REPUBLIC OF SOUTH AFRICA

IN THE LABOUR COURT OF SOUTH AFRICA

HELD IN JOHANNESBURG

REPORTABLE

CASE NO: J 2469/13

In the matter between:

THE SOUTH AFRICAN MEDICAL ASSOCIATION obo PROFESSOR K D BOFFARD Applicant

and

CHARLOTTE MAXEKE JOHANNESBURG ACADEMIC HOSPITAL First Respondent

GAUTENG PROVINCE : DEPARTMENT OF HEALTH Second Respondent

UNIVERSITY OF THE WITWATERSRAND Third Respondent

Heard: 11 March 2014
Delivered: 20 March 2014

Summary: lawfulness of deductions made against remuneration of an employee by a public sector employer. Deductions not lawful in absence of compliance with section 34 of the BCEA and section 38 of the Public Service Act.

JUDGMENT

NGCUKAITOBI AJ

INTRODUCTION

1. Between September and November 2012 Professor Kenneth David Boffard ("Professor Boffard") took various types of leave from his employment with the first respondent. During the period of his absence he was paid his remuneration. Without any notice to him, from December 2012, the first and second respondents began deducting vast sums of money from his remuneration. By the time the South African Medical Association, on behalf of Professor Boffard, brought the current proceedings in December 2013, the total amount of the deductions was R242 222,26.

2. The first and second respondents argue that these deductions were made because the leave taken by Professor Boffard during the periods aforementioned was not in compliance with the leave procedure. This is because, so it is said, the "*leave form that the applicant submitted had only two signatures.*" The correct procedure, it is said, is that "*The leave application form submitted to HR office should contain three signatures, i.e. that of the applicant, that of his direct supervisor and that of the CEO.*"

3. The question for determination is whether an employer in the public service is entitled to deduct monies from an employee's remuneration

where it alleges that an employee has been on unauthorised leave. If so, what procedures should be followed in order to carry out such deductions. Although there was a dispute pertaining to whether the leave was authorised or not, it was common cause that the deductions were not preceded by any hearing whatsoever and were not consensual as between Professor Boffard and his employers, being the Gauteng Department of Health and the University of the Witwatersrand (*"Wits"*). I shall return to this issue later but wish to set out the matrix of fact in this application.

MATERIAL FACTS

4. Professor Boffard was employed by the Wits as a Professor of Surgery and the Charlotte Maxeke Johannesburg Academic Hospital (*"the Hospital"*) as Clinical Head of the Department of Surgery at the rank of Chief Specialist: Department of Surgery. The Hospital is an academic hospital which is also a public hospital. As such, it is managed by the Department of Health in the Gauteng Province. Professor Boffard accordingly reported to the Department of Health in relation to the performance of his functions as Clinic Head of the Department of Surgery at the Hospital.

5. During July 2012 Professor Boffard applied for sabbatical leave to attend an overseas conference and for a period of study from 26 August 2012 to 1 December 2012.

6. On 8 August 2012 the former Chief Executive Officer of the Hospital, Dr T E Selebano, informed Professor Boffard that his request for sabbatical leave had been rejected. The explanation given was that the application did not comply with the departmental study leave policy which required six months advance notice. Professor Boffard was informed that he should "*consider the option of utilising [his] available vacation leave credit and/or vacation leave without pay should the available leave credit prove to be insufficient to cover the remainder of the period of [his] absence.*" In this respect he was advised to contact the "*Institutional Leave Office to be provided with the necessary information*", after which the vacation leave application form should be forwarded "*for further approval and consideration accordingly by the Chief Executive Officer*".

7. On 13 August 2012 Wits addressed a letter to Professor Boffard in response to the application for leave. In that letter Wits informed Professor Boffard that his application for leave for the periods 26 August 2012 to 1 December 2012 had been approved. The letter of approval stated the following:-

"*The faculty has noted the specific activities that have been listed and believe all parties (Charlotte Maxeke Johannesburg Academic Hospital, Wits, patients and students) will benefit significantly from your interaction with highly regarded colleagues in internationally recognised centres. We also acknowledge that it was not possible to grant the leave at an earlier stage since most of the arrangements were made in the last few weeks.*

Please remember that you must submit a written report of the activities undertaken during the leave period through the head of school and to the faculty human resource office within eight weeks of your return to duty after each leave period. The report will be forwarded to the Staffing and Promotions Committee for its information and comment."

8. On 14 August 2012 Professor Boffard addressed a further letter to Dr Selebano. He referred to the letter of Dr Selebano of 8 August 2012 which he "*noted and appreciated*" and motivated for approval of the trip, explaining its importance in the academic community. In relation to the procedure followed in applying for leave the applicant stated that he consulted with the head of the study leave committee who informed him that the application for sabbatical should first be submitted to the University Study Leave Committee where-after it should be submitted to Dr Selebano. Furthermore, Dr Selebano was informed that "*the bulk of payments have been made, and are not returnable*" in relation to the trip. Finally, Professor Boffard informed Dr Selebano that he would ensure that

all his work commitments were covered during the six week period of absence.

9. Professor Boffard alleges that he was informed by the Hospital's leave office that in terms of the leave guidelines he could, in addition to vacation or study leave, take what has been referred to as the *"50/50 leave"*. This means he would be entitled to one day study leave with full pay and one day vacation leave taken from his vacation leave days, also paid in full. This allegation is not denied in the answering affidavit.

10. Subsequent to the advice of the leave office, Professor Boffard proceeded to apply for fourty-four (44) days leave on the 50/50 leave basis. He submitted his application form on 4 September 2012 to the leave office for forwarding to Dr Selebano. He says this is according to what he had been advised by Dr Selebano, which allegation is also not placed in dispute by the first and second respondents.

11. The study leave application form records that Professor Boffard was entitled to eighteen (18) days study leave and thirteen (13) days leave. This together with the entitlement to leave under the 50/50 study leave policy of the Department effectively meant that he was entitled to a total of 44 days leave. He accordingly requested 44 days leave. He also stated that the overseas trip would be entirely self-funded and no financial

support would be sought either from Wits or the Department. Again none of these averments are placed in dispute.

12. There was no response to the letter of 4 September 2012.

13. Professor Boffard states that he was not informed by any person that his leave application had been declined. Although the first and second respondents deny this allegation, it is noteworthy that they have not advanced any counter facts, nor have they explained the basis for their denial. Instead they assert that Professor Boffard failed to obtain the approval of leave from Dr Selebano. This is however no answer to the allegation that no-one said that the leave application had been declined.

14. Professor Boffard proceeded to take leave as follows:-

    14.1 Between 8 September to 12 October 2012 he took a period of 24 days. He worked normally, including overtime from 13 October 2012 until 27 October 2012.

    14.2 Between 28 October 2012 and 19 November 2012 he took a period of 15 working days as leave. He worked normally, including overtime from 20 November 2012 until 23 November 2012.

14.3 Between 24 November 2012 until 30 November 2012 he took a period of 5 days leave, where-after he returned to normal duties.

15. It was during the period between 8 September to 12 October 2012 that a decision to treat the absence of Professor Boffard as unpaid leave was taken. On 13 September 2012 Mr S M Mavathulana, the Acting Director of Human Resource Management at the Hospital addressed a letter to Dr Selebano. In that letter he sought Dr Selebano's approval for the implementation of leave without pay in respect of the alleged unauthorised absence from 8 September to 30 November 2012 for a period of 44 days. Motivating for why the leave should be regarded as unauthorised, Mr Mavathulana noted that Professor Boffard had failed to submit a formal application for consideration and approval by Dr Selebano. According to him, Professor Boffard's absence was only established on 10 September 2012 when the office of Dr Selebano attempted to contact him in respect of a meeting scheduled for 11 September 2012. It was alleged that the conduct of Professor Boffard amounted to a "*gross act of misconduct which is viewed in a very serious light*". The recommendation made by Mr Mavathulana was that the period of absence should be regarded as unauthorised and be dealt with as leave without pay and investigations should be conducted in relation to possible charges of misconduct against Professor Boffard.

16. The recommendations by Mr Mavathulana were approved by Dr Selebano on 14 September 2012. On 1 October 2012, the officials responsible for the administration of the payroll were informed of the decision by Dr Selebano with regard to "*the implementation of leave without pay*" against Professor Boffard. It was in these circumstances that deductions were approved against the remuneration of Professor Boffard.

17. The deductions made were the following:-

17.1 December 2012 – R41 050,63;

17.2 February 2013 - R41 054,63;

17.3 March 2013 - R41 054,63;

17.4 April 2013 - R20 527,31;

17.5 June 2013 - R41 054,62;

17.6 July 2013 - R16 421,85;

17.7 August 2013 - R12 316,38;

17.8 September 2013 - R28 738,24.

18. The total amount of the deductions is R242 222,26.

19. As a result of these deductions in April 2013, Professor Boffard lodged a grievance with the first and second respondents. He stated in the grievance that Dr Selebano's office was fully aware of the leave application, the reasons therefore and the departure dates since these had been submitted before the leave was taken. Furthermore, the allegation that Dr Selebano had been unaware of his whereabouts on or about 11 September 2012 was also addressed. It was stated that this could not be true because Dr Selebano had received the application forms for leave in the week preceding the week of 11 September 2012 and would have received an email sent to all staff informing them of the impending trip. He was accordingly aware of the whereabouts of Professor Boffard.

20. Also recorded was the fact that Professor Boffard had never been informed that his leave had been treated as unauthorised, particularly in view of the fact that the University faculty had expressly approved the application for leave. The failure to communicate with him and the decision taken subsequently to treat his absence as unpaid leave, it was stated, was in breach of the leave policy. This was because the policy says that an application for annual leave should not be unreasonably refused and that any refusal of leave must be confirmed in writing,

explaining the reasons for the refusal and appropriate arrangements for rescheduling the annual leave. In his case Professor Boffard stated that he had never been informed of any refusal of his request for annual leave. He accordingly sought the reversal of the deductions made from his salary.

21. On 17 May 2013 Professor Boffard received a letter from the "*Office of the Chief Executive Officer*". The letter stated:-

> "*This letter serves to confirm the leave without pay deductions being made from your salary in compliance with the instruction received from the former Chief Executive Officer Dr T E Selebano.*"

22. It furthermore proceeded to provide a breakdown of the deductions and future deductions. The letter did not invite any representations to be made on the issue of deductions. The letter, however, contained an apology for the failure to inform Professor Boffard timeously of the deductions.

23. On 22 July 2013 the South African Medical Association, acting on behalf of Professor Boffard, addressed a letter to the Hospital in which a complaint was made pertaining to the unlawful deductions and the failure to respond to the grievance timeously. The letter stated that the deductions did not comply with section 34 of the Basic Conditions of

Employment Act 75 of 1997 as well as section 38 of the Public Service Act, 1994. It demanded that the office of the CEO should immediately look into the grievance, failing which proceedings would be brought to court. There was no response to this letter.

24. On 23 September 2013 the present attorneys of Professor Boffard addressed a letter to the Hospital in which the lawfulness of the deductions was challenged. The Department was given until 4 October 2013 to return the monies which had been deducted by that stage, failing which legal proceedings would be instituted.

25. On 1 October 2013 the Department responded to the letter from the attorneys of Professor Boffard. It appears in the meantime that Dr Selebano had been replaced and a new CEO appointed. The letter of 1 October 2013 is signed by Ms G M Bogoshi, the new CEO. Ms Bogoshi stated the following in her letter:-

> "*Please be informed that I was made aware of your grievance through the letters I received on the 23rd September 2013. In view of the fact that the grievance procedure has not taken place since my appointment in February 2013 regarding the matter, an independent person will be asked to review your grievance and provide a recommendation. I will therefore not respond to the attorneys until I am confident that the internal processes were done to be able to respond to you.*"

26. On 3 October 2013 the attorneys acting for Professor Boffard again addressed a letter to the Department. They recorded their undertaking to suspend any legal proceedings in the event that the Department agreed to an independent review of the grievance which had been filed, by 14 October 2013. Certain proposals were made in relation to the grievance hearing but it was made clear that if such proposals were not accepted, legal proceedings would be instituted. There was no response to this letter.

27. On 17 December 2013 the current application was instituted. In these proceedings Professor Boffard relies on section 34 of the BCEA as well as section 38 of the Public Service Act. In its answering affidavit the Department has conceded that the deductions were not consensual or preceded by any form of a hearing. It has however contended that the deductions are not unlawful because they constituted repayment for monies paid in circumstances where Professor Boffard's leave was unauthorised. The answering affidavit, however, is completely silent on the question of the circumstances leading to the payment of the monies to Professor Boffard resulting in the need to make the deductions in the first place. There is no explanation given about when it was discovered that the payments had been made to Professor Boffard and whether the Department regarded the payments as being irregular or incorrectly made. Nor does the answering affidavit say why the Department decided to

deduct the monies without first informing Professor Boffard of its intention to effect the deductions.

THE PRINCIPLES

The authority to deduct monies paid to an employee

28. The first question is whether the Department had authority to make the deductions, regardless of the issue of consent. A convenient starting point is the principle of the rule of law entrenched by section 1(c) of the Constitution. That section provides that South Africa is one sovereign democratic State founded on, among others, the value of "*supremacy of the Constitution and the rule of law*".

29. The meaning of this section was considered in the decision of *Fedsure Life Assurance Ltd. & Others v Greater Johannesburg Transitional Metropolitan Council & Others*[1] where Chaskalson P (as he then was), Goldstone J and O'Regan J stated the following:-

[1] 1999 (1) SA 374 (CC).

"*[58] It seems central to the conception of our constitutional order that the legislature and executive in every sphere are constrained by the principle that they may exercise no power and perform no function beyond that conferred upon them by law. At least in the sense, then, the principle of legality is implied within the terms of the interim Constitution. Whether this principle of the rule of law has greater content than the principle of legality is not necessary for us to decide here. We need merely hold that fundamental to the interim Constitution is a principle of legality.*"[2]

30. The *Fedsure* decision of the Constitutional Court was concerned with the exercise of legislative power at the local government level. Subsequent decisions however have affirmed the constraints imposed on public power by the principle of legality.

31. In *Democratic Alliance v Ethekwini Municipality*[3] Brand J A (on behalf of a unanimous court) had to consider whether a decision by a local municipality to change street names constituted administrative action

[2] There were dissenting judgments given in this case, but there was no disagreement in relation to these paragraphs. In fact, subsequent judgments from the Constitutional Court and the Supreme Court of Appeal have affirmed these passages as part of the lexicon of South Africa's jurisprudence. See also *Affordable Medicines Trust & Others v Minister of Health & Others* 2006 (3) SA 247 (CC) at paras 48-49.

[3] 2012 (2) SA 151 (SCA).

within the meaning in section 1 of the Promotion of Administrative Justice Act 3 of 2000. He decided that the decision was not administrative action. But this did not mean the decision is not reviewable. It would be reviewable under section 1(c) of the Constitution. He explained in reference to his conclusion that the decision is not administrative action:-

> "*This conclusion does not mean, however, that these decisions are immune from judicial review. The fundamental principle deriving from the rules of law itself is that the exercise of all public power be it legislative, executive or administrative – is only legitimate when lawful … This tenet of constitutional law which admits of no exception, has become known as the principle of legality.*"[4]

32. It is accordingly clear that any decisions taken by the Department, as a repository of public power, must comply with the principle of legality. It is of little moment that the decision in issue is not administrative action. In this case, the power of the Department to deduct monies from state employees or civil servants to reverse situations of wrongly paid remuneration, is specifically governed by legislation in the form of section 38 of the Public Service Act. That section deals with "*wrongly granted remuneration*". Section 38(2) provides:-

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[4] *Democratic Alliance v Ethekwini Municipality* at para 21

"*If an officer or employee contemplated in sub-section (1) has in respect of his or her salary, including any portion of any allowance or other remuneration or any other benefit calculated on his or her basic salary or scale of salary or awarded to him or her by reason of his or her basic salary –*

… (b) been overpaid or received any such other benefit not due to him or her –

(i) an amount equal to the amount of the overpayment shall be recovered from him or her by way of the deduction from his or her salary of such instalments as the head of department, with the approval of the Treasury, may determine if he or she is in the service of the State, or, if he or she is not in so service, by way of deduction from any monies owing to him or her by the State, or by way of legal proceedings, or partly in the former manner and partly in the latter manner."

33. The section accordingly permits a deduction from a salary of an employee in circumstances where such employee has been wrongly paid. However, such deduction is only permissible *"with the approval of the Treasury*". The Chief Executive Officer of Charlotte Maxeke Hospital does not have such authority under the Public Service Act. Nor does the head of department of the Department of Health, Gauteng Province. No case has been made out to show that the deductions were made in exercise of delegated authority.

34. In the absence of authority, the deduction is unlawful. It is common cause that the monies were deducted from the salary of the applicant as contemplated by section 38 of the Public Service Act. Given the manifest breach of section 38, I conclude that the deductions were unlawful and in breach of section 38 of the Public Service Act.

The procedure for the deductions

35. The fact that the State has authority to make deductions from employee's remuneration to reverse wrongly paid remuneration will not necessarily render such deductions lawful. Any authority to deduct employees' salaries or remuneration provided by section 38 is subject to the procedural constraints in section 34 of the BCEA. Section 34 provides, in the relevant parts:-

> *"(1) An employer may not make any deductions from an employee's remuneration unless –*
>
> *a) subject to sub-section (2), the employee in writing agrees to the deduction in respect of a debt specified in the agreement; or*
>
> *b) the deduction is required or permitted in terms of a law, collective agreement, court order or arbitration award.*
>
> *…*

(5) An employer may not require or permit and employee to –

(a) repay any remuneration except for overpayments previously made by an employer resulting from an error in calculating the employee's remuneration; or

(b) acknowledge receipt of an amount greater than the remuneration actually received."

36. It was common cause that the deductions herein were in respect of the "*remuneration*" paid to Professor Boffard. Indeed, on the definition of remuneration provided in the BCEA, the deductions were made on the remuneration.

37. The approach of the Labour Court to section 34 of the BCEA has been to draw a distinction between payments to which an employee is entitled and payments where there is no such entitlement. In *Sibeko v CCMA & Others* (2001) JOL 8001 (LC) at issue was whether an employer was entitled to adjust an employee's salary in order to reflect what had been contractually agreed upon. On the facts, the employer had erroneously paid an employee a higher salary for a period of five months. When it tried to adjust the salary so as to reflect the agreed amount, the employee objected and challenged the employer on the basis that the act of the

reduction of the salary was in conflict with section 34(1) of the BCEA. Revelas J decided that such a claim fell outside the parameters of section 34 of the BCEA. She stated:-

> "*It is indeed so, that in terms of the Basic Conditions of Employment Act, an employer may not deduct amounts from the salary or remuneration of an employee without the employee's consent. Where an employee was however overpaid in error, the employer is entitled to adjust the income so as to reflect what was agreed upon between the parties in the contract of employment, without the employee's consent.*"[5]

38. In the case of *Valasce v Wireless Systems CC*[6] the facts were that as a result of an administrative error the employee had received car allowance payments for a period of eleven months. Because she was not entitled to a car allowance, the employer contended that it was entitled to deduct those monies from her salary. A challenge was thereafter brought against the deductions on the basis that they were in conflict with section 34 of BCEA. Molahlehi J concluded that the car allowance payments were made erroneously to the employee and accordingly the employer was entitled to effect such deductions.

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[5] At para 6.

[6] Case No. J1137/09 (unreported).

39. It is apparent from these decisions that the view taken by the Labour Court is that an overpayment as a result of an administrative error does not constitute remuneration as defined in terms of the BCEA. Since it is outside the parameters of the BCEA, an employer is not required to obtain the consent of an employee before effecting the deductions as required by Section 34(1) of the BCEA.

40. An issue, however, not decided by either the *Sibeko* decision or the *Valasce* decision is whether an employee is nevertheless entitled to a fair hearing before an employer recovers an overpayment as a result of an administrative error. In my view it may well be implicit from the structure of the BCEA as a whole that all instances involving demands for repayment of money already paid to an employee should at least be preceded by a fair hearing.

41. Since this case is in the public sector, it is useful to consider the approach of this Court in respect of deductions made by the state in its capacity as an employer. In the matter of *Police & Prisons Civil Rights Union obo Moyo v Minister of Correctional Services & Another*[7] an employee was held by the employer to be responsible for an accident involving a vehicle belonging to the employer. As a result he was required to pay for the

damages sustained in the accident. The employer began deducting monies from the employee's salary. This was despite the fact that the employee denied any responsibility for the accident. An application was brought to the Labour Court based on section 34 of the BCEA. Lagrange J found that the deductions would be unlawful because they would violate section 34 of the BCEA and in any event the claim which the employer sought to recover had prescribed.

42. In the case of *Cenge and others v MEC, Department of Health, Eastern Cape and another*[8] the government had paid the applicant employees certain monies as *"special skills allowance"*. Sometime after the government had started paying the special skills allowance, it introduced a new policy, by which the affected employees would be entitled to a different benefit. Because of the introduction of the new benefit, the employer decided that the employees must return the monies which had been paid as part of the special skills allowance. The employees challenged the matter before this Court. After referring to the provisions of section 34 of the BCEA, Lagrange J concluded that *"it is clear that the only basis on which the employer would be entitled to make the deductions would be under the provisions of subsections 34(1) (a) or (b)*

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[7] 2013 (34) ILJ 992 (LC).

or 35(1)(a)."[9] He thereafter considered the meaning of section 34(5), which allows an employer to require a refund from an employee if the refund is required from an overpayment made in error, in the calculation of an employee's remuneration. He concluded that the payments of the special skills allowance could not be said to be payments of the kind contemplated by section 34(5) of the BCEA.

43. Another decision is *Western Cape Education Department v General Public Service Sectoral Bargaining Council & Others.*[10] In that case Steenkamp J dealt with the situation of constructive dismissal. An employee had resigned complaining, among others, that the employer had withdrawn excessive amounts from her salary, despite the fact that an application for leave had been duly made. He also took into account the fact that the provisions of section 38 of the Public Service Act gave the relevant officials a discretion when it comes to the deduction of monies from employees. The application which was brought to review an arbitration award was accordingly dismissed.

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[8] (2012) 33 *ILJ* 1443 (LC).

[9] *Cenge* at para 7.

[10] 2013 (34) *ILJ* 2960 (LC).

44. To return to the present facts, it seems reasonably certain that the deductions are in conflict with section 34 of the BCEA. The first and second respondents have not pleaded that the monies were overpayments made to Professor Boffard as a result of erroneous calculation of his remuneration. Section 34(5) of the BCEA therefore does not apply. On the facts the payments appear to have been made correctly and not erroneously, on the basis that the leave of Professor Boffard had been approved. The fact that the leave had been approved by Wits is not in dispute. Nor is it in dispute that Professor Boffard followed the correct procedure to apply for leave as advised by the former CEO, Dr Selebano.

45. The decision taken by Dr Selebano, after the event, also appears to be at odds with the provisions of the leave policy. The Department did not refuse the leave at the time Professor Boffard went on leave. It was reasonable for him to assume that the leave had been approved in the light of what he knew. Dr Selebano had told him what procedure he must follow. He had followed the procedure as advised. Wits had approved his leave. The institutional leave office had told him he would be entitled to a total of 44 days leave on the 50/50 policy. Although it was argued that the leave form should have been sent to Dr Selebano before the leave was actually taken, this is not borne out by a close reading of the letter from Dr Selebano dated 8 August 2012. That letter simply said that the leave form should be forwarded to Dr Selebano once all the prior approvals had been

made. This indeed happened. All approvals were obtained, after which the leave form was sent to Dr Selebano. There was no indication, at all, that anything was amiss insofar as Professor Boffard was concerned. He was accordingly acting reasonably in taking off, when he did on 8 September 2012. The leave policy of the Hospital – echoing the provisions of Chapter 3 of the BCEA – contains a provision that leave should not be unreasonably refused.

46. The claim by the first and second respondents in the answering affidavit that the applicant was on unauthorized leave is not substantiated. It is in conflict with the objective evidence. The monies which were paid to Professor Boffard were accordingly due and owing to him. The Department had no right to regard those payments as constituting the subject matter of an overpayment.

47. It is clear that Professor Boffard did not consent to the deductions. Moreover, the respondents did not seek his consent prior to effecting the deductions. That act too was in violation of the BCEA. A factor which was taken into account in the *POPCRU* decision was whether the deductions would be in excess of 25% of the monthly wages of the employee. That is applicable herein. It is clear that the deductions exceed 25% of the employee's monthly remuneration.

48. In my view the deductions are unlawful and in conflict with section 34 of the BCEA.

CONCLUSION AND ORDER

49. The applicant has established a clear right for the relief he seeks. I can see no reason why he should not be entitled to the relief foreshadowed in the notice of motion.

50. Accordingly the following order is made:-

50.1 It is declared that the conduct of the first and/or second respondent in deducting the amounts of R242 222, 26 from the remuneration of Prof Boffard is in conflict with section 34 of the Basic Conditions of Employment Act 1997 and section 38 of the Public Service Act, 1994.

50.2 The first and/or second respondent are directed to pay to Prof Boffard the amount of R242 222,26 within a period of thirty (30) days from the date of this order.

50.3 The payment of the amount in paragraph 50.2 above shall include interest from December 2013 to date of payment.

50.4 The first and second respondent are ordered to pay the costs of Prof Boffard in this application jointly and severally the one paying the other to be absolved.

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TEMBEKA NGCUKAITOBI
ACTING JUDGE OF

THE LABOUR COURT OF SOUTH AFRICA,
JOHANNESBURG

Appearances:

For the Applicant:	Mr I I Mahomed (of Hogan Lovells)
For the Respondent:	Advocate Ramoshaba (Instructed by the State Attorney)