation for the late filing of the review application and making such order as this Court deems appropriate for the further conduct of the proceedings.

[2] Only the third respondent opposed this application, acting in its capacity as the employer of the applicant. Notably, the third respondent did not oppose

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the applicant's condonation application in its answering affidavit. Neither did the third respondent's written heads of argument make any reference to the condonation application.

Background facts

[3] The applicant is in the employment of the South African Police Services, the SAPS holding the rank of a Warrant Officer. He applied for an advertised promotional post described as 932 Kokstad Vehicle Identification Section level 8. The application was to have him promoted from a Warrant Officer 7 to a Captain 8. There were a number of other applicants including the fourth respondent who was a Coloured male, Ms Dlamini who was a Black Female and Ms Botha, White Female who all filed their applications. From the short listed candidates, interviews were then to be held. A selection panel was convened to conduct the interview assessment under the chairperson, Director S.S Vezi, a Brigadier and two panelists being Senior Superintendent Nyide, a Colonel and Superintendent Keal, a Lieutenant Colonel. This panel constituted what was called an evaluation panel. They had a secretary took kept notes of the proceedings. Eight candidates were short-listed, made up of one White female, three African males and one African female, two Coloured males, and one (1) white male. After the interview, the evaluation panel had to draw up from the short list their preferred list from which a recommended candidate could be identified for appointment. If for any reason a recommendation for an appointment could not be made from the preferred list, they had to consider re-advertising the post.

[4] The order of preference and scores achieved by the panel was as follows:

1.	Dlamini A/F	-	17.41/30	= 58.03%
2.	Jackson W/M	-	19.74/30	= 65.80%
3.	Botha W/F	-	18.83/30	= 62.70%

[5] The applicant was the highest scoring candidate which position made him believe that he ought to have been recommended as the number one

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preferred candidate as the most suitably qualified, experienced and skilled for the promotion. He believed that the employer's operational objectives of service delivery in terms of efficiency had to be balanced with representativity.

[6] The evaluation panel went into the process of considering staff composition and the then existing need in respect of racial and gender representativity for the post. The panel preferred PN Dlamini, an African female, as their number one candidate, to satisfy a shortage in Black Females representativity. The applicant, white male, was number two and a White female, GJ Botha was number three. These recommendations were forwarded to the provincial ratification panel, the ratification panel. It came to light that Ms Dlamini had a criminal record which she had not disclosed and accordingly had to be substituted. She was substituted with Mr Draai, a Coloured Male who is the fourth respondent, to satisfy a shortage of Coloured Officers. He had been on the short list but was not on the preferred list. Mr Draai had a misconduct record with a sanction to undergo a course in anger management which he had disclosed in his application.

[7] The applicant was aggrieved by the decision of the third respondent not to appoint him. He referred an unfair labour practice dispute to the second respondent for conciliation and thereafter for arbitration by the first respondent acting under the auspices of the second respondent. From his non-promotion to Captain level 8, the applicant averred that the third respondent's functionaries were unfair, unreasonable, arbitrary, invidious, inconsistent and capricious both procedurally and substantively in not recommending and eventually promoting him to the post. He said that, had the third respondent been acting within his regulations, Mr Draai should not have been preferred and recommended for the appointment which the third respondent accepted and proceeded to appoint him to the contested post. He said that he was well advised that in promotion disputes in terms of Section 186 (2) of the Act, an applicant bore the onus on a preponderance of probabilities to prove the unfair labour practice complained of and that both procedural and substantive unfairness needed to be proven before an arbitrator could interfere with an employer's prerogative.

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[8] The first respondent issued an award with the finding that the promotion of Mr Draai to the exclusion of the applicant was conducted in a manner that was procedurally unfair but substantively fair. She said that the third respondent had committed a number of breaches of the National Instruction 2/2008, all of which, to a lesser or greater extent resulted in prejudice to the applicant. She ordered the third respondent to compensate the applicant in an amount of money that was equivalent to the salary of two months he was receiving at the time of the award.

Chief findings of the third respondent and grounds for review.

[9] In his grounds for review, the applicant outlined the chief findings of the third respondent he sought to challenge. He cast a net of more than twenty grounds of review into the sea so that at least one of them could catch. What follows are therefore only some of the submissions of the applicant appearing in the founding and supplementary affidavits together with findings of the first respondent that are assailed.

1. Having regard to all the evidence that was led, the first respondent's decision was invalid and unlawful and fell to be corrected and set aside or reviewed in that she committed several gross material irregularities by making findings that were not rational or justifiable in relation to the reasons given or the evidence properly before her, which was not the decision that a reasonable decision maker could reach. The first respondent concluded that only procedural unfairness tainted the selection process by holding that it was certainly not open to the ratification panel to simply appoint another candidate of its choice, although only in relation to the procedure that was followed.

2. The first procedural flaw according to the first respondent was that the Provincial Commissioner did not comply with the peremptory obligation of clause 12(g) National Instruction 2/2008 when the Provincial Commissioner circumvented the National Instruction and approved the recommendation of Mr Draai who was not on the preferred list, without being empowered to do so as dictated by the National Instruction

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2/2008. The first respondent decided that it was a serious procedural flaw as such action amounted to being ultra vires. The first respondent's decision could not only have been procedural, but it also was done without valid or fair reason, whilst it was also arbitrary, grossly unfair, unreasonable and irrational. This significant aspect impacted on the substantive fairness, whilst it also impacted on the selection process of the right to procedural fairness. In not reaching such conclusion, the first respondent erred, came to a materially wrong conclusion and committed a gross irregularity in terms of a question of law regarding substantive fairness.

3. The first respondent erred and committed a further reviewable irregularity in stating that another procedural flaw of a lesser extent took place regarding the fact that none of the panelists applied their minds objectively and rationally on Mr Draai's suitability. The first respondent decided that she was inclined to agree with the third respondent's witnesses Messrs Vezi and Ntanjana that it was a minor infraction and a non issue. But according to the applicant it ought to have been addressed in order for the procedure to have been entirely correct and transparent. Suitability was one of the peremptory criteria and it was clear that no valid and fair reasoning existed substantively in evaluating such criteria in terms of the National Instruction 2/2008. It could not merely be a minor infraction as it was one of the peremptory criteria to be evaluated. The written records bore no evidence of the consideration of suitability as required in the National Instruction 2/2008. The ratification panel did not consider his disciplinary record when recommending him for the post. The first respondent misconstrued her functions and duties as an arbitrator, contradicted herself and committed a gross irregularity in stating that it was a minor infraction and a non issue, despite the fact that it was a peremptory criteria. The panel acted arbitrarily and in total defiance of its National Instruction 2/2008.

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4. The first respondent committed a further reviewable irregularity in that the applicant placed evidence before her that the third respondent's evaluation panel did not have written records as derived from National Instruction 2/2008 clause 8(d) and 10(c) to substantiate and justify its reasons and decisions as valid and fair. This was required in terms of whether the due selection process was substantively fair. The First respondent did not consider such material and relevant evidence and committed an irregularity in the manner that she performed her functions and duties as an arbitrator.

5. The first respondent came to the conclusion that whilst she could not disagree with the third respondents arguments in respect of representativity and the need to address the imbalanced of the past, she did not agree that equity was implemented correctly in the matter as it could not be an excuse for the third respondent to breach its own negotiated process. There was substantively no valid or fair reasoning and justification by the evaluation panel for advancing equity, by preferring Ms Dlamini, without any written record or valid fair reasoning that a properly considered Employment Equity Plan was before the panel as directed by National Instruction 2/2008.

6. Furthermore, no written records existed that the ratification panel had a valid Employment Equity Plan before them when they took such a drastic decision, and failed to balance efficiency with representativity. This significant substantive irregularity was placed before the first respondent who did not apply her mind to such evidence and in agreeing that representativity was not evaluated rationally, which was the third respondents evaluation and ratification panels' decision, no justifiable reasons or substantive reasons reflected such at all.

7. According to the records on salary level 8, white males were 72 whilst numerical goals indicated on level 8 that white males were 102, which meant that 30 posts for white males existed. In the light of these figures it was clear that the first respondent's reasoning that equity was not implemented correctly is correct. That goes to the crucial aspect of

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whether there existed valid and fair reasoning substantively to sideline the applicant on substantive fairness. This gross material irregularity vitiated the selection process, which meant that but for the significant substitution of both Ms Dlamini and Mr Draai, the applicant would have been recommended and promoted. The first respondent erred and committed a gross irregularity in not deciding as such on the third respondent's arbitrary, unfair, unreasonable, unjustifiable, irrational and bad faith displayed during the selection process. This crucial and significant evidence was either not considered by the first respondent or no weight attached to it, which is not the decision of a reasonable decision maker.

8. No mention was made at all on the peremptory criteria of representativity in terms of the Employment Equity Plan of the relevant business unit. Such evidence was placed before the first respondent. The applicant stood out head and shoulders and scored the highest and had the third respondent's evaluation panel applied its mind in a just, fair, objective and rational manner, he would have been recommended in terms of service delivery in the police, service especially as the difference in scoring between Ms Dlamini and the applicant was huge. Such evidence was placed before the first respondent, specifically in relation to the unchallenged, undisputed, competency, experience and prior learning of the applicant which the first respondent acknowledged. Ms Dlamini scored 58.03% and was a normal general detective at SAPS Amanzimtoti whereby post 932 was a specialist vehicle investigation /identification post. No valid or fair reasoning existed why Ms Dlamini was short listed, despite being outside her career stream as a normal detective. Mr Keal's evidence that Mr Vezi told them to focus on promoting Black women whilst the fact that Mr Vezi told him that Mr Draai's appointment was "mistakes happen" was never disputed nor challenged by the third respondent. The first respondent did not apply her mind to such evidence and issued an award that was improper, irregular and grossly unreasonable – especially in relation to the above significant patent errors. The first

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respondent, however, paid lip service hereto, despite such evidence placed before her by the applicant, and erred in the performance of her duties and functions, misconstrued the evidence and omitted to consider such material deviation from a fair selection process.

9. The first respondent concluded that the flaws by the third respondent's functionaries were only in relation to the followed procedure. She regarded such procedures to be serious procedural flaws. However, in awarding compensation, despite the serious procedural flaws, she decided that two months compensation for such serious procedural unfairness would be appropriate. Such procedural flaws also impacted directly on the substantive flaws and in awarding only two months compensation cannot be said to be in all circumstances just, proportionate and equitable. In doing so the first respondent committed a gross irregularity and came to a conclusion that was not just and equitable.

10. Mr Vezi could not rationally justify or explain the irrationality in respect of the preferred list. The first respondent rightly identified such as a gross irregularity and irrational justification. However, she committed a reviewable irregularity and reached a decision that a reasonable decision maker could not have reached by not determining a reasonable remedy, as such clearly affected a substantive fair decision.

11. The first respondent misconstrued the evidence further in respect of the preferred list. Had a representativity candidate, Ms Dlamini fallen away, it was clear that the number two candidate on the preferred list ought to have been the next obvious choice. Ms Botha who was number three was on the preferred list not because of gender equity but simply because she scored the second highest. The applicant scored the highest but was placed in the second preferred position after Ms Dlamini was discarded. The Provincial Commissioner sitting on the ratification panel, in exercising his choice from the preferred list had to be exercised in a just, objective, rational and justifiable manner. He or

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she could not merely exercise his or her choice without rational justification.

[10] Various grounds to oppose this matter were traversed by the third respondent, which include the submissions that:

- The applicant alleged that he ought to have been promoted because he was awarded the highest marks by the evaluation panel. However, he further alleged that that the evaluation panel failed to keep a proper record of the evaluations. Consequently, the justification for the allocation of marks was wanting. Since the applicant was evaluated by the same panel, it also casts doubt on the allocation of marks to the applicant. In the circumstances, on this basis alone, the applicant is not entitled to the relief sought.

- The applicant further alleged that when Ms Dlamini was not promoted, he should have been promoted instead of the fourth respondent. The applicant's reasoning in this regard was flawed as the shortlist of the evaluation panel was only a recommendation list and not a promotion list. Accordingly, the discretion of whether to follow the recommendations fell with the Provincial and/or Divisional Commissioner. In the circumstances, the non-appointment of Ms Dlamini did not automatically impose the post on the applicant.

- The applicant further alleged that the evaluation panel was never properly briefed on representativity in SAPS and therefore that it could not properly make an informed decision on the affirmative action criterion. Yet, the applicant conceded that the panel was informed to target females, particularly black females. The applicant argued that in those circumstances, he ought to have been at the top of the short list as affirmative action ought not to have been a criterion and he did obtain the highest score. With this reasoning, the applicant failed to take into account the fact that, should the Provisional Commissioner and/or Divisional Commissioner appointed a person from outside of the designated groups, they would have to submit written reasons to the

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third respondent to explain their failure not promote persons from these groups. Consequently, it is unlikely that the said Commissioners would have appointed the applicant.

- It is not sufficient for a complainant to say that he or she was more qualified by experience, ability or formal education but rather that the employer's decision to appoint someone else was unfair.

- Evidence was led at the arbitration that persons from the designated group of Coloured were underrepresented in the rank of Captain while whites were over represented. Consequently, the promotion of the fourth respondent would advance the objectives of affirmative action.

- In the circumstances, the conclusions reached by the first respondent were both rational and fair. In the premises, the award of compensation was justified.

Evaluation

The condonation application

[11] The applicant has filed an application for condonation for the late filing of the review application. The applicant's review application was lodged some 78 days late. The delay was caused by the difficulty of the applicant in communicating with his trade union officials (SAPU) to review the award and to give a legal opinion on the arbitrator's award and the way forward. The award was communicated to the applicant on 28 November 2012. It became difficult for the applicant to reach his legal representative Advocate Gerber, as most businesses were shutting down during the December and January period. The applicant attempted to reach his union and the legal representative on 30 November 2011 and on 19 December 2011. At the time and due to being a lay person, he was not aware of the requirements of the Court rules with time limits. He left the matter in the hands of his union and the legal representative after giving them instructions. When he became aware of the dilatory manner his matter was handled with, he obtained the assistance of another legal

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representative who specialised in labour matters. He was active in ensuring that his matter was being dealt with. In respect of the prospects of success he relied on a number of cases with similar features as his and it could be argued that the prospects might have some merits. The condonation application was not opposed and would be dealt with together with the review application. The application has some merits.

The review application

[12] The applicant criticised the first respondent by contending that she committed several gross material irregularities by making findings that were not rational or justifiable in relation to the reasons given or the evidence properly before her, which was not the decision that a reasonable decision maker could reach. Further it was submitted that the first respondent misconstrued her functions and duties as an arbitrator, contradicted herself and committed gross irregularities in various identified ways.

[13] Section 145 of the Labour Relations Act[1] on which this application is premised, *inter alia*, states as follows:

> '(1) Any party to a dispute who alleges a defect in any arbitration proceedings under the auspices of the Commission may apply to the Labour Court for an order setting aside the arbitration award….
>
> (2) A defect referred to in subsection (1) means:
>
> (a) that the Commissioner -
>
> (i) committed misconduct in relation to the duties of the commissioner as an arbitrator.
>
> (ii) committed a gross irregularity in the conduct of the arbitration proceedings or
>
> (iii) exceeded the commissioner's powers: or
>
> (b) that an award has been improperly obtained.'

[1] Act Number 66 of 1995.

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[14] The review grounds as outlined in section 145 of the Act are now suffused by the constitutional requirement of reasonableness. In the often cited case of *Sidumo and Another v Rustenburg Platinum Mines (Pty) Ltd and Others*[2] Court, *inter alia*, said that:

> '[106] The *Carephone* test, which was substantive and involved greater scrutiny that the rationality test set out in *Pharmaceutical Manufacturers* , was formulated on the basis of the wording of the administrative justice provisions of the Constitution at the time, more particularly, that an award must be justifiable in relation to the reasons given for it. Section 33(1) of the Constitution presently states that everyone has the right to administrative action that is lawful, reasonable and procedurally fair. The reasonableness standard should now suffuse section 145 of the LRA.
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> [107] The reasonableness standard was dealt with in *Bato Star*. In the context of section 6(2) (h) of PAJA 3 of 2000, O`Regan J said the following :"(A) n administrative decision will be reviewable if, in Lord Cooke`s words, it is one that a reasonable decision-maker could not reach".
>
> [108] This Court recognised that scrutiny of a decision based on reasonableness introduced a substantive ingredient into review proceedings. In judging a decision for reasonableness, it is often impossible to separate the merits from scrutiny. However, the distinction between appeals and reviews continues to be significant.
>
> [109] Review for reasonableness, as explained by Professor Hoexter, does threaten the distinction between review and appeal. The Labour Court in reviewing the awards of commissioners inevitably deals with the merits of the matter. This does tend to blur the distinction between appeal and review. She points out that it does so in the limited sense that it necessarily entails scrutiny of the merits of administrative decisions. She states that the danger lies, not in careful scrutiny, but in "judicial overzealousness in setting aside administrative decisions that do not coincide with the judge`s own opinions."This court in *Bato Star*

[2] [2007] 12 BLLR 1097 (CC) at paras 106-109.

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recognised that danger. A judge`s task is to ensure that the decisions taken by administrative agencies fall within the bounds of reasonableness as required by the Constitution.'

[15] The decision in *Sidumo* was followed and applied in a number of cases including the matter of *Herholdt v Nedbank Ltd*[3] where the Court held that:

> '[25] In summary, the position regarding the review of CCMA awards is this: A review of a CCMA award is permissible if the defect in the proceedings falls within one of the grounds in s 145(2)*(a)* of the LRA. For a defect in the conduct of the proceedings to amount to a gross irregularity as contemplated by s 145(2)*(a)*(ii), the arbitrator must have misconceived the nature of the inquiry or arrived at an unreasonable result. A result will only be unreasonable if it is one that a reasonable arbitrator could not reach on all the material that was before the arbitrator. Material errors of fact, as well as the weight and relevance to be attached to particular facts, are not in and of themselves sufficient for an award to be set aside, but are only of any consequence if their effect is to render the outcome unreasonable.'

[16] The applicant correctly submitted that the short list was the first stage of narrowing the candidates. The preferred list was the final stage whereby the evaluation panel elected the best three suitable candidates in order of preference as their recommendation to the ratification panel. The ratification panel, therefore, usurped the function of the evaluation panel by selecting a candidate from the shortlist instead of utilising the preferred list. This was a non-compliance with the promotional policy, the National Instruction 2/2008. This breach impacted on the procedural fairness. Whether it also affected the substantive fairness is part of the bone of contention.

[17] If the ratification panel has to usurp the role of the evaluation panel, then the evaluation panel serves a role or purpose less than was intended by the National Instruction 2/2008 in selecting and evaluating candidates as it provides for only two options when the ratification panel can deviate from the evaluation panel. Firstly, it is to re-advertise the post or select another

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[3] 2013 (6) SA 224 (SCA); [2013] 11 BLLR 1074 at para 25.

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candidate from the preferred list after consultation.[4] Secondly, it was clear that both panels did not consider or evaluate the fourth respondent's disciplinary record.[5] Thirdly, the employment equity plan was not implemented correctly in selecting, recommending and appointing the fourth respondent. The first respondent realised these discrepancies and dealt with them in her award.[6] She then considered the question whether the appointment of Mr Draai by the third respondent was grossly unreasonable. She considered oral and documentary evidence and conclude that the appointment was grossly unreasonable only to the extent of affecting the procedure followed. She held that the evidence of the third respondent in respect of representativity and a need to address the imbalances of the past called on the application of the equity principles.

[18] Throughout the arbitration proceedings, it remained undisputed that White Males were over represented in the rank of the contested post. In his heads of argument, Mr van *Vollenhoven*, for the applicant, conceded that equity statistics indicated that African males were much more under represented than Coloured Males.[7] There remains no doubt that what the rationalisation panel ought to have done, having disqualified Ms Dlamini, was to re-advertise the post. This is not a case where evidence was led that the applicant possessed any attributes in experience or qualifications that made him stand out better than any White Males who had already been appointed to that rank. There was no need to add another White Male to an already racially imbalanced public service that yenned for transformation. The first respondent saw through all of this, hence her criticism of the procedure followed in an attempt to correct the discrepancy committed in the racial construction of the preferential list. In terms of the equity statistics the names of the applicant should not even have been in the preferential list.

[19] Put differently, had the evaluation panel considered the equity statistics together with the rest of the other considerations in their deliberations post the interviews, the applicant's name would most probably have not featured in the

[4] See clause 12 (h).
[5] See clause 11 (c).
[6] See pages 9 to 12 of the award.
[7] See paragraph 10.3.6.

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preferential list. His complaint is, therefore, very opportunistic. He seeks to rely on an erroneous inclusion of a racial group that was over represented when statistics called for the exclusion of that group so as to level the plain field in the work place.

[20] The applicant has relied on a number of cases in support of this application. Two of those cases are *Minister of Safety and Security v Safety and Security Sectoral Bargaining Council and Others,*[8] where the selection panel recommended a candidate who achieved lower scores than the unsuccessful candidate and the employer failed to advance reasons for such an appointment and this Court confirmed the arbitrators award that an unfair labour practice was committed by the employer (SAPS) and awarded protective promotion. The second case is *Israel Sibiya and Safety and Security Sectoral Bargaining Council and Others.*[9] The Court decided that the third respondent (SAPS) committed an unfair labour practice and to promote the applicant to the rank of captain level 8.

[21] In my view, the two cases are not of any help to the applicant. In applicant's matter and as already pointed out, evidence showed that it was undesirable to promote a White male in circumstances where other racial groupings were largely under represented. The competing interests among the underrepresented groups could not reasonably accrue to the benefit of the applicant. In any event, it is accepted that two wrongs, as perpetrated by the evaluation panel, to give the applicant a false hope, and the ratification panel cannot make a right.

[22] The applicant averred that the evaluation panel failed to keep a proper record of the evaluations as a consequence of which the justification for the allocation of marks was wanting. I must agree with Mr Nicholson for the third respondent that, since the applicant was evaluated by the same panel, it also casts doubt on the allocation of marks to the applicant himself. In the circumstances, on this basis alone, the applicant could not seriously be

[8] [2010] 4 BLLR 428 (LC).
[9] Case No. D961/10, (unreported by Boqwana AJ dated 29 November 2012).

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attacking the very system through which he seeks a promotion. If this ground were upheld, he would not be entitled to the relief that he seeks.

[23] The applicant must consider himself to have been lucky to have been awarded two months compensation as in my view, the compromise of the procedure affected only candidate members of the underrepresented groups and not a White Male. The ground for review based on compensation has no merits. He has prayed for the granting of protected promotion in a post advantageous to both the third respondent and himself. He prayed that benefits be paid to him retrospectively from the promotion date. He has not asked for the unseating of the fourth respondent. In my view, none of the other grounds for review are meritorious. As a matter of fact, this was more of an appeal than a review application. While it is often impossible to separate the merits from scrutiny, it remains essential that the distinction between appeals and reviews should continue to be upheld.

[24] In the circumstances, it is found that the applicant has not succeeded in proving that the first respondent committed any defect as defined in section 145 of the Act and as suffused by the constitutional standard of reasonableness. No unfair labour practice has been shown to have been committed by the third respondent in relation to its reasons for not promoting the applicant.

[25] The following order will issue:

1. Condonation for the late filing of the review application is granted.

2. The review application in this matter is dismissed.

3. No costs order is made.

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Cele J

Judge of the Labour Court of South Africa.

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APPEARANCES:

For the applicant:	Mr S van Vollenhoven
Instructed by:	K Dass Attorneys, Durban.
For the Third Respondent:	Mr W A J Nicholson
Instructed by:	The State Attorney, Durban.

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