IN THE LABOUR COURT OF SOUTH AFRICA

(HELD AT CAPE TOWN)

Case no: C104/2009

In the matter between:

LITHOTECH MANUFACTURING CAPE **Applicant**

A DIVISION OF BIDPAPER PLUS (PTY) LIMITED

and

STATUTORY COUNCIL PRINTING,

NEWSPAPER & PACKAGING INDUSTRIES **1st Respondent**

GUY BLOCH N.O **2nd Respondent**

SATU obo MOGAMAT YUSUF LACKAY **3rd Respondent**

REASONS FOR ORDER

AC BASSON, J

1] On 3 September 2009 I dismissed the application for review with costs. Herewith brief reasons for the order.

2] The Applicant made an application in terms of sections 145 and 158(1)(g) of the Labour Relations Act, 1995 (hereinafter referred to as "*the LRA*") for the review and setting aside of the arbitration award made by Second Respondent (hereinafter referred to as "*the arbitrator*") on 31 January 2009 in respect of the unfair dismissal dispute between the Third Respondent (SATU on behalf of Mr. Mogamat Lackay - hereinafter referred to as *"the respondent*").

Relevant background facts

3] The respondent was employed by the applicant as a waste controller in its

production department. The respondent was also a shop steward and had 19 ½ years' of service with the applicant. At the time of his dismissal he was 63 years old and 2 ½ years from taking his pension.

4] On 13 October 2008 the respondent was in the applicant's despatch department at the strapping machines. Mr. Arthur Jansen (hereinafter referred to as "*Jansen*") was the supervisor in the despatch department at that time. Jansen was also the alleged victim of the respondent's abusive language.

5] According to the applicant, the respondent was standing around and talking to fellow employees and was still standing around after approximately three quarters of an hour. Jansen then contacted the respondent's supervisor Mr. Alex Theunissen (hereinafter referred to as *"Theunissen*") to inform him that the respondent was keeping the employees in despatch from performing their work.

6] The respondent admitted that he was talking to co-workers and that his supervisor came to him to tell him that Jansen had complained that he (the respondent) kept his workers out of work. He testified that he went to Jansen and told him - "*hou jou bek ook van my af en moet nie weer met my jokes maak nie".* He testified that he only said "*hou jou bek van my af. As daai die case is, dan hou jy bek van my ook af en moet nie weer met my jokes maak nie, want ons is mos gewoond grappe met mekaar maak, daai is mos maar 'n klomp mans bymekaar"*. He denied that he swore at Jansen. The respondent conceded that he had a final written warning at the time of the arbitration. The warning was for abusive language, assault and finger pointing at Theunissen.

7] According to Jansen, the respondent swore at him and aggressively said to him (Jansen): *"Jy hou jou fokken bek van my* af" and "*jy hou jou fokken bek van my af en jy fok nie met my nie."* According to the evidence of Jansen the respondent uttered these words to him as a superior. He testified at the

arbitration hearing that he saw the behaviour as abusive as it was not about him but rather about his position as a supervisor. According to Jansen it happened in the presence or within hearing distance of other employees who also reported to him. During the arbitration, Jansen, however, testified that only one other employee (a certain Daniels) was present. Despite the fact that Jansen alleged that the respondent swore at him he made the following concessions: (i) Firstly, he conceded that he did not lay a grievance against the respondent for swearing. (ii) Secondly, he conceded that the respondent was charged with *swearing* and not for his aggressive behaviour.[1] (iii) Thirdly, he conceded that he has never taken discipline against any of the people on the shop floor for using the word "*fok"*. He, however, testified that it is different when someone tells you "*fok jou*" because it is directed to him as a person. (iv) Fourthly, he conceded that he was shocked that the outcome of the hearing was that the respondent was dismissed. He stated that he believed that the outcome would have been a final written warning. In cross-examination he also stated that he has been a supervisor for two years and that it was the first time that he has been involved in something of this nature and that he thought the respondent would have received a final written warning.

8] Mr. Manuels (one of the co-workers of the respondent) gave different versions of what was said. The one version was that the respondent told Jansen: "*wat fok jy met my".* Then he said the respondent said: "*hou jou bek van my af en moenie fok met my nie*" and then he said the respondent said: "*dan hou jy jou mond van my af, jy fok nie met my nie*". He testified that the respondent "*was woedend*". He testified that it was not acceptable conduct in the workplace.

1 See paragraph [10] *infra*.

9] Manuels testified that Jansen was in his office when the respondent swore at Jansen and that the door was closed. According to him the respondent was outside of the door and he was speaking whilst Jansen was inside of the office. He testified that there was a glass and that he could see Jansen inside the office through the door. Manuels then testified that he could see that the respondent was angry ("*kwaad*") but testified that the respondent was not aggressive.

10] From the aforegoing it is clear that the two witnesses on behalf of the applicant gave different evidence about what was said to Jansen. They also gave different versions about the circumstances under which the words were uttered. Jansen testified that the respondent had stormed up to him and that he looked like he might attack him and that the whole incident had been observed by Manuels. Manuels, however, gave a different version not only in respect of what was said but also about the circumstances under which the alleged words were uttered. He testified that he heard the abusive language after the respondent had left Jansen's office and at a time when the door had been closed. Contrary to the applicant's version was the respondent's version that he did not swear at Jansen. It must, however, be pointed out that the respondent was not charged with aggressive behaviour nor did Jansen lodge a grievance against the respondent.[2]

Disciplinary hearing

11] On 24 October 2008 the respondent was issued with a notice to attend a disciplinary hearing and was charged with *"abusive language".* The hearing commenced on 30 October 2008 and was concluded on 04 November 2008. The chairperson of the disciplinary hearing found him guilty and ordered his

2 See paragraph [7] *supra.*

dismissal on four weeks' notice. On 4 November 2008 the chairperson gave a brief oral summary of the reasons for her finding. Although she found him guilty as charged, the chairperson was clearly uncomfortable with the fact that swearing seemed to be the norm in the workplace. (I will return to what the chairperson stated during the disciplinary hearing hereinbelow).[3]

The award

12] The dispute was referred to the First Respondent (hereinafter referred to as "*the council*"). The arbitration took place on 23 January 2009 and the arbitrator found the dismissal procedurally fair but substantively unfair.

13] The arbitrator noted that there were contrasting versions about what the respondent had said to Jansen as well as in respect of the circumstances under which the alleged words were uttered. The arbitrator, however, did not make a definite factual finding about what was actually said by the respondent to Jansen. The furthest the arbitrator was prepared to commit himself was to say that that the sentence construction of what was said was similar: *"[a]nd apart from the difference over the closed door, the testimony of these 3 witnesses is very similar in terms of what was said with regards to the sentence construction and the length of the sentence. However, Jansen has an extra 'vokken' [sic] in what he testified to which is not corroborated by Daniels".* The arbitrator concluded that whether or not the word "*vok*" (sic) or "*jokes*" "*or even if the word was 'vok'*" was used, it did not constitute abusive language *per se*. The arbitrator, however, concluded that the respondent's behavior was not acceptable but that it was not as serious as the applicant had made out it to be. The arbitrator was also not persuaded that the respondent was aggressive. The

3 See paragraph [27] *infra*.

arbitrator in particular found that dismissal was not an appropriate sanction.

14] The conclusion eventually arrived at by the arbitrator was (without making a finding as to what was actually said by the respondent) that the respondent was not guilty of "*use of abusive language*". The arbitrator then proceeded to evaluate whether or not it was fair to dismiss the respondent in the circumstances. He concluded that the respondent was disrespectful towards Jansen and the fact that it was in front of other subordinates made it worse. He, however, concluded that he was not convinced that the trust relationship has been irretrievably destroyed or that the continued employment relationship was intolerable. In coming to this conclusion the arbitrator also took into account the length of service of the respondent and his age. He lastly took into account that the words were not directed at Jansen directly but that "*they had more to do with the situation that the applicant [the respondent in the present proceedings] believed he was in"*.

15] The commissioner ordered the reinstatement of the respondent. The arbitrator, however, limited the retrospective reinstatement of the respondent to one month only and extended the final written warning for being disrespectful towards his superior for another 12 months.

Is the award reviewable?

16] I am in agreement with the applicant that the award, particularly the reasoning of the arbitrator in respect of the substantive fairness of the dismissal, is difficult to follow. Firstly, the arbitrator does not make a factual finding about what the contents of the statement by the respondent to Jansen was. However, the arbitrator clearly was of the view that it does not really matter what was said because the context within which it was said was relevant. Secondly, despite not making a factual finding, the arbitrator concludes that the respondent was

not guilty of "*use of abusive language* under the circumstances". He, however, concluded that the respondent was guilty of *"tough behaviour that is not acceptable and needs to be corrected"* (a lesser form of misconduct). The arbitrator further stated that even if the respondent was guilty of abusive language, he might have found that dismissal was appropriated but that he still then had to assess the fairness of the dismissal in light of *Sidumo & Another v Rustenburg Platinum Mines Ltd & Others* (2007) 28 ILJ 2405 (CC).

17] Is the award unreasonable? Although it is somewhat difficult to follow the arbitrator's reasoning, this does not render the award unreasonable *per se*. See in this regard the *Sidumo (supra)* case where the Constitutional Court held as follows in respect of the standard of reasoning expected of commissioners:

> *"[118] CCMA figures reveal that each year between 70 000-80 000 cases are referred to the CCMA for conciliation in respect of dismissals. Given the pressures under which commissioners operate and the relatively informal manner in which proceedings are conducted, and the further fact that employees are usually not legally represented, it is to be expected that awards will not be impeccable.*
>
> *[119] To my mind, having regard to the reasoning of the commissioner, based on the material before him, it cannot be said that his conclusion was one that a reasonable decision maker could not reach. This is one of those cases where the decision makers acting reasonably may reach different conclusions. The LRA has given that decision-making power to a commissioner".*

See also: See also *Shoprite Checkers (Pty) Ltd v Ramdaw NO & Others*, (2001) 22 *ILJ* 1603 (LAC) 1636H-I, (per Zondo JP)**:**

> *"""In my view, it is within the contemplation of the dispute resolution*

system prescribed by the Act that there will be arbitration awards which are unsatisfactory in many respects, but nevertheless must be allowed to stand because they are not so unsatisfactory as to fall foul to the applicable grounds of review. Without such contemplation, the Act's objective of the expeditious resolution disputes would have no hope of being achieved. In my view, the first respondent's award cannot be said to be unjustifiable when regard is had to all the circumstances in this case and the material that was before him".

18] Even where the reasoning of the arbitrator may be criticized, this in itself does not render the award reviewable particularly where the ultimate result arrived at by the arbitrator is sustainable in light of the record. I must, however, qualify this statement by pointing out that there may be cases where, although the ultimate conclusion reached by the commissioner or arbitrator is reasonable, the reasoning adopted by the arbitrator or commissioner is so flawed (even if the ultimate result is reasonable), that it cannot be concluded that the arbitrator duly exercised his or her functions as an arbitrator by taking due consideration of matters that are vital to the dispute. In such circumstances the reviewing court may well be inclined to review and set aside the award. I find some authority for this statement in *Stocks Civil Engineering (Pty) Ltd v Rip NO & Another* (2002) 23 ILJ 358 (LAC) (although these comments were made in the context of a review of a private arbitration award):

"[52] In my view the following principles emerge: A court is entitled on review to determine whether an arbitrator in fact functioned as arbitrator in the way that he upon his appointment impliedly undertook to do, namely by acting honestly, duly considering all the evidence before him and having due regard to the applicable legal principles. If he does this, but reaches the wrong conclusion, so be it. But if he does not and shirks his

task, he does not function as an arbitrator and reneges on the agreement under which he was appointed. His award will then be tainted and reviewable. It is equally explicit in the agreement under which an arbitrator is appointed that he is fully cognizant with the extent of a limit to any discretion or powers he may have. If he is not and such ignorance impacts upon his award, he has not functioned properly and his award will be reviewable. An error of law or fact may be evidence of the above in given circumstances, but may in others merely be part of the incorrect reasoning leading to an incorrect result. In short, material malfunctioning is reviewable, a wrong result per se not (unless it evidences malfunctioning). If the malfunctioning is in relation to his duties, that would be misconduct by the arbitrator as it would be a breach of the implied terms of his appointment."

19] A similar view, in the proper context of review in terms of section 145 of the LRA is followed by the Constitutional Court in *Sidumo* where Ngcobo J pointed out that it is the intention of the LRA that "*as far as is possible arbitration awards would be final and would only be interfered with in very limited circumstances."* The reviewing court will therefore, in the words of the Constitutional Court in *Sidumo* only interfere with a decision if the decision reached by the commissioner or arbitrator is one which no reasonable commissioner could have arrived at. In the present case I cannot conclude that, despite the fact that I have some difficulties with the reasoning adopted by the arbitrator, that this is a conclusion that no reasonable decision maker could have arrived at. I will in paragraph [26] hereunder point out that even if I was persuaded that the award should be reviewed and set aside, dismissal was, in any event, not an appropriate sanction. I refer to my reasons for arriving at this conclusion hereinbelow.

20] In respect of an arbitrator's discretion as to what would be an appropriate sanction, the review court must consider whether or not the commissioner took all relevant factors into account in arriving at a decision. See in this regard *Fidelity Cash Management Service & Others v CCMA & Others* where the Labour Appeal Court observed as follows in respect of the test of review in light of the *Sidumo*–case (particularly in the context of exercising a discretion in respect of sanction):

> *" [93] I have already said above that, in line with the decision of this Court in Engen and Algorax, the Constitutional Court decided in Sidumo that the reasonable employer test must not be applied and there should be no deference to the employer's choice of a sanction when a CCMA commissioner decides whether dismissal as a sanction is fair in a particular case. Indeed, both in Engen and in Sidumo this Court and the Constitutional Court, respectively, said that the commissioner must decide that issue in accordance with his or her own sense of fairness. (see Engen at par 117 at 1559 A, - par 119 at 1559 H-I; par 126 at 1562 C-D, par 147; Sidumo's case at paras 75 and 76.) In par 75 in the Sidumo case the Constitutional Court, inter alia, said: "Ultimately, the commissioner's sense of fairness is what must prevail and not the employer's view." At par 76 the Constitutional Court quoted a passage from Engen which inter alia contained a statement to the effect that unions "can ventilate all issues about their grievances in regard to such dismissals in that forum before a third party, who can listen to all sides of the dispute and, using his own sense of what is fair or unfair, decide whether the dismissal is fair or unfair."*
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> *[94] In terms of the Sidumo judgment, the commissioner must:*
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> *(a) "take into account the totality of circumstances" (par 78);*
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> *(b) "consider the importance of the rule that had been breached" (par*

78);

(c) "consider the reason the employer imposed the sanction of dismissal, as he or she must take into account the basis of the employee's challenge to the dismissal" (par 78);

(d) consider "the harm caused by the employee's conduct" (par 78);

(e) consider "whether additional training and instruction may result in the employee not repeating the misconduct"

(f) consider "the effect of dismissal on the employee" (par 78);

(g) consider the employee's service record.

Tthe Constitutional Court emphasised that this is not an exhaustive list. The commissioner would also have to consider the Code of Good Practice: Dismissal and the relevant provisions of any applicable statute including the Act. In this regard sec 188 and 192(2) of the Act will usually be of relevance.."

[95] Once the commissioner has considered all the above factors and others not mentioned herein, he or she would then have to answer the question whether dismissal was in all of the circumstances a fair sanction in such a case. In answering that question he or she would have to use this or her own sense of fairness. That the commissioner is required to use his or her own sense of justice or fairness to decide the fairness or otherwise of dismissal does not mean that he or she is at liberty to act arbitrarily or capriciously or to be mala fide. He or she is required to make a decision or finding that is reasonable…."

21] Turning to the present matter, in arriving at a decision as to whether or not dismissal was an appropriate sanction, the arbitrator took into account that the respondent was disrespectful and the fact that his unacceptable behaviour was towards a superior. He also took into account that the trust relationship has not

been irretrievably destroyed. He was also not convinced that continued employment was intolerable. He also took into account the respondent's 19 years' of service and that he was on the brink of retirement. The conclusion reached by the arbitrator, despite some defects in his reasoning in arriving at a conclusion, and particularly in respect of the finding that dismissal was not appropriate is, in my view reasonable, and should stand.

Guilty finding on a lesser charge

22] The arbitrator found the respondent guilty of disrespectful behaviour. I am in agreement with the submission that an arbitrator may not find an employee guilty of a lesser charge. On behalf of the respondent it was submitted that the arbitrator's award should be corrected to provide for retrospective reinstatement with no warning. It was also submitted that dismissal should not have been imposed in the context of a shop floor culture where the use of such a word was common practice.

23] In order to succeed with the review application, the applicant must show that the arbitrator made a decision that a reasonable decision-maker could not reach and in so doing, acted unreasonably. See *Sidumo (supra); Fidelity Cash Management Service v CCMA* & *Others* [2008] 3 BLLR 197 (LAC) and in particular at page 224-5 para 97; *Edcon Ltd v Pillemer NO* & *Others (2008)* 29 ILJ 614 (LAC). In the *Edcon* case, with reference to the *Sidumo*- case and *Engen Petroleum Ltd v CCMA* & *Others* (2007) 28 I LJ 1507 (LAC) at para 111, the Labour Appeal Court pointed out that fairness requires that regard must be had to the interests of both the employee and those of the employer.

24] The applicant sought to review the award on the basis that it is defective and unreasonable in that the arbitrator's findings that the respondent was not guilty of the charge of the use of abusive language and that dismissal was not the

appropriate sanction. The applicant argued that these are not findings that a reasonable decision-maker could come to. The applicant argued that the arbitrator disregarded relevant evidence that was properly before him and failed to properly apply his mind to the evidence before him. It was also argued that the arbitrator committed a gross irregularity in finding that the actual words used by the respondent were irrelevant to the charge of *"the use* of *abusive language".* In respect of the sanction the applicant argued that had the arbitrator acted unreasonable especially in light of the arbitrator's own finding that: *"If I had agreed with the respondent that the applicant was guilty of the use abusive language, I might well have found that dismissal could well have been appropriate ...".* The applicant argued that had the arbitrator properly considered the evidence before him, he ought to have found that the respondent was guilty of the charge of *"the use of abusive language"* and, according to his own acknowledgement in the award, that dismissal would have been an appropriate sanction. The fact that the arbitrator found him guilty of a lesser charge is unreasonable.

25] Although, as already pointed out I agree that an arbitrator cannot find an employee guilty on a lesser charge, I am, despite of this defect in the award not persuaded that the award cannot stand.

26] In the event that I am wrong in deciding not to review and set aside the award, I conclude as follows: The respondent is guilty as charged. I am on the probabilities persuaded that the respondent had used the word "*fok*" and that it was directed at Jansen. I am particularly persuaded that he had used this word in light of the fact that this was how the employees talked on the shop floor. Although the two witnesses on behalf of the applicant differed to some extent

as to what was precisely said, it is clear from their evidence that the respondent used swear words.

27] The question which remains is whether or not dismissal is the appropriate sanction? Taking into account the totality of the circumstances as advocated in the *Sidumo* case, the length of service of the respondent (more than 19 years); the fact that the respondent was on the brink of retirement; the fact that employees apparently used swear words liberally on the shop floor; and the fact that even his superior admitted using swear words, I am of the view that dismissal is inappropriate. I must also point out that even the chairperson of the disciplinary hearing was perturbed by the fact that even the supervisor swore and that it was apparently the norm in the factory. In this regard she stated *"[that] it bothered her that swearing and cursing was a norm in the factory and that a Supervisor like Arthur can sit and admit that he has cursed before and mentioned that that should be looked into. She also mentioned that it was important that people are treated the same and if one is to be punished for verbal abuse then so should everyone else. This is why she recommends that Paul take the verbal abuse received from Arthur and raises it with his manager. However, due to the evidence presented to her and the witnesses brought forward she had to find Mr. Lackay guilty."*[4] Lastly, there is no evidence that the

4See *L M Wulfsohn Motors (Pty) Ltd t/a Lionel Motors v Dispute Resolution Centre & Others* (2008) 29 ILJ 356 (LC) where the Court held as follows in respect of foul language (albeit in this case in the context of a constructive dismissal*: "[13] Turning to the facts of this case. It is common cause that De Waal used a swear word when Nel approached him with her request. It is indeed so that swearing in the workplace may result in a constructive dismissal. The obvious example that springs to mind is where an employer swears 'at' an employee. It is, however, equally true, that although foul language in the workplace should not be condoned, not all cases of foul language will necessarily result in the workplace being rendered intolerable to such an extent that an employee will have no option but to resign. As pointed out, whilst swearing at an employee can never be condoned, it is still incumbent upon the commissioner carefully to analyse the circumstances in which it took place in order to decide whether it rendered the employment relationship intolerable to such an extent that continued employment was no longer possible."* The court referred to the following in footnote 9: *"Although the circumstances in the case of Miladys (A Division of Mr Price Group Ltd) v Naidoo &; others (2002) 23 ILJ 1234 (LAC) differed from the present case in that it was held by the court that the employee in that matter was a mature woman and that she ought to have been able to handle the situation properly, the principles set out in this case are, in my view, relevant to the present case. The court held as follows. '[26] The second respondent found that Roy spoke to first respondent in a "rude and disrespectful manner and that she gained the impression that he wanted her to leave". If he had spoken "nicely" to her she would never have wanted to resign. That abuse of a serious nature can result in*

employment relationship was rendered intolerable.[5] Even Jansen, the victim of the swearing, did not expect the respondent to be dismissed. It should also be pointed out that the mere fact that abusive or strong language is used by an employee in the workplace does not, *per se* justify dismissing an employee. All the circumstances must be considered. I therefore conclude that dismissal is inappropriate in the present circumstances. I am, however, of the view that the respondent should take some responsibility for his behaviour. I therefore reinstate him on a final written warning valid for 12 months for the use of abusive language. I am further of the view that his conduct does not warrant full reinstatement, I therefore limit his reinstatement to one month only. I can find no reason why the applicant should not be ordered to pay the costs.

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constructive dismissal is evidenced by the English case of Palmanor Ltd v Cedron [1978] IRLR 303. In that case the applicant, who was employed at a night club and had previously arranged to attend later than usual, was wrongly accused by the night club manager of being late. The manager then became abusive saying ``You are a big bastard, a big cunt, you are pig-headed, you think you are always right.'' When Cedron (the employee) objected the manager responded, "I can talk to you any way I like, you big cunt'' and ``if you leave me now, don't bother to collect your money, papers and anything else. I'll make sure you don't get a job anywhere in London''. Not surprisingly Cedron resigned and his claim, that he had been constructively dismissed, by reason of the behaviour in question, including the abuse, was upheld by the Employment Appeal Tribunal.[27] In giving judgment in that matter Slynn J acknowledged that many cases involving foul and abusive language did not constitute constructive dismissal. That particular case was exacerbated by the threats relevant to the employee (Cedron) leaving, ie "don't bother to collect your money, papers and anything else'' and to prohibit him finding other work, ie "I'll make sure you don't get a job anywhere in London''.' (Emphasis added.)"

5 See *Edcon v Pillemer* (191/2008) [2009] ZASCA 135 (5 October 2009) where the Supreme Court of Appeals held that there must be evidence presented to the commissioner that the employment relationship was rendered intolerable by the conduct of the employee: "*[22] Pillemer was entitled and in fact expected, in the scheme of things, to explore if there was evidence by Edcon and/or on record before her showing that dismissal was the appropriate sanction under the circumstances. This was because Edcon's decision was underpinned by its view that the trust relationship had been destroyed. She could find no evidence suggestive of the alleged breakdown and specifically mentioned this as one of her reasons for concluding that Reddy's dismissal was inappropriate. A reading of the award further reveals that in addition to this finding Pillemer also found that in the context of that matter Reddy's long and unblemished track record was also an important consideration in determining the appropriateness of her dismissal*
[23] It is inevitable that courts, in determining the reasonableness of an award, have to make a value judgment as to whether a commissioner's conclusion is rationally connected to his/her reasons taking account of the material before him/her. That this is the correct approach has been stated on a number of occasions by the LAC, this court in the Sidumo matter as well as the Constitutional Court in the same matter1. In my view, Pillemer's finding that Edcon had led no evidence showing the alleged breakdown in the trus relationship is beyond reproach. In the absence of evidence showing the damage Edcon asserts in its trust relationship with Reddy, the decision to dismiss her was correctly found to be unfair. She cannot be faulted on any basis and her conclusion is clearly rationally connected to the reasons she gave, based on the material available to her. She did not stray from what was expected of her in the execution of her duties as a CCMA arbitrator. The challenge, therefore, to Pillemer's award on this basis is without merit. I have no hesitation in concluding that the award issued by her is properly compliant with the constitutional standard of reasonableness propounded in Sidumo. This conclusion on its own is, in my view, dispositive of the appeal. I find it unnecessary therefore, in view of this conclusion, to consider the other interesting point regarding the admissibility of hearsay evidence, raised on behalf of Edcon.''

AC BASSON, J

DATE OF REASONS 8 FEBRUARY 2010

FOR THE APPLICANT:

Edward Nathan Sonnenbergs

FOR THE 3RD RESPONDENT:

Chennels Albertyn Attorneys