REPUBLIC OF SOUTH AFRICA

Of interest to other judges

THE LABOUR COURT OF SOUTH AFRICA,

IN JOHANNESBURG

JUDGMENT

Case no: JS 986/10

In the matter between:

GRETA JOANNE SMART **Applicant**

and

BYTES MANAGED SOLUTIONS, a Division of BYTES TECHNOLOGY GROUP OF SOUTH AFRICA (PTY) LTD **Respondent**

Heard: 01-02 March 2012

Delivered: 29 April 2013

Summary: (Trial – contractual claim short payment of overtime pay and standby allowance - prescription applicable to part of claim – estoppel based on silent representation – no prejudice suffered).

JUDGMENT

LAGRANGE, J

Introduction

[1] This matter concerns a claim for alleged short payment of a standby allowance and overtime to the applicant from March 2001 until July 2010. Ms G J Smart, the applicant, calculated that the total value of the arrear payments amounted to R 628,369-00 during this period. The respondent raised a special plea of prescription in respect of all such claims for the period three or more years prior to the service of the statement of claim on 8 December 2010.

[2] From April 2010 onwards, the applicant sought to rectify what she believed was the short payment of her standby allowance and overtime pay, which culminated in her lodging a formal grievance on 3 June 2010, and thereafter referring the matter to the CCMA before ultimately referring the dispute to this court.

[3] Smart and Mr K Barker (a software developer like Smart), gave evidence on her behalf and Ms D Morris (the HR Manager) and J Van Wyk (a payroll administrator) testified for the respondent.

Material evidence

[4] From 1 May 1995 until 31 January 2001, the applicant worked for the respondent's predecessor in title, National Data Systems (Pty) Ltd, as a full-time employee. In August 2000 the applicant gave birth to twins and her working hours were reduced to 65 hours per month (three hours per day) at an hourly rate of R107-00. From 1 February 2001 until June 2010 the applicant was required to perform standby duty and was paid for such services.

[5] In late 2003, National Data Systems (Pty) Ltd changed its name to Bytes Managed Solutions and in 2005, the company was split into two operating arms, Bytes Specialised Solutions and Bytes Manage Solutions, but later reintegrated again in 2010 under Bytes Managed Solutions, a division of Bytes Technology Group of South Africa (Pty) Ltd. It is common cause that

none of these changes affected the fact that Smart remained employed by the same corporate entity throughout.

[6] The applicant's work was developing software for banking clients and standby work between 17h00 and 22h00 was common because it provided a window when processing was done on the banks' systems.

[7] Smart said that it was common knowledge that the standby rate was half the hourly rate and the overtime rate was one and a half times the hourly rate, except for Sunday work, which was paid at double the hourly rate. In terms of the part-time contract of employment entered into by Smart in February 2001 her total remuneration for 65 hours per month was R8,981-00, which worked out at an hourly rate of R107-00. No specific mention was made of the standby allowance in this contract.

[8] Under cross-examination, Smart initially maintained that the question of the payment for standby duties was discussed at the time of concluding her part-time contract, even though the contract itself made no mention of this or the overtime rate. When pressed further on when the oral agreement on these issues had been reached, Smart conceded that she could not remember when this happened but ever since she joined National Data Systems in 1995 it was a known practice. Morris also testified that when Smart queried her standby allowance in March 2010 she did not mention the existence of an agreement being reached on it.

[9] When the company amended the contracts of employment based on the total cost of employment in March 2003, the clause dealing with working hours and overtime read:

> *"4.1 The employer's normal working hours from 08h00 to 16h30 daily, with a half an hour's break for lunch. Our ever you are required to work 65 hours per month. Commencing employment with the employer your principal place of work will be at the employer's office is situated at Selby. ..*
>
> *4.2 You will be required to work reasonable overtime as may be required of you to fulfil the functions and mandates that are concomitant with your position timeously and effectively. <u>If overtime must be paid in terms of current legislation, it will be</u>*

compensated at the rate governed by the Basic Conditions of Employment Act, 75 and 1997 (BCEA) as amended from time to time."

(emphasis added)

[10] As in Smart's 2001 contract, no mention was made of the standby allowance in the 2003 contract. Smart's evidence was that it was never the case that overtime was to be paid on a different basis if someone was earning above the income threshold stipulated under the BCEA in terms of which overtime provisions in the Act no longer applied. Staffs were informed that they would be paid on the basis of one and half times the ordinary rate and double their ordinary rate for overtime worked during the week and on Sundays respectively. She also maintained that overtime was payable to her for any hours worked in excess of three hours a day, even though there were no documents to support this in the bundle. When she was required to work during standby duty she claimed she was supposed to be paid at overtime rates.

[11] The hourly rates of the applicants' full-time colleagues who received a standby allowance and overtime pay, one of whom was Barker, were calculated on the basis of an hourly rate equal to 80% of an employee's total monthly cost of employment divided by 21.67 days, divided by 8 hours. Expressed differently, dividing 80% of the employee's total monthly cost of employment by 173.36 ordinary working hours yielded the hourly rate to which the standby and overtime factors were applied.

[12] Smart contended that the respondent incorrectly applied the identical formula to determine her hourly rate for the purpose of the standby allowance and overtime pay, which was nothing like her actual hourly rate of pay. According to the applicant, the calculation of her hourly rate that should have been used to determine her overtime pay and standby allowance was 80% of the employees total monthly cost of employment divided by 21.67 days, divided by 3 hours (equivalent to dividing her total monthly cost of employment by 65 hours). The respondent maintains that Smart's hourly rate for the purposes of calculating her standby allowance was correctly calculated on the same basis as full-time employees and

that this was an express term or tacitly accepted by the applicant, whereas Smart maintains that the hourly rate that should have been used was her actual hourly rate.

[13] It was only in March 2010, when a new payroll department took over the processing of her remuneration that Smart says she became aware of the fact that her overtime and standby remuneration were being calculated on the same basis as her full-time colleagues. It was because there was a change in the global amount she normally received that she then saw that the standby allowance and overtime had not been paid.

[14] It was then Smart went back to analyse her previous payslips and pointed out in an e-mail to her supervisor on 12 April 2010 that the 35 and 40 per hour standby rate she was receiving appeared to have been calculated on the basis of approximately 160 hours worked per month as opposed to her 65 hours per month. When she queried this, she was advised that the new payroll administrators were waiting for the standby formula from the previous department. Morris also agreed that when Smart raised the query, the new payroll department did not know what the previous rate was.

[15] When they provided her with the formula, Smart saw that it was calculated on the basis of the full-time working hours and she queried whether the payroll department had not simply been provided with the formula for the full-time staff by the previous department, but she was told that the formula applied to her as well. In an e-mail dated 30 April 2010 she confirmed been advised that the formula used was based on the hourly rate calculated by dividing 80% of the 'total cost of employment' ('TCOE') by the number of hours worked in a month.

[16] Prior to that she had not been aware of the alleged miscalculation because she had never been provided with the formula used in the calculation. Smart agreed though that with the information at her disposal she could have raised a query about the precise formula used at any time prior to March 2010, but stressed that she did not do so because she had no reason to believe anything was being done incorrectly.

[17] On 11 May 2010 the HR department responded to her queries. Firstly, the respondent denied that her standby allowance and overtime pay had been incorrectly calculated and that she had never questioned either rate over a period of seven years. Further, the letter asserted that the standby allowances “are set using a formula of 80% of your monthly salary divided by 21 divided by eight." Moreover, the letter asserted that the formula was not amended for employees who do not work a full day such as herself, and this was the same basis on which her standby allowance and overtime were calculated when she was employed by Bytes Specialised Solutions. The letter further stated that it was incorrect for Smart to calculate her overtime in accordance with section 10 of the Basic Conditions of Employment Act because that provision was not applicable to her as she earned in excess of the earnings threshold applicable under the Act.

[18] Despite this seemingly unequivocal response from the company on 12 May 2010, Mr B Lourens, who was designated to deal with the standby question, directed a query to Smart about the standby arrangements between the company and herself. In her e-mail response on the same day, Smart explained the basis for the standby arrangement which lay in the maintenance contract the firm had with Nedcor. She also apparently attached a roster showing that standby hours were from 4:30 PM to 10 PM during the week and from 8 AM to 4:30 PM on Saturdays, and confirmed that the five employees who worked standby were told that they would be paid 50% of their hourly rate for standby duty. One of those employees was Barker.

[19] In an e-mail response of 13 May 2010 to the firm’s rejection of her claims, Smart explained why she had not raised a query earlier. She questioned why the standby rate did not appear to be calculated on her hourly rates of pay when staff had been told previously when agreeing to do standby that it would be paid at half the hourly rate of pay. In passing it should be noted that in respect of a full-time employee the formula for the standby allowance would have been based on their hourly rate of pay. She also pertinently asked Morris to explain that if the standby rate applied to her was not based on her hourly rate of pay, what was the purpose of using

the figures '21'and '8' in the formula. Morris agreed that she had never applied directly to this probably because she had already explained it when she had met with Smart previously. When pressed on why she did not answer her request for clarification she said that she thought perhaps it was 'a rhetorical question'.

[20] Morris defended the company's use of the formula on the basis that it was not designed for 'exceptions" - clearly an implicit reference to Smart - but for the norm. In passing, it should be mentioned that this rationale does not sit comfortably with the employer's other claim that the calculation of the applicable hourly rate took account of Smart's opportunity to do freelance work, which her full-time colleagues did not enjoy.

[21] On Smart's version the effect of applying the formula for the calculation of the standby allowance used for full-time staff to her was dramatic because it meant that she would be receiving one third of what her full-time colleagues received. Clearly, if her hourly rate for the purposes of the standby allowance was calculated on the basis of an eight hour working day instead of a three hour working day, the hourly base rate for calculating her standby allowance would be that much lower. If the applicant was correct it would also mean that since 2001, she had received approximately two thirds less standby remuneration than she ought to have received. Despite such an appreciable discrepancy, Smart says that she never realised there was anything wrong with her remuneration because she had expected a drop in her take-home pay as a result of moving on to working on a part-time basis and she simply collected her pay slips every five or six months and filed them away. When she had been employed full-time her monthly remuneration was about R10,000-00, which dropped to approximately R3,000-00 when she moved to part-time work. She took this to be correct because she had no reason not to trust the company and was too preoccupied with her new twins to verify her payslips. However, she did concede she could have done so. She agreed also that she could have checked her pay slip when the company changed to the TCOE basis of determining remuneration in 2003, but that change did not alter the basis on which overtime and standby hours were remunerated. When she received annual increases

she saw no reason to check her payslips because an increase of a few hundred rand per month 'did not make much difference'.

[22] Morris was asked to respond to a suggestion made by Barker in his evidence that the previous payroll department had simply made an error in the calculation of Smart's hourly rate, but all she would say was that they simply applied the formula which the previous department had implemented. However, she did venture the opinion that it was unlikely that the error would have continued for 10 years bearing in mind that the HR and payroll departments were audited twice a year. Later, in her testimony it was put to her that the explanation provided by the company for the formula applied to Smart was simply a ruse to excuse the company from liability for a mistake it had made in administering payroll. Her response to this proposition was to say was that the formula applied to Smart that was the one that had been handed down by the previous payroll department and that she could not say it was a mistake in Smart's case.

[23] Morris testified that when Smart's actual hourly rate for the purposes of standby and overtime pay became the basis of her payment for those allowances from August 2010, that was simply a result of the re-alignment of all standby rates on a uniform basis following the reintegration of Bytes Specialised Solutions and Bytes Managed Solutions in 2010: it was not in order to 'rectify' an incorrect formula which had previously applied to Smart.

[24] Further on in her testimony, Morris was asked why she did not confirm the new formula that would apply to the calculation of Smart's standby allowance from August 2010 going forward, when Smart asked her to do so. The new formula going forward was the same basis of calculating her hourly rate that Smart contended should have been applied in the past, namely that her standby allowance would be calculated with reference to her actual hourly rate based on her 65 hour month, rather than an artificial figure based on the hours of full-time staff. Morris's curious explanation for not confirming what she had been asked to confirm was: "I did not see why I had to add another calculation when she has already put that down."

[25] Morris confirmed that the company was not prepared to redress the 'incorrect payment' of Smart's overtime prior to that because they had told Smart the matter was closed. She further conceded that the calculation received from the previous payroll department was incorrect and she could not explain how it had come about, nor why Smart had never queried it for so long. Van Wyk, who had been responsible for processing Smart's standby payments in 2001, said that the rate applied to her had not been a mistake because she acted on instructions. She also maintained that it was not possible that a mistake had been made when Smart became a part-time employee in 2001, because in 2003 when the company moved to a TCOE basis the same formula still applied. Van Wyk mentioned that another check in the system was that before the payroll was sent to the bank it would be checked by the Financial Manager.

[26] Before the new payroll administrators took over in 2010, Smart's payslip had simply reflected the number of hours worked on standby and the 50% rate but the method of calculation was not set out in the payslip. Thus, her payslip dated 25 July 2001 detailed her earnings in the following way:

EARNINGS		
Description	**Days/hours**	**Amount**
Cash component		7000.00
Overtime 1.5	19.00	1150.28
Overtime 2.0	4.00	323.03
Overtime .5	145.00	2927.43
Cell allowance		400.00
Total earnings		11801.24

[27] Under cross-examination, it was pointed out to Smart that her payslip reflected the overtime and standby hours and the amount paid for each. Smart do not dispute this and agreed that every now and then she would glance at her payslips to see if the number of hours due had been captured. She also agreed that she knew what her hourly rate was, but insisted that even though she was aware that the standby rate was 50% of the hourly rate she was not aware of the formula that was used. Smart conceded that she could have checked the calculations previously but retorted that even if she had discovered the problem in 2003 the company would have given the same response it gave in 2010. Morris also confirmed that it would have been possible for Smart to work out the basis of the standby and overtime payments from the information available on her payslip.

Evaluation

The determination of the applicant's overtime pay and standby allowance prior to August 2010

[28] There is no dispute that before Smart worked on a part-time basis, the determination of her standby allowance was on the same basis as the other full-time employees providing the same services to the employer's banking clients. That formula used in the employee's basic hourly rate of pay which was then multiplied by a factor of 1.5 or 2 in the case of overtime pay and 0.5 in the case of the standby allowance. This formula remained essentially the same when the company moved to a TCOE measure of monthly remuneration in 2003. All that changed then was the basis for calculating an employee's gross monthly remuneration.

[29] The evidence of whether the formula had been confirmed in discussions with the affected staff was vague, but no witness for the employer denied that such discussions might have taken place. What is not really in dispute is that it was a well-established practice and was applied consistently over a number of years. Any dispute over an entitlement to overtime pay or payment of a standby allowance would have been determined by

reference to the formula. The essential dispute between the parties is whether it was an essential feature of the policy that these rates would be calculated with reference to an employee's actual hourly rate of pay, or only with reference to an hourly rate of pay calculated on the basis of the hours of a full-time employee powers, irrespective of whether an employee worked full-time or part-time.

[30] The part-time contract Smart concluded in 2001 made no express mention of the formula that could be used to calculate her standby and overtime payments in the future. Accordingly, it is of no direct assistance in determining the central issue in dispute. Indirectly however, given that Smart continued to receive a standby allowance and overtime pay, it is reasonable to suppose that the parties did not intend any variation in the existing arrangements governing those items. Of course, this still leaves a question mark over what the existing norm was. The company maintains that because Smart would notionally have had the opportunity to perform freelance work, which was something full-time staff could not have done, her hourly rate of pay for the purposes of overtime and standby duty, was effectively reduced by basing the calculation on the hours of a full-time employee rather than her actual basic hours of 65 hours per month.

[31] The effect of applying the calculation in this form meant that whereas a full-time employee would earn three times wages for every six hours on standby duty, Smart would only earn two hours wages, and for every three hours overtime worked a full-time worker would earn 4 1/2 hours overtime pay but for the same time worked Smart would only earn one and a half hours overtime pay. The idea that an employee earns overtime pay which paid less than an ordinary rate of pay stands the commonsense notion of overtime remuneration on its head, irrespective of whether the Basic Conditions Of Employment Act rates of overtime were applicable or not. It is an extraordinary proposition that an employee is paid for hours worked over and above the basic, is at a rate lower than the basic remuneration. The more probable explanation for Smart is reduced rate of remuneration was that when she moved from a full-time to part-time position no adjustment was made in the formula for standby and overtime pay to take account of the fact that her normal hours of work had been reduced.

[32] Understandably, when the potential implications of the error became apparent to Smart and the employer, the respondent was reluctant to concede that such a financially significant error had occurred and sought some way to justify the anomalous situation. On the balance of probabilities, I am satisfied that it was more probably a calculation error by the payroll department which was the cause of the reduction of Smart's standby and overtime rates rather than a deliberate policy choice to adjust her standby hours allowance and overtime rates downwards to take account of the opportunity she had to do freelance work, which might not have materialised.

Prescription

[33] Nonetheless, this does not mean that Smart is entitled in law to claim the shortfall at any time in the future as and when she became aware of it. I accept that, pre-occupied as she was with looking after twins and expecting a reduction in her remuneration roughly commensurate with the reduction in her basic hours, it might not have been obvious to her on casting an eye over her payslips that she was being short paid on the overtime pay and standby duty.

[34] Clause 12 (3) of the Prescription Act 68 of 1969 ('the Prescription Act') states:

> *"A debt shall not be deemed to be due until the creditor has knowledge of identity of the debtor and of the facts from which the debt arises: provided that a creditor shall be deemed to have such knowledge if he could have acquired it by exercising reasonable care."*

(emphasis added)

[35] In this instance, Smart conceded that with the information available on her pay slip she could have determined if the hourly rate of pay used for her overtime and standby remuneration was the same as her actual hourly rate of pay. Even if she had not conceded it, arithmetic logic dictates that Smart had the means at her disposal to work these figures out. Consequently, she had the deemed knowledge which is sufficient for the

activation of clause 12 (3) of the Prescription Act. Accordingly, even though I accept that Smart probably did not actually realise she had been short paid until March 2010, in terms of section 11(d) of the Prescription Act all amounts due three years prior to her demanding payment of the debt when she referred this dispute to court had prescribed.

Estoppel

[36] Apart from a plea of prescription, the respondent also raised an alternative claim that by not raising a query about her standby and overtime rates, Smart made a representation to it that her standby and overtime allowances were correctly paid and therefore she was now estopped from claiming the contrary. In ***Aris Enterprises (Finance) (Pty) Ltd v Protea Assurance Co Ltd*** **[1981] 4 All SA 238 (AD)** Corbett JA, succinctly stated the doctrine of estoppel in the following terms :

> *"The essence of the doctrine of estoppel by representation is that a person is precluded, ie estopped, from denying the truth of a representation previously made by him to another person if the latter, believing in the truth of the representation, acted thereon to his prejudice (see Joubert The Law of South Africa vol 9 para 367 and the authorities there cited). The representation may be made in words, ie expressly, or it may be made by conduct, including silence or inaction, ie tacitly (ibid para 371); and in general it must relate to an existing fact (ibid para 372)."*[1]

[37] The leading case on the defence of estoppel based on a representation arising from silence or inaction on the part of a party is ***Resisto Dairy (Pty) Ltd v Auto Protection Insurance Co Ltd*** **1963 (1) SA 632 (A)**. In that matter in terms of a motor vehicle insurance policy the insurer (the respondent on appeal) had undertaken to indemnify Resisto Dairy (the appellant) in the event of an accident caused by or through or in connection with it's vehicle against all sums which the appellant should become legally liable to pay in respect of (ii) damage to property. On receipt of a claim by a third party, the insurer had repudiated liability by

[1] At 246-247

reason of an alleged failure on the part of the insured dairy to notify it as soon after the occurrence of any accident or loss or damage and in the event of any claim. The dairy did not know if the third party claimant was going to hold it liable and did not notify the insurer of incident for nearly two years. However, as soon as the claim was made, the dairy immediately notified the insurer. The insurer then delayed for seven months before it decided to rely on the breach of the notice condition and repudiate liability to indemnify the dairy for the claim. The trial Court held the insurer was entitled to repudiate liability despite its delay in responding. On appeal, the SCA found that the insurer should have notified the dairy as soon as it received the claim whether or not it was accepting liability to indemnify the dairy, and its silence in those circumstances constituted a representation to the dairy that it had accepted liability and was dealing with its claim. Hoexter, JA, for the court expressed the central issue in the case and the governing legal principle thus:

> *" (W)hatever may have been the real intention of the respondent, its silence and inaction towards the appellant for so long a period constituted a representation that it had accepted liability and was dealing with the appellant's claim in terms of ... the conditions of the policy. It will be appropriate to quote what Spencer-Bower Estoppel by Representation p. 60, has to say about representation by silence or inaction:*
>
> *'75. The main condition subject to which alone silence or inaction counts as a representation is that a legal (not a mere moral or social) duty shall have been owed by the represent or to the representee to make the disclosure, or take the steps, the omission of which is relied upon as creating the estoppel. The theory is this. The parties to a transaction are entitled to assume, as against one another, omnia rite esse acta; each of them is entitled to suppose that the other has fully discharged all such obligations (if any) of disclosure or action towards himself as may have been created by the circumstances. If, therefore, he received from that other no intimation, by language or conduct, of the*

existence of any fact which, if existing, it would have been the latter's duty, having regard to the relation between them, the nature of the transaction, or the circumstances of the case, to reveal, he has legitimate ground for believing that no such fact exists, or that there is nothing so abnormal or peculiar in the nature of the transaction, or in the circumstances of the case, as to give rise to any duty of disclosure, and to shape his course of action on that assumption; in other words, he is entitled to treat the representor's silence or inaction as an implied representation of the non-existence of anything which would impose, or give rise to, such a duty, and, if he alters his position to his detriment on the faith of that representation, his represent or is estopped from afterwards setting up the existence of such suppressed or undisclosed fact. The terms, 'lying by', 'standing by', 'acquiescence', 'waiver', 'laches' and 'encouragement', are often used, in preference to 'estoppel', for the purpose of enunciating and justifying the rule under discussion; but it is really one and the same doctrine which is the subject of these terminological variants.'

The representation in the present case caused prejudice to the appellant by lulling him into a false sense of security. The appellant believed, and justifiably believed, that the respondent was dealing with its claim in terms of ... the conditions of the policy and the appellant itself therefore made no attempt to investigate or to prepare a possible defence or to attempt a reasonable settlement. After the lapse of seven months it was suddenly and unexpectedly faced with the problem of dealing with the summons itself."[2]

[38] In *Resisto* the insurer's inaction caused the insured dairy actual prejudice in defending the claim against it. In this matter, the respondent seeks to rely on an implied representation made by Smart that she accepted the

[2] At 642G-643D

payment regime that was applied to her because she could reasonably have been expected to complain about it if she did not accept it. However, the respondent's fundamental difficulty with a defence based on estoppel is that even if it had supposedly relied on Smart's silent representation that all was well, ignoring for the purposes of this alternative claim its strenuous denials that there had been any error in the formual applied to her, what prejudice did it suffer as a result? This is not a case in which the respondent acted to its disadvantage in consequence of Smart's silence on the error. The only party who was disadvantaged by the error was Smart by being underpaid.

[39] In consequence, the respondent's alternative defence based on estoppel must fail.

Conclusion

[40] In the light of the findings above, I am satisfied that the applicant ought to have been paid her standby and overtime remuneration based on her actual hourly rate rather than an hourly rate determined using a full time employee's ordinary hours of work. However, because of the operation of extinctive prescription under the Prescription Act, the respondent is only liable to pay the applicant the difference between what she received for standby hours and overtime worked for the period commencing 8 December 2007 and ending on 30 June 2010.

[41] The parties did not lead evidence on the question of the quantum, though the applicant had provided the respondent with a breakdown of the calculation of her claim. In case the parties are unable to agree the same, the matter may be referred back to this Court as set out in the order below.

Costs

[42] This is simply a contractual claim, and there is no reason why the costs should not follow the result. As the applicant has been successful on the essential question of the respondent's liability for the underpayments even though the value of her claim will be reduced by the effect of prescription, the applicant should not be denied her costs.

Order

[43] It is declared that prior to 1 August 2010, the respondent was obliged to pay the applicant for hours on standby duty and overtime hours worked according the following formulas:

43.1 Overtime hourly pay = 1.5 x (80 % of applicant's total monthly cost of employment) /65

43.2 Standby duty hourly pay = 0.5 x (80 % of applicant's total monthly cost of employment) /65

[44] The applicant's claim in respect of the rates stipulated in paragraph [43] above has prescribed in respect of amounts due before 8 December 2007.

[45] The respondent is ordered to pay the applicant the difference between the actual payment made to her for being on standby duty and for overtime worked and what she would have received had the formulas in 44.1 and 44.2 being applied, for the period commencing 8 December 2007 and ending 31 July 2010.

[46] The parties are directed to seek consensus on the amount due to the applicant in terms of paragraph [45] above within 15 days of the date of this order, and any amount so agreed upon in writing must be paid to the applicant within 15 days thereafter, unless the parties agree in writing to extend the payment period to another specified date.

[47] In the event the parties are unable to agree on the amount due to the applicant in terms of paragraph [45] above, either party may refer the determination of the amount to this Court, subject to such directions the Court might make as to the procedure to be adopted.

[48] The respondent must pay the applicant's costs.

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R LAGRANGE, J

Judge of the Labour Court of South Africa

APPEARANCES

APPLICANT: S Hardie, Attorney

FIRST RESPONDENT: D Short of Fairbridges Attorneys