**REPUBLIC OF SOUTH AFRICA**

**IN THE LABOUR APPEAL COURT OF SOUTH AFRICA, JOHANNESBURG**

**JUDGMENT**

Reportable

Case No: JA 32/09

**The Public Servants' Association**

**On behalf of PSA members** **Appellants**

and

**National Prosecuting Authority** **First Respondent**

**Department of Justice and**

**Constitutional Development** **Second Respondent**

**Heard:** **25 August 2010**

**Delivered:** **20 April 2012**

**Summary**: **Labour Law – Review of Bargaining Council award –– powers of arbitrator vis a vis public service regulations – applicability of Section 74 of the LRA – arbitrator's powers to make an award not ousted by the regulations - award one which reasonable decision-maker would have made**

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**JUDGMENT**

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MLAMBO JP

[1] The issue in this appeal is whether an arbitration award made in terms of the Labour Relations Act[1] (LRA) is one that a reasonable decision-maker would have made.

[2] The award, in favour of the appellants, was made by former Zimbabwe High Court Judge N J McNally (the arbitrator). The respondents however succeeded in having it reviewed and set aside by the Labour Court (Molahlehi J), on the basis that the arbitrator took into account irrelevant considerations and also exceeded his powers, thus rendering the award one that a reasonable decision-maker would not have made. This appeal is directed at that order and is before us with the leave of the Labour Court. Central to the resolution of the appeal is the effect of certain Public Service Regulations, to which I shall return shortly, on the arbitration in general but more specifically on the arbitrator's powers. I must at the outset sketch in some details the factual background of the matter.

[3] In 1998, the government of this country commenced a job evaluation exercise intended for the whole of the public service. The *modus operandi* adopted was consultative and embraced all key role players and departments including National Treasury (Treasury). Consultation with Treasury was necessary in view of the need for additional budgetary allocations which were required to implement the job evaluation process recommendations, in cases where there were posts that required upgrading. This was because no government department would be able to upgrade any posts and increase the salary levels of those posts, if there were no funds available for that purpose.

[4] It was for this reason that the government sought to ensure that there be tight control regarding the fiscal consequences of the exercise. In keeping with this objective, in 1999 and 2001, Public Service Regulations were promulgated, which dealt with the method of controlling and managing the fiscal implications of the job evaluation exercise. Essentially these regulations decreed that no post upgrades were to be implemented unless the necessary funding was available. In this regard Regulation V.C.5 of 2001 (regulation 5) provides:

[1] Act 66 of 1995 as amended.

> 'An executing authority may increase the salary of a post to a higher salary range in order to accord with the job weight, if
>
> (a)The job weight as measured by the job evaluation system indicates that the post was graded incorrectly: and
>
> (b) The department budget and medium-term expenditure framework provide sufficient funds.'

[5] This regulation in particular, has been pivotal in the litigation that has culminated in this appeal. The arbitrator and the Labour Court grappled with it, not so much with its meaning, but rather with its effect on the arbitration process in general and the arbitrator's powers specifically. It is common cause that reference in the regulations to 'executing authority' means the Cabinet Minister in charge of the relevant state department.[2]

[6] At the conclusion of the job evaluation process, it was found that a large number of posts in the establishment of the First Respondent (NPA) required upgrading. The financial implications of this finding was that an additional budgetary amount of approximately R140 million was required to effect all the post upgrades in the NPA over a three - year budgetary cycle. In the first year of the budgetary cycle, the NPA required an amount of R54 million of the R140 million to implement the recommended job upgrades. There was no provision in the NPA's budget for these funds nor in that of the Second Respondent (the DOJ & CD) under which the NPA resorts. For this reason, the NPA, through the DOJ & CD, approached Treasury for additional funding in the amount of R27 million for that year of implementation. For the balance of the funds required for the first year, the NPA was confident it would raise these through savings from its existing budget.

[7] The approach to Treasury was unsuccessful as the requested budgetary allocation was not approved. There is no reason in the record before us why this request was turned down. The need to call a Treasury official to testify during the arbitration proceedings was dispensed with by the respondents. Their reasons appear to have been based on respect for what Treasury

[2] Regulation B.2, Part 1 read with Section 1(1) of the Public Service Act, 103 of 1994.

officials do and to avoid subjecting them to cross-examination on matters involving their decisions regarding fiscal priorities. Hence to this day we remain in the dark about Treasury's reasons for refusing to approve the NPA's request for an additional budgetary allocation in the amount of R27 million at that time.

[8] As a consequence of this setback, the NPA decided that it would be feasible to adopt a phased implementation of the job evaluation recommendations. In this regard, the NPA decided that certain identified posts were to be upgraded first as it regarded these as most in need for upgrading. The idea appears to have been that further posts would be upgraded as and when further funds become available through other means but most likely through forced savings.

[9] The NPA went ahead and raised funds from its existing budgetary allocation to commence the phased implementation of the job evaluation recommendations regarding those posts it had identified for prioritised implementation. This phased approach was however rejected by the appellants who insisted that the upgrading be implemented for all posts at the same time; this despite the respondents stated position that the required funds for total implementation were not available. It is this *impasse* that gave rise to the litigation that has ensued. I pause here to highlight the fact that, at that point, the parties were in agreement that the recommended job upgrades were justified. The issue was the failure and/or inability of the NPA to effect the job upgrades as recommended.

[10] The appellants declared a dispute characterising it as a dispute of mutual interest and referred it to the General Public Service Sectoral Bargaining Council (the Council) for resolution through the latter's dispute resolution processes. The Council has jurisdiction over the parties in this matter regarding the determination of conditions of employment as well as the resolution of disputes between them regarding terms and conditions of employment. The Council was however unsuccessful in its efforts to resolve the dispute through conciliation.

[11] The appellants pressed ahead and referred the dispute for resolution through arbitration by the council. The parties however agreed that, instead of the council initiating arbitration under its auspices, the dispute be resolved by private arbitration in terms of the Arbitration Act[3]. To this end, the parties concluded an arbitration agreement in terms of which they, *inter alia*, appointed the arbitrator and agreed that he would have the same powers as if he had been appointed by the Council to arbitrate the dispute in terms of the LRA even though his appointment was in terms of the Arbitration Act.

[12] The parties characterised the dispute in that agreement, as follows: '3.The dispute arises out of the failure by the National Prosecuting Authority (NPA) to pay certain categories of departmental employees (principally prosecutors and special investigators) the extra remuneration to which they were entitled as incumbents of the re-graded posts with effect from 1 April 2005.'

[13] In the normal course of mutual interest disputes such as this one was alleged to be, upon the failure of conciliation, industrial action in the form of a strike or lockout would have ensued. However no strike action was initiated as the employees of the NPA involved in this matter are precluded from engaging in strike action as they have been designated in terms of section 71 of the LRA to be engaged in an essential service[4]. Compulsory arbitration in terms of section 74[5] is the option available to such employees instead of strike action. It is for this reason that this dispute went that route.



[3] Act 42 of 1965.

[4] Section 71 (7) and (8) reads as follows:– 'After having considered any written and oral representations, the essential services committee must decide whether or not to designate the whole or a part of the service that was the subject of the investigation as an essential service.
(8) if that essential services committee designates the whole or a part of the service as an essential service, the community must publish a notice to that effect in the government Gazette.'

[5] Section 74 in respect of Disputes in Essential Services provides:
(1) any party to a dispute that is precluded from participating in a strike or lockout because that party engaged in an essential service may refer the dispute in writing to-
(a) a council, if the parties to the dispute fall within the registered scope of the Council: or
(b) …
(2) …
(3) The Council… must attempt to resolve the dispute through conciliation.
(4) If the dispute remains unresolved, any party to the dispute may request that the dispute be resolved through arbitration by the council.
…"

[14] At the commencement of the arbitration proceedings, the arbitrator considered two *in limine* objections raised by the respondents. Although a total of nine objections had initially been raised in the pleadings but these were eventually whittled down to the two main objections referred to which were originally numbers four and five. The first objection was based on regulation 5, it being contended essentially that the regulation permitted an executing authority to increase salaries provided that the relevant budget and departmental Medium Term Expenditure Framework (MTEF) allocation made provision for sufficient funds to accommodate the increase. It was argued that this was a statutory requirement which barred implementation of the recommended job upgrades if the funds required for that purpose were not available. It was contended that, in view of this requirement, the application fell to be dismissed. The other *in limine* objection was to the effect that the relief sought by the appellants in the arbitration was aimed at reversing a decision by Parliament and/or Treasury, a legal impossibility, so it was contended. For this reason, it was argued that no arbitrator had jurisdiction to make such an order and therefore the application similarly fell to be dismissed.

[15] The arbitrator ruled with regard to the first objection that regulation 5 indeed limited the discretionary power of the Minister acting on his own to increase salaries where no funds were available in the departmental budget. He acknowledged that in terms of the regulation the Minister could only increase the salary of a post if the departmental budget provided sufficient funds for this. His view was, however, that despite this being the statutory framework, if faced with strike action or compulsory arbitration under section 74, the Minister could approach Parliament or Treasury to augment his budget to enable him to increase salaries. He stated in this regard that : 'There must be many situations where a strike is settled on terms which go beyond the provisions in a departmental budget for salaries and wages. The solution may then have to be reached at a level higher than that of the Minister or the executing authority. Parliament, the ultimate source of funding, may have to become involved. That is exactly what section 74 of the LRA envisages.' On that basis, the arbitrator rejected the first *in limine* objection.

[16] He also rejected the second objection and stated that his jurisdiction to make an award was not ousted. To him, if an award was to be made in favour of the salary increase in circumstances where the required funding was not available, it would have to be presented by the Minister to Parliament for consideration. In his view, section 74 provided for a parliamentary overview of the award should one be made. He stated that it was because of section 74 that he believed he had the authority and jurisdiction to make an award, if persuaded to do so, regarding any unbudgeted amount, which, in his view, could be reversed by Parliament, if it was so minded. He articulated his reasoning in this regard as follows: 'It is precisely because the extra funds sought are unbudgeted that s 74 provides for a parliamentary overview of the award, if one is made by me. I find nothing in the legislation, which prevents the applicants [appellants] from in effect taking the Treasury's decision to arbitration. And it is precisely because of the terms of s 74 that I believe I have the authority and jurisdiction to make an award (if so persuaded) in an unbudgeted amount, which award may be reversed by Parliament if it is so minded. Far from me reversing a decision of Parliament, it is parliament which is, empowered by the statute to reverse an arbitration award made by me.' The arbitrator elaborated this view further in his final award as follows : 'A strike by members of the public service not in an essential service is the equivalent of arbitration under section 74(4) of the LRA in the case of public servants who are in an essential service. The result of the strike, or the award of the arbitrator, cannot be fettered by regulations about the availability of funding.' He reasoned that this view did not mean that as an arbitrator, he had no limitations in terms of his decisions or that he could 'usurp the function of government in regard to the allocation of resources.' This, he stated, was obviated by the provisions of section 74(5).

[17] Section 74(5) provides:

> 'Any arbitration award in terms of subsection 4 made in respect of the state and that has financial implications for the state becomes binding-
>
> (a) 14 days after the date of the award, unless a Minister has tabled the award in Parliament within that period; or

(b) 14 days after the date of tabling the award, unless Parliament has passed a resolution that the award is not binding.'

Section 74 (6) provides that 'If Parliament passes a resolution that the award is not binding, the dispute must be referred back to the commission [or Council] for further conciliation between the parties to the dispute and if that fails, any party to the dispute can request the Commission [Council] to arbitrate.'

[18] In that final award, in which was incorporated the *in limine* rulings, the arbitrator also dealt with the question whether the dispute before him involved rights or was one of mutual interest. The NPA's stance was that the dispute concerned the alleged infringement, application or interpretation of existing rights and as such, was a dispute about rights and therefore had to be referred to the Labour Court for adjudication in terms of Section 158(1) (h)[6]. This argument, which was persisted in before us, was based on a view that the recommended salary increases linked to the job upgrades had crystallised into rights. The appellants' argument on the other hand was that no enforceable rights had come into being, hence the insistence of taking the dispute to arbitration. The appellants' argument was based on a view that the beneficiaries of the recommended salary increases may have become morally entitled to the salary increases but these were not legally enforceable until an arbitration award sanctioned them.

[19] The arbitrator concluded that the dispute was one of mutual interest and that it had been correctly referred to arbitration. He reasoned that the dispute concerned the creation of fresh rights such as for higher salaries. For this reason, higher salaries could only be attained generally through strike action but, in this case, through compulsory arbitration in terms of section 74, should the relief sought be granted at arbitration.



[6] Section 158(1) provides that 'The Labour court may
...
(h) review any decision taken or any act performed by the state in its capacity as employer, on any grounds as are permissible in law:'

[20] Turning to the substantive matter, the arbitrator concluded that the appellants had made out a good case for the relief they sought. He reasoned in this regard that all parties were *ad idem* that posts had to be upgraded as the conditions then were unsatisfactory. He referred in this regard to correspondence exchanged between the parties that care should be taken to effect the job evaluation upgrades to avoid industrial action by dissatisfied members of the prosecution service. He also stated that by not implementing the job upgrades, the NPA, DOJ & CD or Treasury had failed to appreciate the seriousness of the situation. His award was that the appellants' members be paid in line with the job evaluation recommendations and that they be compensated for the failure of the NPA to implement the job evaluation recommendations with effect from the same date that it was implemented for the other employees who were identified for prioritised implementation. This is the award that was taken to the Labour Court for review.

[21] In the Labour Court, the respondents primarily sought to assail the award on the basis that the arbitrator had failed to take into account the provisions of the regulations, in particular regulation 5 which, in their view, regulated the financial implications of the job evaluation exercise and that by so doing he had exceeded his powers. This, they argued, rendered his award one that a reasonable decision-maker would not have made.

[22] The Labour court proceeded from the premise that the arbitrator was alive to the statutory requirement that job upgrades could only be effected if funds were available for that purpose. The court then pointed out that the arbitrator did not base his conclusion on this important fact but on two findings: (i) that the funds required ought to have been made available and that the regulations were not to stand in the way of the outcome of the job evaluation exercise and, (ii) on considerations of fairness and equity.

[23 The Labour court accepted the respondents' contentions, finding that the arbitrator had indeed based his award on considerations of equity and fairness which, it stated, did not take account of the regulatory and statutory framework within which the public service operated, including how the job evaluation exercise had come into being as well as the context within which

the regulations were promulgated. The Court found that central to the implementation of the job evaluation recommendations was the availability of funds. Essentially, the court's reasoning was that the arbitrator's hands were tied by the regulations and that he could not make any award regarding unbudgeted funds.

[24] The court further disagreed with the arbitrator's conclusion that the dispute was one of interest. In the court's view, despite the presence of some interest element in it, the dispute was essentially a rights dispute. In this regard, the court found that regulation 5 clearly pointed towards the dispute being rights based, in that an executing authority was legally obliged by the regulations to ensure the availability of funds to effect the salary adjustments arising from the job evaluation exercise. This the court found introduced a rights element into the matter which placed an impediment upon the relief sought by the appellant at arbitration. In this regard, the court stated: 'Until set aside the regulation forms part of the law and the executing authorities were once the job evaluation was completed obliged as a matter of law to ensure that funds were available before effecting salary adjustment arising from the finding of the job evaluation.' The Labour Court concluded in the final analysis that the award failed to measure up to one which a reasonable decision-maker would have made and set it aside.

[25] The appellants contended on appeal that the Labour Court erred in rejecting the findings made by the arbitrator, that he could issue an award regarding unbudgeted funds. They also contended that the Labour Court failed to appreciate the arbitrator's reasoning regarding the applicability of section 74. It was submitted in this regard that the court had failed to appreciate that an arbitrator, acting in terms of section 74, exercises a different power to that of an executing authority in observing budgetary constraints.

[26] On the other hand, the respondents, supporting the Labour Court's reasoning, argued that the arbitrator did indeed misconceive his powers in the context of section 74. Their further submissions went along the following lines: the regulations, the validity of which was never challenged, properly understood disempowered the arbitrator from undoing the fiscal control mechanism found

in the promulgated requirement contained in regulation 5 in particular; that Treasury, having rejected a request for an additional allocation, effectively ended the appellants' options of having the upgrades effected simultaneously; that it was not open to the arbitrator to second-guess Treasury's decision as to how the national revenue was to be spent and that the arbitrator had been misdirected in regarding the regulation as not binding on him, seeing that these had been put in the place as a deliberate 'control mechanism and defined pertinent rights'[7]. In effect, the conclusion that was contended for was that the arbitrator could only come to one conclusion and this was that, as there were no funds available to implement the job evaluation results, regulation 5 had the effect of preventing any further action being taken to have the upgrades effected until funds were available.

[27] Before considering the contrasting contentions raised in the appeal, it is worthwhile to remind ourselves that the essential issue before us is whether the award made by the arbitrator is one that passes muster when considered in the context of the test laid down in *Sidumo and Another v Rustenburg Platinum Mines and Others*[8]. It is therefore to the award that we must focus our attention in considering if it was correctly set aside by the court *a quo*. This Court has stated that in the review of awards issued in terms of the LRA, and in line with the *Sidumo* standard of reasonableness, the essential issue is not whether the award is wrong or whether the judge holds a different view to that of the arbitrator[9], but whether the award is justifiable in relation to the material available to the arbitrator. See *Bestel v Astral Operations and Others*.[10] This approach as well as an enquiry into the process employed by the arbitrator in making an award have been sanctioned by this Court as

[7] This argument is expanded upon in the heads of argument as follows: 'Again, that evidence directly reflects the clear language of the regulation, which in turn gives explicit legal content to a deliberate (and consensual) government decision to manage the substantial fiscal burden of job evaluation by linking the implementation of upgrades to the availability of funds. That decision did not leave it open for the state to be compared by an arbitrator to source and assign additional funds. The arbitrator was not empowered to substitute his decision for that made by the government and his flawed reasoning in this regard is not rescued by the statement that Parliament could be reverse his award.'

[8] 2008 (2) SA 24 (CC); (2007) 28 ILJ 2405; [2007] 12 BLLR 1097.

[9] *Fidelity Cash Management Service v CCMA and Others* [2008] 3 BLLR 197 (LAC) at para 98.

[10] [2011] 2 BLLR 129 (LAC) at para 17 where the court referring to *Carephone (Pty) Ltd v Marcus* 1999 (3) SA 384 (LAC) at para 37, stated: 'The following *dictum* in the latter judgment is helpful in order to illustrate the nature of the test: "Is there a rational objective basis justifying the conclusion made by the administrative decision-maker between the material properly available to him and the conclusion he or she eventually arrived at"'.

acceptable and to be in line with the *Sidumo* test[11]. With this reminder, it is necessary to consider the conclusions as well as the reasoning of the Labour Court in setting the award aside.

[28] The Labour Court's conclusion to set aside the award is rooted in its acceptance of the respondents' contentions as well as its reasoning that the arbitrator based his award on irrelevant considerations. This ineluctably calls for a proper consideration and location of section 74, which features prominently in the arbitrator's reasoning. The question squarely before us therefore must be whether there is an objective rational basis between the arbitrator's reasons regarding the effect of the regulations on the arbitration as well as his powers specifically and his conclusions.

[29] The arbitrator's conclusion that the dispute was one of interest is, in my view, rationally connected to the material before him and his analysis of the facts before him. In this regard, he properly took account of the fact that if the recommendations for job upgrades had become legal entitlements in the form of rights, then the regulations provided no shield to the respondents to avoid total implementation until they had found money. Recommendations are just that and nothing more. They are required to be effected and/or implemented before crystallising into substantive rights. It cannot be that the appellants were entitled to the higher salaries but could not enjoy them until the NPA found money.

[30] The regulations could play no role in converting these recommendations into rights as found by the Labour Court. Had this been the case, it would not have been open to the NPA to delay implementation thereof for the other posts in the hope of raising further funds. Clearly, until an award was issued in their favour, the appellants could not enforce any entitlement to the higher salaries embedded in the job evaluation recommendations. The arbitrator explained this by means of his analogy that, had the employees affected not been designated to be performing an essential service, they would have been perfectly entitled to go on a protected strike to force the NPA to effect the

[11] *Afrox Healthcare LTD v CCMA and Others* unreported LAC case no JA37/09; *SAMWU and Others v SALGBC and Others* unreported LAC case no DA6/09.

higher salaries. It must follow that before implementation no rights accrued; hence the arbitrator's finding that the approach to arbitration was the path towards the creation of fresh rights. In my view, the arbitrator's conclusion that the dispute is one of interest is a reasonable one when considered within the factual matrix of this case read with the law. This Court has stated that a dispute of interest does indeed concern the creation of new rights or the diminution of existing rights and that a dispute of right concerns existing rights. *Gauteng Provincial Administrasie v Scheepers*[12]. In general, disputes of right can be defined as being concerned with the infringement application or interpretation of existing rights contained in a contract of employment, a collective agreement or a statute such as the Labour Relations Act. Disputes of interest generally relate to the creation of new rights or the elimination of existing rights and are resolved, ordinarily by collective bargaining, failing which the exercise of social power[13].

[31] The approach to arbitration in the context of this matter was clearly akin to the initiation of strike action to garner higher and better salaries. The arbitrator's conclusion in similar vein is, in my view, properly countenanced by section 74 in the context of this matter. In this regard the argument that the dispute was not a typical wage dispute, but one that was concerned with whether the appellants were entitled to higher salaries, and therefore not of interest, is clearly misconceived.

[32] In relation to the arbitrator's conclusion that the regulations did not bind him, he clearly considered the effect of the regulations on his powers in the context of section 74(5) as has already been pointed out. This section provides for conciliation and arbitration of disputes in the public sector involving essential service designated parties, subject to the final oversight of Parliament. It is proper at this juncture to make the finding that Parliament, as we know it, has not considered the funding situation arising from the job evaluation process. It is Treasury that considered the first respondent's funding request and rejected it. Treasury is not Parliament, and the arbitrator was alive to this fact. It was

[12] [2000] BLLR 756 (LAC) at para 8.
[13] John Grogan Collective Labour Law (2010) at 104.

on this basis that the arbitrator reasoned that he exercised a power different to that of the executing authority in such matters.

[33] Regarding second-guessing Treasury, the arbitrator, specifically acknowledged that he could not do that, but that any award made by him was sanctioned by section 74(5). Acknowledging the importance of the right to strike, to which the resort to interest arbitration is akin, the mechanisms set out in section 74(5) as an alternative to strike action in the form of compulsory interest arbitration, cannot be treated as ineffectual or toothless. In *SANDU v Minister of Defence and others* this was expressed in the following terms:

> 'Secondly, proceedings before an arbitrator are remarkably akin to a process of bargaining...This is a well-known phenomenon in the civil courts and other forums, flowing from the fact that each party would rather negotiate an outcome that is more or less acceptable to it than be faced with a less acceptable outcome imposed by an outside decision-maker...But it is certainly not true to say that the arbitration option is so feeble a remedy that it cannot serve as a substitute for the economic pressure that would ordinarily set the bargaining process in motion'[14].

[34] Indeed, as argued by the appellants, if spending constraints on the executive authority, together with the regulations applicable to a job evaluation exercise were interpreted in this way (which was equally applicable to an arbitrator determining a dispute of interest with financial implications under section 74) this would substantially dilute the right to invoke the section 74 arbitration mechanism. The consequent effect would be that the outcome of such arbitrations would be a foregone conclusion in line with departmental budgetary constraints. Strike action is universally acknowledged as a powerful weapon in the hands of employees when bargaining with their employer for higher wages and other benefits. Adopting the interpretation advanced by the respondents to the section 74 alternative to strike action in the form of interest arbitration in essential services designated situations, as we have in this matter, would indeed be inimical to the proper exercise of this right.[15]

[14] 2007 (1) SA 402 (SCA) at 416 para 24.
[15] *In Re: Certification of the Constitution of the Republic of South Africa*1996 (10) BCLR 1253 (CC) at para 66 where this is stated – 'Collective bargaining is based on the recognition of the fact that

[35] The respondents' arguments are to my mind premised on a clear misconception of the regulations vis a vis the powers of the arbitrator when viewed in the context of section 74.

[36] It is clear in this case as reasoned by the arbitrator that if the executing authority was unable to comply with the award he was enjoined by section 74 (5) to table it before Parliament. It is only then that Parliament could consider the award and the job evaluation process as a whole and take a view whether it authorised the additional funds required to implement the job evaluation recommendations or take a decision that the award did not bind it. A key consideration for Parliament in this regard would be the motivation for embarking on the job evaluation process. In the first place, there was the wide spread threat of industrial action within the NPA's ranks fuelled by low moral due to low salaries and benefits. This is well articulated in the memorandum prepared by the NPA motivating for the additional funds it requested from Treasury. This memorandum testifies to the fact that all the parties involved in this matter were all at one that the recommendations were justified.

[37] Considered properly, the regulations and the unavailability of funds presented no impediment to the arbitrator making an award in the terms he made. The regulations were put as a controlling measure against executing authorities. The arbitrator's reasoning is clear, that rather than incur unbudgeted expenditure, an executing authority confronted with an abnormal situation, such as a strike or an award, as we have here, had the option of approaching parliament to approve a supplementary allocation to augment his budget in order to enable him to meet the dictates of the award.

[38] Bearing in mind the standard to which an award of the nature we are dealing with here has to comply, it is clear from the record before us that the arbitrator exhaustively engaged with the regulations in particular, when considering the matter. No criticism can be levelled at him on the basis that he did not bring to bear extensive analysis of the regulations and the law. A reading of the award

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employers enjoy greater social and economic power than individual workers. Workers therefore need to act in concert to provide them collectively with sufficient power to bargain effectively with employers. Workers exercise collective power primarily through the mechanism of strike action.'

shows that he considered the regulations and dealt with these extensively. He also took account of all the material placed before him and properly analysed it in a manner that a reasonable decision-maker considering the matter would have done. I am therefore of the view that the award rendered by the arbitrator in this matter is beyond reproach and eminently one that a reasonable decision-maker would have arrived at. In my view the Labour court erred in setting aside the award

[39] In the circumstances, the following order is granted:

1. The appeal succeeds;

2. The order of the Labour Court is set aside;

3. In its stead, an order is granted that:

    3.1 The application for review is dismissed.

    3.2 There is no order as to costs.

4. There is no order as to costs.

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MLAMBO JP

DAVIS and JAPPIE JJA have concurred in the judgment of MLAMBO JP.

APPEARANCES:

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|---|---|---|
| FOR THE APPELLANTS: | | MSM Brassey SC |
| | | PA Burski |
| Instructed by | : | Bowman & Gilfillan Inc |
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| | | GI Hulley |
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