IN THE LABOUR APPEAL COURT OF SOUTH AFRICA, JOHANNESBURG

Reportable

Case no: JA 20/2020

In the matter between:

SASOL MINE LIMITED **Appellant**

and

PAULOS NHLAPO AND 941 OTHERS **First Respondents**

VICTOR MABUYAKHULU **Second Respondent**

PETRUS LEMOANE AND 7 OTHERS **Third Respondents**

Heard: **24 March 2021**

Delivered: **09 September 2021**

In view of the measures implemented as a result of the Covid-19 pandemic, this judgment was handed down electronically by circulation to the parties' representatives by email on 09 September 2021.

Coram: Waglay JP, Savage AJA and Molefe AJA

JUDGMENT

MOLEFE AJA

Introduction

[1] This appeal is against the judgment and orders of the Labour Court (Lagrange J) delivered on 17 September 2019, which found the dismissal of a number of the respondent employees to be substantively unfair and ordered their reinstatement.

[2] Despite not raising any cross-appeal, the respondents asserted in their heads of argument and persisted in argument before this Court that the conduct of the respondents did not satisfy the requirements of a strike. Since the appellant had been provided with no opportunity to answer to this contention it was afforded the opportunity to file a supplementary note on the issue. The parties were also invited to attempt to resolve the matter between themselves, with the Court informed on 25 April 2021, that no such resolution had been possible.

Background

[3] From 21 January 2009 until the afternoon of 23 January 2009, approximately 950 of the appellant's employees (the respondents) engaged in an unprotected strike action across 10 underground shafts of the appellant's coal mining operations near Secunda in Mpumalanga. The unprotected strike was planned and well-coordinated, comprising of a sit-in held underground over a two-day period.

[4] The respondent employees claimed that the appellant had provoked the unprotected strike action by its failure to make the so-called "bonanza" payments of approximately R9000.00 to each employee by January 2009. The appellant denied that any such payments were agreed and contended that employees had been informed that a 6.5% increase and a further 0.5% annual service increment

would be paid in January 2009, there is no dispute that these amounts were paid to employees.

[5] Dissatisfied with the January 2009 payments, employees declared an internal dispute with the appellant on 16 January 2009. Since a prior dispute regarding the issue had already been declared and the agreed dispute procedure commenced, the appellant indicated that the dispute was not competent and sought the intervention of the United Peoples' Union of South Africa ("UPUSA"), the union to which the striking workers belonged. The union refused to intervene. The Local Shop stewards' Council ("the LSC") then sought permission from the appellant for employees to march to the appellant's Secunda head office. Permission was refused on the basis that the LSC had not complied with the recognition agreement and remedies available in terms of it. Nevertheless, two marches took place on 19 January 2009 as a result of which the appellant sought to meet with the LSC. Members of the LSC attended but refused to allow the meeting with the appellant to commence while the appellant's labour relations manager for the Secunda area remained present. The appellant rejected this demand as unreasonable and the LSC members left the meeting. Thereafter the appellant suspended the members of the LSC from duty for inciting unprotected industrial action in the form of the marches, which had taken place during working hours.

[6] After the unprotected strike action commenced on 21 January 2009, employees refused to communicate with the appellant and would only be addressed by the suspended members of the LSC. On 22 January 2009, a first ultimatum was issued in which it was stated that the respondents had embarked on an unprotected industrial action and calling on them to halt such conduct. A second ultimatum was issued on the afternoon of 22 January 2009, with a third issued on the morning of 23 January 2009 instructing the respondents who had finished their shift to cease their unprotected strike and return home.

[7] After these ultimata were ignored, the appellant met with UPUSA local officials who called on striking employees in an urgent notice not to align themselves with the unprotected industrial action, which had been caused by "lies" regarding the wage gap. This notice warned that their action constituted a breach of mine

health and safety rules and cautioned employees that a similar incident in January 2007 had led to dismissals.

[8] Safety teams were restricted by strikers from undertaking three-hourly safety patrols necessary to monitor methane build-up underground to avoid underground explosions, potential flooding and rockfalls. The appellant suffered significant economic harm in consequence of the underground strike which necessitated the halting of mine production at 10 shafts over multiple shifts, with all operations and production halted for several days and only capable of resumption days after the strike had ended. In addition, it resulted in alternative coal for use in the appellant's continuous oil production facilities, having to be sourced. On 23 January 2009, the appellant obtained an urgent order from the Labour Court interdicting the unprotected strike.

[9] Following the conclusion of the strike, those employees who had participated were suspended from duty and faced disciplinary action relating to their participation in the strike, with a number of employees also charged with assault, intimidation and causing damage to the appellant's property. Approximately 20 different independent chairpersons conducted a number of internal disciplinary hearings which resulted in disciplinary action being taken against 936 employees. Of these employees, 636 were dismissed from their employment with the appellant, with the dismissal of 636 employees upheld on appeal.

[10] Aggrieved with their dismissals, the respondents referred an unfair dismissal dispute to the Commission for Conciliation Mediation and Arbitration ("the CCMA") for conciliation, which was unsuccessful, and thereafter to the Labour Court for adjudication. The evidence before the Labour Court was that the strike had affected 10 shafts across four of the appellant's mines. The respondent employees were identified as having participated in the strike in one of a number of different categories:

10.1. *Category 1* (Night shift 22:00-08:00) - employees on the night shift of 21 January 2009. These employees performed their duties from 22:00 on 21 January 2009 to 08:00 on 22 January 2009, and commenced

an underground sit-in after their shift until they surfaced in the afternoon of 23 January 2009;

10.2. *Category 2* (Morning shift 07:00-17:00) - employees of the morning shift of 22 January 2009. These employees joined the underground sit-in from 17:00 on 22 January 2009 after their shift until they surfaced in the afternoon of 23 January 2009;

10.3. *Category 3* (Afternoon shift 16:00-02:00) - employees of the afternoon shift of 22 January 2009. These employees planned to, but were not able to join the underground strike as the employer cancelled their shift in consequence of the strike. These strikers refused to disperse and remained on the surface at the employer's premises in support of the category 1 and 2 strikers until they surfaced on 23 January 2009;

10.4. *Category 4* - employees stationed in the appellant's offices on the surface (e.g. full-time safety representatives, surveyors, general workers). These employees joined the cause and remained on the surface at the employer's premises in support of the category 1 and 2 strikers underground. They did not heed the appellant's instruction for them to return home until 23 January 2009 when the category 1 and 2 strikers surfaced; and

10.5. *Category 5* - shaft cage (lift) drivers or operators who were not able to participate underground but joined the cause and remained on the surface at the employer's premises in support of the category 1 and 2 strikers underground. They did not heed the appellant's instruction to go home until 23 January 2009 when the category 1 and 2 strikers surfaced.

[11] A sixth category of employees was identified, which is not the subject of this appeal, being those employees stationed as Sasol Coal Supply (CSS), who joined the cause and remained on the surface at the employer's premises in support of the category 1 and 2 strikers underground. These employees heeded the appellant's instruction to return home and were issued with final written warnings valid for four months instead of being dismissed.

Judgment of the Labour Court

[12] The matter was argued in the Labour Court in 2018, almost a decade after the respondents' dismissals, with judgment delivered in 2019. The Court found that the appellant had not been required to make a "bonanza" payment to the respondents, that the LSC had failed to correct the mistaken view of the respondents that they would receive such payment and that they may have misrepresented to the respondents that such payment would be received.

[13] It was noted as common cause and as having been conceded by the respondents' legal representatives during the course of the trial that the industrial action embarked upon by the respondents amounted to a strike. The Court found that the strike was pre-planned and reckless, with no attempt made by the striking employees to adhere to the provisions of the recognition agreement or the Labour Relations Act ("the LRA"). The LSC was found to have been involved in the planning and co-ordination of the strike. Serious breaches of mine safety procedures occurred during and as a result of the unprotected strike which placed the health, safety and wellbeing of numbers of employees at risk, with some employees held underground against their will, threatened, physically attacked and harmed by certain of the respondents. This while the respondents barred the appellant from serving and reading out ultimata issued calling for the unprotected strike to end.

[14] Although the Court accepted that the appellant had contacted UPUSA, that the LSC had "torpedoed" the appellant's attempts to engage with it and the respondents had refused to engage with the appellant, it was found that the appellant had made no *bona fide* attempt to end the strike as soon as possible by engaging with local shop stewards.

[15] Furthermore, the Court found that historical inconsistency existed in that despite evidence put up that following an unprotected strike from 23 to 25 December 2007, the appellant dismissed employees who had participated in a four-day aboveground unprotected strike in December 2006 employees received a final written warning.

[16] For these reasons the Labour Court found that the sanction of dismissal was unnecessarily severe and that the dismissals were, in consequence, procedurally fair but substantively unfair, with the respondents reinstated into their employment with the appellant. It was ordered that those employees who elected not to be reinstated should receive twelve months' compensation.

On appeal

[17] The appellant appealed against the judgment and orders of the Labour Court contending that the Labour Court had erred in finding that the appellant had failed to attempt to engage with the LSC when the evidence showed the contrary and the finding contradicted the Court's own findings. This included that the LSC had "torpedoed" the appellant's attempts to engage with it; had misrepresented to the respondents that they would receive a bonanza payment; had caused the unauthorised marches to occur on 19 January 2009; had been present and involved at the meeting planning the underground strike; and had been in telephonic communication with the strikers underground during the course of the strike until a Labour Court's interdict was obtained. It is in this context that it was argued that it is difficult to conceive how engagement with the LSC would have altered the course of the strike.

[18] As to the Court's finding of historical inconsistency, it was argued that the respondents had failed to put up any evidence of such inconsistency, with no witnesses testifying on the issue. The December 2006 aboveground strike, in being located at one building over four days did not interrupt production, differed markedly from the January 2009 underground strike, which violated several mine health and safety regulations which the December 2006 strike did not. There were no identifiable grievances in the January 2009 strike, with no entitlement on the part of the respondents to any "bonanza" payment. In addition, there was no evidence that the respondents were operating under the expectation that a practice had been established that unprotected strikes, particularly an underground strike in a coal mine, did not carry with it the possibility of a sanction of dismissal. For these reasons the appellant sought that the appeal succeeds and that the dismissal of the respondents be found to be procedurally and substantively fair.

[19] The respondents opposed the appeal submitting that the Labour Court had correctly found that historical inconsistency existed in relation to category 3 to 5 respondents who like those employees who participated in the 2006 strike remained aboveground while recognising that the conduct of category 1 and 2 respondents who had remained underground, with resulting safety concerns causing the appellant to halt production, was distinguishable from that of employees in the 2006 strike.

[20] The respondents argued that the finding that the LSC had torpedoed management's attempts to engage with them referred to what transpired prior to the suspension of the LSC and that the Labour Court correctly concluded that the appellant had failed to communicate with individuals from the LSC who could have persuaded the category 1 and 2 respondents to surface. Furthermore, the Court cannot be faulted for finding that historical inconsistency existed given that the two strikes were markedly different as with the 2006 strike, a number of respondents were not underground.

[21] In addition, without raising a cross-appeal, the respondents submitted that the Labour Court had erred in not determining whether the legal concessions made by the respondents' legal representatives that the respondents had engaged in a strike were correctly made; and that, because the concessions were wrong, they were not binding on the Court.[1] It was argued that category 1 and 2 respondents could not have embarked on a strike by refusing the instruction to return to the surface after completing their shifts, as the instruction and refusal must be given during work or during their shift and the appellant's instruction was given after the shift.[2] Furthermore, it was contended that there was no evidence that any of the respondents had refused, retarded or obstructed work with the result that no strike could be said to have occurred; and, it was submitted with reference to paragraph 402 of the judgment, the Labour Court failed to make a finding that their conduct amounted to a strike.

[1] With reference to Electoral *Commission of South Africa v Speaker of the National Assembly* 2018 JDR 2059 (CC) at para 79.
[2] With reference to *Association of Mineworkers and Construction Union & others v AngloGold Ashanti Limited* (2016) 37 ILJ 2320 (LC) para 185.

[22] In its supplementary note filed on the issue, it was argued for the appellant that the evidence had patently shown that the respondents had engaged in an unprotected strike by withholding their labour in circumstances in which they were not permitted to do so and that as much had, correctly, been found to be the case by the Labour Court.

Evaluation

[23] A judgment or order cannot as a general rule be varied against an appellant to its prejudice, in the absence of the necessary cross-appeal by the respondent.[3] There are compelling reasons why this is so, including ensuring that the playing fields in the context of an appeal are levelled, that parties are aware of the issues that are in dispute between them and provided with an appropriate opportunity to answer to such issues. This also prevents litigation by ambush, which is neither fair nor permissible in our legal system.

[24] Although the respondents failed to raise a cross-appeal in this matter and in their heads of argument filed after those of the appellant, for the first time disputed that the Labour Court had found that their conduct had constituted a strike, this Court took the view that it was appropriate to allow the issue to be properly ventilated. This was so given that the substantive fairness of the respondents' dismissals was already before this Court.

[25] From the judgment of the Labour Court, it is apparent that the Court took account of the fact that the respondents' legal representatives had conceded during the course of the trial that the respondents had engaged in an unprotected strike and the trial proceeded on that basis. On appeal, the respondents contend that that the Court erred in not determining whether such legal concession was correctly made, and because the concession was wrong, it was not binding on the Court.[4]

[3] *Standard Bank of SA Ltd v Stama* (Pty) Ltd 1975 (1) SA 730 (A) 746E.
[4] *Matatiele Municipality v President of the Republic of South Africa* [2006] ZACC 2; 2006 (5) SA 47 (CC); 2006 (5) BCLR 622 (CC) at para 67.

[26] Quite apart from the concession made, the Court of its own accord undertook a careful analysis of what constitutes a strike as defined in section 213,[5] with reference to section 68(5) of the LRA, read with items 6 and 7 of the Code of Good Practice and repeatedly referred to the respondents' conduct as constituting a strike. The reliance by the respondents on one paragraph of the judgment in isolation in an attempt to prove the contrary is unfounded. The Court had regard to the sit-in both underground and above ground and found that the respondents' conduct across all categories amounted to participation in the same unprotected strike. This finding was supported by the evidence which indicated that the respondents had withheld their labour and refused to work for the purpose of remedying a grievance or resolving a dispute in respect of any matter of mutual interest in circumstances in which they were not lawfully entitled to do so.[6] From the evidence, it was apparent that those who remained on the appellant's premises after their shift, after having been instructed not to do so, had retarded or obstructed work through their physical and intentional conduct even though off-duty and that by so doing they too had participated in the unprotected industrial action.[7] As much was made clear in *Association of Mineworkers & Construction Union & others v AngloGold Ashanti*[8] where the court held that in certain circumstances, a failure to obey a lawful instruction amounts to strike action. The fact that the appellant immobilised machinery as a result of the strike did not alter the fact that the respondents had participated in the action.

[27] The evidence placed before the Labour Court clearly proved that the respondents engaged in an unprotected strike and that the Labour Court correctly found as such.

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[5] A strike is defined in section 213 of the LRA as: '…the partial or complete concerted refusal to work, or the retardation or obstruction of work, by persons who are or have been employed by the same employer or by different employers for the purpose of remedying a grievance or resolving a dispute in respect of any matter of mutual interest between employer and employee and every reference to "work" in this definition includes overtime work, whether it is voluntary or compulsory.'

[6] See *Transport & Allied Workers Union of SA obo Ngedle & others v Unitrans & Chemical (Pty) Ltd* (2016) 37 ILJ 2485 (CC) at para 106.

[7] John Grogan, workplace Law 12ed (Juta 2017), page 406.

[8] (2016) 37 ILJ 2320 (LC) at para 185.

Contact with LSC

[28] Turning to the substantive fairness of the dismissals of the respondents, item 6(2) of Schedule 8 requires the employer, in the context of a strike, at the earliest opportunity, prior to dismissal, to contact a trade union official to discuss the course of action it intends to adopt. In addition, the employer is required to issue an ultimatum in clear and unambiguous terms that should state what is required of the employees and what sanction will be imposed if they do not comply with the ultimatum, with the employees allowed sufficient time to reflect on the ultimatum and respond to it, either by complying with it or rejecting it. Where the employer cannot reasonably be expected to comply with these steps, item 6(2) permits such steps to be dispensed with.

[29] There is no dispute that the appellant contacted UPUSA, being the union of which the respondents were members, and secured a letter from its local official calling on the respondents to halt their unprotected strike. It was apparent that the appellant was in contact with members of the LSC, despite their suspension from duty, since the respondents refused to communicate with the appellant. The evidence showed that the LSC had been party to planning the strike. The evidence supported the Labour Court's finding that the LSC had "torpedoed" efforts made by the appellant to resolve workplace issues, after defying the appellant's refusal to consent to marches proceeding. Since LSC members had been suspended due to their conduct which had evidenced their refusal to discuss issues with the appellant, the appellant was confronted with local labour representatives who were unwilling to discuss issues with their employer. This placed the appellant in a difficult position.

[30] There was however no dispute that the appellant had before the strike attempted to meet with the LSC and that the LSC was aware after the strike had commenced that various ultimata had been issued by the appellant in which the serious consequences of embarking upon and continuing with strike were set out. The Labour Court recognised that the LSC, the members of which were lawfully suspended, were in telephonic communication with the underground

strikers and intervened when the interdict was granted and that the appellant was faced with strikers who were 'heedless' to management's attempts to engage, and a 'cavalier' LSC who had already 'torpedoed' attempts to engage in consultation. The purpose of the employer's obligation to contact the union is to enable the union to advise its members on the course of action that the employer intends to adopt, thus allowing employees an opportunity to consider their position and making a rational decision.[9].

[31] The ultimata issued by the appellant were repeatedly ignored by the respondents. The evidence before the Court was that the strikers had impeded management's attempt to engage with them and sought to prevent service of the ultimata. It was recognised by the Court that the appellant had attempted to ensure that ultimata were served *"and for the most part did what could be expected in the circumstances which varied from shaft to shaft."*

[32] When weighing the strikers' conduct, the Court found that the respondents could not, given their conduct, complain of insufficient time to consider and reflect on the ultimata given the course of conduct they had chosen to prevent such ultimata being served.

[33] The LSC members did not intervene to halt the unlawful action. In this sense this matter is distinguishable from the facts of *NUM v Goldfields,*[10] in which the union official on learning of the unprotected strike, rushed to the scene, and began fervently counselling the strikers to resume work. To the contrary, in *casu,* there can be no conclusion that the pre-planned underground strike would have ended any sooner had management made further attempts (following already rejected attempts) to engage the LSC. There can equally be no conclusion that the strikers were deprived of an opportunity to reflect on their course of action or to seek advice from their leadership. The court *a quo* correctly characterised the strikers' conduct as heedless, and that the strikers could not seek to rely on the success of their own efforts to frustrate the issuing of ultimata by management.

[9] *Nation Union of Mineworkers & others v Goldfields Security Ltd* (1999) 20 ILJ 1553 (LC).
[10] *National Union of Mineworkers & others v Goldfields Security Ltd* (1999) 20 ILJ 1553 (LC).

[34] The strikers had sufficient opportunity to reflect and seek advice, but they continued with the underground strike with the approval of the LSC. They would not surface when management indicated that it would listen to their concerns on the surface. In none of the shafts was the decision to surface promoted by receipt of an ultimatum, and the LSC was in telephonic contact with the strikers through the shaft telephones. The reality is that the LSC had made promises of bonanza payments to UPUSA members, which ultimately turned out to be a significant misrepresentation. Therefore, the LSC steered the entire course of the underground strike as a tactic to bring pressure on the management to make the bonanza payment.

[35] Neither the evidence nor the findings of the court *a quo* supports the proposition that the LSC was opposed to the underground strike, and that its attitude would have weighed on the strikers to discontinue their course of action had management done something different.[11] The course of the underground strike was chartered by the LSC from the meeting of 21 January 2009 (the day before), and as correctly concluded by the court *a quo, 'on the whole, the only time workers in the sit-in heeded the call to surface was when they got the call from their own leadership to do so, and that call came after the interdict was obtained'.*

[36] The court *a quo's* finding that the appellant failed to engage with the LSC ought to be set aside, and more importantly, this finding cannot form a basis for the finding of substantive unfairness. Although the LSC were lawfully suspended, they were involved in the planning of the strike.

Historical inconsistency

[37] Item 6(1) of Schedule 8 to the LRA makes it clear that the substantive fairness of a dismissal as a result of participation in an unprotected strike, like other misconduct, does not always deserve dismissal and must be determined in the light of the facts of the case, including the seriousness of the contravention of the LRA, attempts made to comply with the LRA and whether or not the strike was in response to unjustified conduct by the employer.

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[11] *Performing Arts Council of the Transvaal v Paper Printing Wood and Allied Workers Union* 1994 (2) SA 204 (A).

[38] In *Mzeku and Others v Volkswagen SA (Pty) Ltd and Others* it was stated that:[12]

> 'Once there is no acceptable explanation for the [workers'] conduct, then it has to be accepted that the [workers] were guilty of unacceptable conduct which was a serious breach of their contracts of employment . . . The only way in which the [workers'] dismissal can justifiably be said to be substantively unfair is if it can be said that dismissal was not an appropriate sanction.'

[39] The Constitutional Court in *Transport and Allied Workers Union of South Africa obo Ngedle and Others v Unitrans Fuel and Chemical (Pty) Ltd Limited*[13] made it clear that in determining the appropriateness of a dismissal as a sanction for striking workers' conduct, consideration must be given to whether a less severe form of discipline would have been more appropriate, as dismissal is the most severe sanction available. An illegal strike has been recognised by our courts to constitute serious and unacceptable misconduct by workers.[14] In this matter, the respondents acted outside the bounds of the recognition agreement entered into with the appellant, failed to adhere to the unequivocal ultimata issued by the appellant and refused to comply with the appellant's instructions to halt their dangerous and unlawful industrial action. In such circumstances, dismissal has been found by our courts to be an appropriate sanction.[15]

[40] The obligation upon an employer to act consistently in the application of discipline arises in two contexts in our law. The first is in relation to the application of the rule and the second is in relation to the imposition of sanction.[16] In both respects there can exist either contemporaneous inconsistency or historical consistency. In relation to the consistent imposition of sanction it was

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[12] [2001] ZALAC 8; 2001 (4) SA 1009 (LAC); (2001) 22 *ILJ* 1575 (LAC) at para 17.
[13] [2016] ZACC 28; 2016 (11) BCLR 1440 (CC); [2016] 11 BLLR 1059 (CC); (2016) 37 ILJ 2485 (CC) at para 50.
[14] *Performing Arts Council of the Transvaal v Paper Printing Wood and Allied Workers Union and Others* [1993] ZASCA 201; 1994 (2) SA 204 (A) at 216E.
[15] See, for example, *SA Clothing and Textile Workers Union and Others v Berg River Textiles – A Division of Seardel Group Trading (Pty) Ltd* (2012) 33 *ILJ* 972 (LC) at para 30
[16] Item 7 of Schedule 8 to the LRA provides guidelines for the determination of cases of dismissal for misconduct which include a determination as to whether the rule or standard has been consistently applied by the employer and whether dismissal is an appropriate sanction for its contravention.

stated in *Southern Sun Hotel Interests (Pty) Ltd v Commission for Conciliation, Mediation & Arbitration & others*[17] the court said the following:

> 'The courts have distinguished two forms of inconsistency - historical and contemporaneous inconsistency. The former requires that the employer apply the penalty of dismissal consistently with the way in which the penalty has been applied to other employees in the past; the latter requires that the penalty be applied consistently as between two or more employees who commit the same misconduct.'

[41] The Labour Court had regard to the evidence as to the distinctions between the December 2006 above ground strike and the far more dangerous and coordinated underground strike at the appellant's premises in January 2009. However, it failed to have regard to the fact that no evidence existed to justify a finding of historical inconsistency in that the 2007 unprotected strike resulted in the dismissal of the striking employees who participated. While the Court recognised that the 2006 strike was distinct in the sense that it was a conventional above ground strike, the Court failed to give appropriate weight to the differences between that strike and the 2009 underground strike, including the serious consequences of the 2009 strike which halted production, compromised mines safety and exposed workers to serious personal risk.

[42] Given the serious and dangerous circumstances of the strike, the extent of the contravention of the LRA, the lack of any attempt on the part of the respondents to comply with the provisions of the LRA and the fact that the strike was not in response to any unjustified conduct by the employer, this Court is satisfied that dismissal was the appropriate sanction in the circumstances of this matter.

[43] The appellant seeks no order of costs order against the respondents and in the circumstances no costs order is made.

Order

[44] In the result, the following order is made:

[17] (2010) 31 ILJ 452 (LC) at para 10.

1. The appeal is upheld.

2. The order of the court *a quo* of the 17 September 2019 is set aside and replaced as follows:

   "The dismissal of the respondent employees was procedurally and substantively fair".

Acting Judge of the Labour Appeal Court

Waglay JP and Savage AJA concur.

APPEARANCES:

FOR THE APPELLANT:	Adv. W.G LaGrange SC and Adv. A.C Russell
	Instructed by Cliffe Dekker Hofmeyr Inc
FOR THE FIRST RESPONDENT:	Adv. V. Mndebele
	Instructed by Motshegare Attorneys Inc