REPORTABLE

IN THE LABOUR COURT OF SOUTH AFRICA
HELD IN CAPETOWN

CASE NO: C335/ 2003

In the matter between:

PROTEKON (PTY) LTD Applicant

and

COMMISSION FOR CONCILIATION, MEDIATION AND ARBITRATION First Respondent
COMMISSIONER DAVE WILSON N.O. Second Respondent
NEIL ROBERT MARINUS Third Respondent

JUDGMENT

Introduction

1. This is an application to review and set aside an arbitration award made by a CCMA commissioner, the Second Respondent in these proceedings. The CCMA award has been reported at (2003) 24 ILJ 1595 (CCMA).

2. The dispute has its origin in a decision by the Applicant, Protekon (Pty) Ltd, to terminate the provision of travel concessions to a class of managerial employees. The Third Respondent, Mr Marinus, fell within this class and was affected by the decision.

3. Protekon terminated the travel concessions and substituted these with an increase in remuneration to compensate affected employees for the loss of the travel concessions. The Third Respondent considered that he was unfairly affected by this decision. After internal grievance procedures were exhausted, he referred a dispute to the CCMA. He alleged that the Applicant's

decision constituted unfair conduct relating to the provision of benefits. That is a dispute contemplated by the provisions of Section 186(2)(a) of the Labour Relations Act, 1995 ("the LRA").

4. The dispute ultimately came before the commissioner in arbitration proceedings. The commissioner made an award in favour of the Third Respondent. Before dealing with the arbitration award and the grounds on which the Applicant attacks the award on review, I set out a summary of the material facts as they appear from the papers before me.

Summary of material facts

5. Protekon was, until April 1999, an internal business unit of Transnet. It had no separate legal personality. With effect from 1 April 1999 it was "corporatised". Its business was transferred from Transnet to a newly established company, Protekon (Pty) Ltd. The company was wholly owned by Transnet. One of the consequences of this transaction was that the company was substituted in the place of Transnet as the employer of all employees employed in the business immediately prior to the transfer. This took place in terms of the provisions of Section 197 of the LRA.

6. Immediately prior to the business transfer, employees in the business enjoyed certain travel concessions. The nature of the travel concessions was regulated by a policy document. The policy document described the travel concessions in terms which indicated that they were discretionary in nature and that the rules governing the grant of travel concessions could be changed unilaterally.

7. Nevertheless, employees of Transnet had been able to take up the travel concessions in terms of the policy consistently since it was first introduced by the former South African Railways and Harbours Service, during 1981. The travel concession policy was inherited by Transnet when it was established in 1990.

8. One of the undertakings given by the Applicant to Transnet at the time of the business transfer was that conditions of employment would not be changed for a period of three years following the business transfer.

9. The Third Respondent was not employed in the Protekon business unit of Transnet at the time of the business transfer in 1999. At that time he was employed by Transnet in its Spoornet business unit.

10. During 2001, the Third Respondent applied for a vacant position with the Applicant. He was successful in his application and was appointed as an employee of the Applicant with effect from 1 October 2001.

11. Immediately prior to his appointment, and as a consequence of his employment with Spoornet, the Third Respondent enjoyed the benefit of the travel concessions. When he was engaged by the Applicant with effect from October 2001 he signed a fresh employment contract. There was no reference to the travel concessions in the employment contract. He was, however, told that his "benefits" in the employment of the Applicant would remain the same as with Spoornet. There was no specific discussion in relation to the travel concessions. On taking up employment with the Applicant, the Third Respondent was provided with a copy of an induction booklet in which it was stated that the viability of the travel concessions was "currently under revision and therefore subject to change".

12. During March 2002 the Applicant resolved, with effect from 1 April 2002 (three years following the business transfer from Transnet), to withdraw travel concessions from approximately 200 managerial employees and to replace the concessions with an increase in monetary remuneration. The Applicant took this decision without prior consultation with the affected employees.

13. The increase in monetary remuneration for affected employees was determined following an examination of the actual usage of travel concessions by those employees. Actual usage by the group of affected employees as a whole amounted to approximately 25% of the total available travel concessions. Each affected employee was compensated by the payment of additional remuneration amounting to one third of the value of the available travel concessions. The average value of the travel concessions available per manager was calculated as being approximately R51,000. The amount of compensation determined by the Applicant was one third of this, R17,000.

14. The Third Respondent was one of the affected managerial employees.

15. In his award, the commissioner found that the travel concessions were benefits as contemplated by the provisions of section 186(2)(a) of the LRA. He found that the Applicant had committed an unfair labour practice, and awarded the Third Respondent certain relief.

16. The Applicant then initiated these proceedings.

Unfair conduct relating to the provision of benefits: the jurisdiction of the CCMA

17. Mr Kahanovitz, who appeared on behalf of the Applicant, approached the matter on the basis that the Applicant accepted that the travel concessions were "benefits" of the Third Respondent's employment in the sense contemplated in Section 186(2)(a) of the LRA.

18. The Applicant was, in my view, correct to approach the matter on this basis. This Court has, in previous decisions, determined that a "benefit" for this purpose must be something other than remuneration: Schoeman v Samsung Electronics (Pty) Ltd (1997) 18 ILJ 1098 (LC) 1102; Gaylard v Telkom SA Ltd (1998) 19 ILJ 1624 (LC). In reaching that conclusion, this Court was clearly concerned that if the notion of "benefits" is interpreted too widely, the effect of this would be to give parties the right to refer to arbitration a wide range of disputes that are in essence disputes about remuneration. The effect of this would, because of the provisions of section 65(1)(c) of the LRA, be to preclude industrial action over a range of disputes over remuneration that properly fall within the realm of collective bargaining.

19. On the facts of those cases, this Court found that commission payable as part of the employee's salary (in Schoeman v Samsung) and accumulated leave pay (in Gaylard v Telkom) were not "benefits" as contemplated by the unfair labour practice definition. While it is not necessary for me here to reconsider whether those decisions were correct on their facts, the statement (in Schoeman v Samsungat 1102G to 1103A) that a benefit is "something extra, apart from remuneration" seems to me to go too far. In my view there is little doubt that remuneration in its statutory sense (as defined in the LRA) is broad enough to encompass many forms of payment to employees that may, in the ordinary use of language, properly be described as "benefits".

20. There is no closed list of employment benefits that fall within what is contemplated in section 186(2)(a). But there can be little doubt that most pension, medical aid and similar schemes fall within the scope of that term. This is so despite the fact that employer contributions to such schemes fall within the statutory definition of remuneration: see, for example, Younghusband v Decca Contractors (SA) Pension Fund and its Trustees (1999) 20 ILJ 1640 (PFA)at 1657I to 1658E; .[at [15(Resa Pension Fund v Pension Fund Adjudicator & Others (2000) 21 ILJ 1947 (C And in SAMRI v Toyota of South Africa Motors (Pty) Limited [1998] 6 BLLR 616 (LC)participation in a motor vehicle benefit scheme in terms of which employees were granted the use of a motor vehicle by the employer was held to constitute part of an employee's remuneration.

21. I have referred earlier to this Court's concern that if some forms of remuneration are found

to fall within the concept of "benefits" as contemplated in the unfair labour practice definition, this might unduly curtail industrial action in an area typically regarded as the proper subject of collective bargaining. In the light of the decisions of the Labour Appeal Court, to which I refer below, this concern need not persist.

22. Disputes over the provision of benefits may fall into two clearly identifiable categories: the first is where the issue in dispute concerns a demand by employees that certain benefits be granted (or reinstated) irrespective whether the employer's conduct in not agreeing to grant the benefit (or in removing it) is considered to be unfair; the second is where the issue in dispute is the fairness of the employer's conduct. No party has a right to refer disputes in the first category to arbitration, and there is consequently no barrier to industrial action at the point of impasse. The converse is true of disputes in the second category.

23. In Ceramic Industries Ltd t/a Betta Sanitary Ware v National Construction Building & Allied Workers Union (2) (1997) 18 ILJ 671 (LAC) Appeal Court cautioned against allowing parties to "convert" justiciable disputes into disputes in respect of which industrial action is permissible by changing the nature of the demand. This would allow "the tail to wag the dog." (at 677 H-I and 678 A-C) When that decision is considered in the context of other decisions of the LAC (in particular Fidelity Guards Holdings (Pty) Ltd v Professional Transport Workers Union & Others (1) (1998) 19 ILJ 260 (LAC)at 269 G-H and Coin Security Group (Pty) Ltd v Adams & Others (2000) 21 ILJ 924 (LAC)at [16]) it is, however, clear that the Court will look at the substance of the dispute and not at the form in which it is presented, and that the characterization of a dispute by a party is not necessarily conclusive. What is required is an assessment, on the facts of each case, of the true nature of the dispute in order to determine whether it is a dispute that a party has the right to refer to arbitration.

24. More significantly, perhaps, the Labour Appeal Court has pointed out that there are a number of types of dispute in respect of which parties enjoy a genuine election whether to resort to industrial action or to seek adjudication: see Maritime Industries Trade Union of SA & Others v Transnet Ltd & Others (2002) 23 ILJ 2213 (LAC) paragraphs [106] to [108].

25. Where disputes over benefits are concerned, its seems to me, there can be little objection to workers choosing to tackle the employer in the collective bargaining arena rather than trying to demonstrate unfairness in the sense contemplated in the unfair labour practice definition. The LRA does not appear to preclude them from doing both at the same time. (This is in contrast to the election to resort to either arbitration or industrial action in relation to organisational rights: Section 21 read with Section 65(2) of the LRA; and the election to resort to either adjudication or industrial action now provided for in Section 189A, with specific reference to sub-section 189A(10).)

26. It is for these reasons that I consider that the Applicant was correct to approach the matter on the basis that the travel concessions that the Third Respondent enjoyed whilst in the employ of the Applicant constituted a "benefit" within the meaning of that term in the unfair labour practice provisions of the LRA.

27. That conclusion does not of course determine the nature or extent of the employer's obligations to provide the benefit. A separate enquiry is necessary for that purpose. This will usually be necessary to determine whether or not any particular employer conduct in relation to the provision of the benefit can properly be described as being unfair and as constituting an unfair labour practice.

28. The main thrust of the argument of Mr Kahanovitz, however, was that the Third Respondent had enjoyed no contractual right to the benefit in question because the benefit was conferred on terms which expressly reserved the employer's right to withdraw it. In the absence of an enforceable contractual right to the benefit, Mr Kahanovitz submitted, the CCMA had no jurisdiction to adjudicate the dispute because it fell outside what was contemplated by the provisions of section 186(2)(b) of the LRA. In support of this submission, Mr Kahanovitz referred me to the judgment of the Labour Appeal Court in Hospersa & another v Northern Cape Provincial Administration (2000) 21 ILJ 1066 (LAC).

29. In Hospersa, an employee had acted in a more senior position for some two years. When the position was advertised she applied to be permanently appointed to it, but was unsuccessful in her application. She then ceased to act in the more senior position. She declared a dispute in which she claimed that she should have been remunerated retrospectively at the higher rate of remuneration commensurate with the position in which she had been acting for the duration of the period of acting. She could point to no contractual entitlement, regulation or policy that provided for an "acting allowance" in those circumstances. The LAC held that the dispute was not about something to which the employee was already entitled. It was about a benefit which she hoped to "create through arbitration" (at paragraph [8]). The Court continued:

> " …the legislature did not seek to facilitate, through item 2(1)(b), the creation of an entitlement to a benefit which an employee otherwise does not have. I do not think that item 2(1)(b) was ever intended to be used by an employee who believes that he or she ought to enjoy certain benefits which the employer is not willing to give him or her, to create an entitlement to such benefits through arbitration….It simply sought to bring under the residual unfair labour practice jurisdiction disputes about

> benefits to which an employee is entitled ex contractu (by virtue of the contract of employment or a collective agreement) or ex lege (the Public Service Act or any other Act). ”(at paragraph [9])

30. The essence of the Court’s reasoning was that the unfair labour practice jurisdiction may not be used as a substitute for collective bargaining, to create new employment rights or to further collective bargaining demands.

31. Mr Kahanovitz sought to persuade me that the effect of the decision in Hospersawas to restrict the unfair labour practice jurisdiction in relation to benefits to the enforcement of contractual rights. Scrutiny of employer conduct was to be limited to an examination of whether the employee is contractually entitled to the remedy that is sought. I do not agree that this was the intention of the Labour Appeal Court or the effect of the decision in Hospersa.

32. What the Labour Appeal Court clearly does say in Hospersais that the unfair labour practice jurisdiction cannot be used to assert an entitlement to new benefits, to new forms of remuneration or to new policies not previously provided by the employer. To permit that would allow an employee to use the unfair labour practice jurisdiction to establish new contractual terms, something which the LRA clearly contemplates should be left to a process of bargaining between the parties.

33. It does not, however, follow from this that an employee may have recourse to the CCMA’s unfair labour practice jurisdiction only in circumstances in which he has a cause of action in contract law. If that was the case there would have been little purpose in introducing the specific unfair labour practices contemplated in Section 186 of the LRA.

34. The establishment of the CCMA’s unfair labour practice jurisdiction specifically in relation to benefits is, it seems to me, a legislative response to the complexity of the reciprocal employer and employee rights and obligations that exist in many employee benefit schemes. In typical employee benefit schemes (such as pension funds and medical aid schemes) the employer’s obligations frequently extend beyond the simple payment of money to the employee or a third party in return for services rendered by the employee. Employer obligations are typically regulated by separate policies or rules. In many instances the employer enjoys a range of discretionary powers in terms of those policies or rules. The legislature has clearly considered it necessary to regulate employer conduct in those circumstances by superimposing a duty of fairness irrespective whether that duty exists expressly or impliedly in the contractual provisions that establish the benefit.

35. The fact that an employer is entitled, by the terms of a benefit scheme or policy, to exercise a discretion as to the amount of any benefit to be provided, as to the terms upon which a benefit is to be provided, or as to whether a benefit is to be provided at all does not, in my view, take the benefit outside the ambit of the unfair labour practice jurisdiction provided by Section 186(2)(a). The existence of an employer discretion does not by itself deprive the CCMA of jurisdiction to scrutinise employer conduct in terms of the provisions of that section. On the contrary, it is clear that the provision was introduced primarily to permit scrutiny of employer conduct including the exercise of employer discretion in the context of employee benefits.

36. It follows from this that there are at least two instances in which employer conduct in relation to the provision of benefits may be subjected to scrutiny by the CCMA under its unfair labour practice jurisdiction. The first is where the employer fails to comply with a contractual obligation that it has towards an employee in relation to the provision of an employment benefit. The second is where the employer exercises a discretion that it enjoys under the contractual terms of the scheme conferring the benefit.

37. In the first instance, there is clearly an overlap between the CCMA's unfair labour practice jurisdiction and the jurisdiction of civil courts to deal with contractual disputes. In the second instance, where the fairness of the employer's exercise of a contractual discretion may be subjected to scrutiny, it is not clear that the employee has any other cause of action besides the unfair labour practice, unless it can be demonstrated in a civil court that the contract requires, expressly or impliedly, that the discretion be exercised fairly.

38. It is possible that a contractual term to this effect (imposing a duty on the employer to act fairly) will readily be implied in the context of employment benefits. The courts have on a number of occasions found an implied duty of good faithin this context: see, for example, Tek Corporation & others v Lorentz 1999 (4) SA 884 (SCA)at 894B-E (referring to Imperial Group Pension Trust Ltd v Imperial Tobacco Ltd [1991] 2 All ER 597 (Ch)); IBM Pensioners Action Group v IBM SA (Pty) Ltd (2000) 21 ILJ 1467 (PFA)at [27] to [38]. It seems to me that the requirement of fairness derived from the right to fair labour practices may well be found to coincide substantially if not completely with the duty of good faith referred to in these decisions.

The commissioner's assessment of the fairness of the Applicant's conduct

39. The travel concessions regime in place when the Third Respondent took up employment with the Applicant during 2001 was the same regime as that enjoyed by other employees prior to their employment by the Applicant in consequence of the business transfer in 1999. It was the same travel concessions regime as that enjoyed by the Third Respondent during his employment

at Spoornet. It was a regime that reserved a considerable degree of employer discretion that was expressly provided for in the policy regulating the travel concessions.

40. What the Applicant did with effect from 1 April 2002 was to exercise the discretion that it had reserved for itself in terms of the rules regulating travel concessions to withdraw the concessions from a class of employees. It substituted them with the payment of increased remuneration. The withdrawal of the travel concessions against payment of increased remuneration constituted employer conduct in relation to the provision of a benefit.

41. The Applicant suggested that the commissioner should have limited himself to assessing the fairness or otherwise of the withdrawal of the benefit, and that he erred in considering that the "compensation" that the Applicant determined should replace the travel concessions formed part of the Applicant's "conduct" in relation to the provision of benefits. In my view the withdrawal of the travel concessions and its replacement with monetary "compensation" was part of a single course of conduct by the Applicant, and the commissioner was entitled to consider that conduct in its entirety.

42. The conduct was unilateral. It was not preceded by any formal process of engagement or consultation with the affected employees with a view to seeking consensus. The commissioner was required to consider whether the conduct constituted an unfair labour practice.

43. The commissioner's approach to assessing the fairness of the Applicant's conduct was to look separately at the question whether there was a fair reason for the conduct and the question whether a fair procedure was followed. Although the LRA itself does not prescribe this separate analysis of questions of substance and procedure, as it does for example in relation to the question of the fairness of dismissal (in Section 188), this approach was well established under the general unfair labour practice jurisdiction of the 1956 LRA. (The commissioner referred in this regard to the decision of WL Ochse Webb & Pretorius (Pty) Ltd v Vermeulen [1997] 2 BLLR 124 (LAC)). In my view that is an appropriate approach to adopt in considering the fairness of employer conduct in relation to the provision of benefits.

44. The commissioner found that the Applicant was contractually entitled to withdraw the travel concessions and that it had a genuine commercial rationale for doing so. This, in the commissioner's view, meant that there was a fair reason for the employer's conduct. That decision of the commissioner is not challenged in these proceedings.

45. On the question of procedure, the commissioner considered the effect of the decision in two

discrete ways. First, the commissioner concluded that since the Applicant had a genuine commercial rationale to withdraw the travel concessions, it was entitled to make this decision without consultation. This conclusion, it seems to me, is open to serious question. But it is not attacked in these proceedings, the application being unopposed, and I am not at liberty to interfere with it. In any event, the commissioner concluded that the failure to consult was indeed unfair, for a different reason. He concluded that it was unfair (as a matter of procedure) for the employer to determine without prior consultation the amount of compensation to be paid to affected employees as a substitute for the withdrawal of the travel concessions. He then crafted certain remedies based on that finding of unfairness.

46. In my view there is no reason to fault the commissioner's finding of procedural unfairness, and I too would have decided that the employer conduct in withdrawing the benefit was procedurally unfair. I would have added to the reasoning of the commissioner that it was unfair because there was no consultation on the rationale for the employer conduct.

The remedy determined by the commissioner

47. This disposes of all of the Applicant's challenges save for one. That challenge focused on the remedy that the commissioner determined in consequence of his finding that the employer conduct was procedurally unfair.

48. There were two elements to the Applicant's attack on the remedy. The first was that the commissioner ordered the Applicant to consult with all of the approximately 200 affected employees, and not only the Third Respondent. The remaining employees were not party to the dispute and, it was submitted, had made no complaint. The Applicant submitted that the commissioner exceeded his powers when he made this order.

49. The second element to the attack on the remedy concerned the commissioner's award of compensation. The commissioner ordered the Applicant to compensate the Third Respondent in an amount equal to the difference between the value he would have received had the travel concessions remained in place and the amount actually paid to him during the period of one year (that was the period of time that had elapsed between the withdrawal of the travel concessions and the date of the arbitration).

50. A commissioner appointed to determine an unfair labour practice dispute may determine the dispute "on terms that the commissioner deems reasonable" (Section 193(4) of the LRA). Those terms "may include ordering reinstatement, re-employment or compensation".

51. In the present matter the commissioner ordered that consultation with all affected employees must take place, but that if it did not the Applicant must re-instate the Third Respondent's full travel benefits retrospective to the date of the award. In addition, the commissioner awarded compensation for the loss of the benefit for the period prior to the arbitration. Since the net effect of these elements of the award did not amount to more than the full retrospective reinstatement of the benefit, I need not consider the question whether the commissioner has the power to award both reinstatement and compensation as remedies for an unfair labour practice, or whether these remedies stand as alternatives only.

52. The commissioner's award gave the Applicant an opportunity to remedy its procedural error. If it took this opportunity, it would have to compensate the Third Respondent only for the loss he had suffered during the one year period prior to the arbitration taking place. The consultation envisaged did, however, necessarily involve a large number of other employees that were not in dispute with the Applicant. The commissioner could not reasonably order consultation with the Third Respondent alone. Where the amount available as compensation for withdrawal of the travel concessions had been settled for the group of affected employees as a whole, the outcome of consultation with the Third Respondent would have been a foregone conclusion.

53. At the same time, the commissioner could not reasonably have contemplated consultation with the group of affected employees as a whole, unless that consultation took place on the basis that the Applicant and the affected employees were willing to revisit, with open minds and in good faith, what had previously been determined. That process would necessarily have unsettled what had, for the approximately 200 other employees, until then been settled. On the evidence before the commissioner, the other affected employees had made no complaint, and had accepted the new dispensation. They had not been joined in the proceedings. In my view that made the commissioner's award, at least to that extent, irrational, and the commissioner exceeded his powers in granting that relief.

The relief to be granted by this Court

54. This conclusion does, however, give rise to certain difficulties in relation to the relief that should be granted by this Court. The commissioner considered it reasonable to make the further order that, in the event consultation did not take place, the Applicant must re-instate the Third Respondent's use of the travel concession. The commissioner clearly considered the failure to consult to be sufficiently serious to justify the grant of what may be termed substantive rather than merely procedural relief in the event that the Applicant failed to take the further opportunity it was

given to consult.

55. I have considered whether the matter should be remitted to the commissioner to reconsider the remedy he granted in the light of the difficulties with it that I have referred to. Although the remedy that is to be granted in unfair labour practice disputes is a discretionary one, and for that reason I would ordinarily be inclined to remit the matter to the CCMA, I have decided to substitute the award. The circumstances in which this Court will do this were considered in Maarten & Others v Rubin NO & Others (2000) 21 ILJ 2656 (LC)at [26] to [28]. In the present matter I consider that further delay would cause unjustifiable prejudice to both the Applicant and the Third Respondent, and that this Court is in as good a position as the CCMA to make the decision itself. The type of decision is one with which this Court is familiar.

56. There is nothing in the provisions of the LRA (section 193(4)) to suggest that substantive relief (in the form of reinstatement of a benefit) may not be granted where an employer has been found to have committed an unfair labour practice on procedural grounds only. This is in contrast to the remedies for unfair dismissal provided for in Section 193(1) and (2), as interpreted by the Labour Appeal Court in Mzeku & others v Volkswagen SA (Pty) Ltd & others (2001) 22 ILJ 1575 (LAC).

57. In the present matter, however, there are compelling reasons why an order reinstating the travel concessions for one employee only would not be reasonable. Inherent in the substitution of the travel concession scheme, it seems to me, is the notion of cross subsidisation. It is a group scheme. Some employees may make more use of it while others may use it less. That appears to be the basis of the commissioner's conclusion that the Applicant "acted fairly in determining the total amount of compensation payable, in that the amount of compensation exceeded the anticipated cost of granting the benefit, based on historical information."

58. Where an employer has not breached its contractual obligations to an individual employee, it seems to me that an adjudicator should be reluctant, as a matter of fairness, to disturb an employer decision that may reasonably be said to be in the interests of a group of employees as a whole, even if the interests of a minority of employees in the group are adversely affected. With fairness as the test, questions of proportionality will invariably need to be considered. The disadvantages to a minority may, as a matter of fairness, outweigh the advantages to a majority. In the present case, however, there is no reason to conclude that any adverse impact on the Third Respondent is disproportionate to the settled interests of the majority of employees in the affected class.

59. In those circumstances it seems to me that compensation is an adequate and appropriate remedy. As to the amount of such compensation, the LRA provides only that it should not exceed the equivalent of 12 months remuneration (Section 194(4)). In my view the amount of compensation calculated by the commissioner, being the difference in value to the Third Respondent of the travel concession and the compensation paid to him as a member of the affected class of employee, for a period of 12 months, is reasonable, just and equitable in all the circumstances.

60. The Third Respondent did not oppose this application and no cost order was sought against him. The Applicant sought an order of costs against the CCMA and the commissioner on the grounds that there had been a serious failure to discharge their statutory functions, and that the order was "bizarre". I do not agree that a cost order is warranted in the present matter.

Order

I make the following order:

1.

1. The relief granted by Second Respondent is reviewed and set aside and substituted with the following: "The Respondent is ordered to pay the Applicant an amount of R23,890 (twenty three thousand eight hundred and ninety rand). This amount shall bear interest from 21 May 2003 to date of payment at the rate prescribed from time to time in respect of a judgment debt in terms of section 2 of the Prescribed Rate of Interest Act, 1975."

2. The Applicant is ordered to pay the amount due in terms of paragraph 1 within 14 days of this order.

3. There is no order as to costs.

C F N TODD

Acting Judge of the Labour Court

Date of hearing:	24 November 2004
Date of judgment:	17 May 2005
Applicant's Representative:	Adv. CS Kahanovitz, instructed by Jan S De Villiers