

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

CASE NO: J 339/00

In the matter between:

Applicant

and

1st Respondent

2nd Respondent

3rd Respondent

4th Respondent

5th Respondent

SELBY MNDawe

6th Respondent

BOY SAMBO

7th Respondent

LUCKY NKAMBULE

8th Respondent

JUDGMENT

BEFORE LANDMAN J:

1. The commissioner found that the dismissal of the six individual respondents formerly employed by Indlovu Spar was substantively fair. I will assume, for purposes of this case, that the commissioner was correct in finding that the dismissal of the six employees in this case was procedurally unfair or, at least, that his finding was justifiable in relation to his reasoning.
2. The commissioner went on to award the employees compensation for this defect in an amount equivalent to their remuneration for a period of thirteen months. The commissioner misdirected himself in this regard for

it has been held that the maximum compensation for a procedurally unfair or substantively unfair dismissal of the kind in question is 12 months. This is the construction which the labour Court has placed on s 194 of the Labour Relations Act 66 of 1995. See **Whall v Brandadd Marketing (Pty) Ltd** (1999) 20 ILJ 1314 (LC), **Vickers v Aquahydro Projects (Pty) Ltd** (1999) 20 ILJ 1308 (LC) and **Eyre v Hough t/a Miller Eyre Travel** (1999) 20 ILJ 1047 (LC). A commissioner of the CCMA is obliged to follow a decision of this court which interprets the statute which the commissioner is applying. One would have thought that this is trite law. However there has been a suggestion of late that a commissioner of the CCMA is not bound to follow decisions of the Labour Court. This is clearly incorrect save where there are conflicting decisions. In that instance a commissioner is free to make a decision as has been described by Wallis AJ in **Le Roux v Commission for Conciliation, Mediation and Arbitration and others** (2000) 21 ILJ 1366 (LC).

3. The commissioner compounded this misdirection by failing to appreciate that in terms of **Johnson and Johnson** (1999) 20 ILJ 89 (LAC) after finding that the dismissal was merely procedurally unfair, he was endowed with a discretion to make no compensation award or award the maximum amount permissible which I have indicated amounts to 12 months. These misdirections entitle me to interfere with the award of compensation.

4. I have a discretion to substitute the award made by the commissioner by one of my own or to remit the matter to the commissioner for his decision. I have decided to substitute the award with my own finding as neither party requested that the matter be remitted to the commissioner, the dismissal took place in October 1998 and I have a full record before me which places me in as good a position as the commissioner was to render the order which he should have made.

5. In my opinion the following factors should have persuaded the commissioner not to make any award:

e) the minor nature of the procedural defects ie the length of time to prepare for the disciplinary hearing and the fact that the disciplinary chairperson completed the charge sheet regarding the alleged infractions;

f) the absence of a complaint by the employees about either item;

g) there was a subsequent appeal hearing which provided an opportunity to rectify the defects to the extent that this can be achieved on appeal;

h)an award of compensation of between R11 700 and R 17 200 each, according to the respective remuneration earned by the employees, for such procedural deficiencies would be excessive in the circumstances.

6.In the premises the award of the 1st respondent dated 15 December 1999 under case number MP8578 is hereby reviewed and set aside and replaced by the following order: “No compensation is awarded in respect of the procedurally unfair dismissal”. The 2nd and further respondents are ordered to pay the costs of the application, the one paying the others to be absolved.

SIGNED AND DATED AT BRAAMFONTEIN THIS 7TH DAY OF SEPTEMBER 2000.

A. A. Landman
Judge of the Labour Court

6 September 2000

7 September 2000

Adv J F A Nel instructed by Riaan Du Plessis Inc

Mr Zibi of SACCAWU