IN THE LABOUR APPEAL COURT OF LESOTHO

LAC/CIV/A/2/2010

HELD AT MASERU

In the matter between:

THABO MOHLOBO	1ST APPELLANT
THABISO SEGOATSI	2ND APPELLANT
MENTSELE MOLATO	3RD APPELLANT
ISAAC SEPETLA	4TH APPELLANT
LEBONAJOANG RANTHO	5TH APPELLANT
SEBOKA PULE	6TH APPELLANT
RAMOREBOLI CHABELI	7TH APPELLANT
SEPHULA LETUKA	8TH APPELLANT
NTIMO NKOME	9TH APPELLANT
JOSEPH KOABATSANA	10TH APPELLANT
MOTSOMI RALITAPOLE	11TH APPELLANT
MOEKETSI JAASE	12TH APPELLANT

JOBO LEROTHOLI 13TH APPELLANT

PHEELLO RATSOANYANE 14TH APPELLANT

AND

LESOTHO HIGHLANDS DEVELOPMENT AUTHORITY RESPONDENT

CORAM: HONOURABLE DR K. E. MOSITO AJ

ASSESSORS: MR M MAKHETHA

MR J M TAU

HEARD: 17TH JANUARY 2011

DELIVERD: 26TH JANUARY 2011

SUMMARY

Appeal from Labour Court – Arbitrator having not considered the evidence presented before her – mistake of law materially affecting the decision resulting from such failure – appeal succeeding and matter remitted to the DDPR for hearing in de novo.

Costs of appeal to be borne by respondent

JUDGEMENT

MOSITO AJ

INTRODUCTION

1. The Appellants were initially employed by the 1st respondent and were thereafter deployed at a project of the 1st respondent called Katse Lejone Matsoku Water Supply Sanitation and Refusal Disposal Facilities Program (KLM-WATSAN). They were made to sign contracts with the said project which, as far as relevant to this case, provided expressly for only M300.00 per month as mountain/deprivation allowance. They served the 1st respondent under KLM-WATSAN until the contracts came to an end. They were paid the M300.00 per month as mountain/ deprivation allowance. After the contracts had terminated, they referred a dispute of underpayments based on breach of contract to the Directorate of Dispute Prevention and Resolution, (DDPR). The DDPR dismissed it. They approached the Labour Court but it declined to intervene on review. They now appeal to this Court.

2. The case raises important questions concerning the role of arbitrators and that of the courts in overseeing the arbitration process under the **Labour Code Act No 24 of 1992** (as amended by the **Labour Code (Amendment) Act No 3 of 2000** and the **Labour Code (Amendment) Act No of 2006**) which is a carefully crafted statute. Applied in its terms the Code can generally result in the just and speedy resolution of labour disputes. It may be mentioned that in many such disputes conciliation and arbitration play a

pivotal role. Thus, if care is taken at that stage of the process there ought to be little call for the intervention of the courts.

LEGAL PRINCIPLES APPLICABLE TO THE REVIEW OF COMPULSORY ARBITRATION AWARDS BY THE DIRECTORATE OR DISPUTE PREVENTION AND RESOLUTION (DDPR)

3. Generally, in cases of disputes that are subject to compulsory arbitration the courts have a limited role (See **Tao Ying Metal Industry (Pty) Ltd v Pooe NO and Others 2007 (5) SA 146 (SCA))**. Their role is generally confined to overseeing the process by way of review to ensure that it was in accordance with law. In proceedings for review two separate questions arise. The first is whether the award was made in accordance with law. The focus in that enquiry, is not on whether the decision of the arbitrator is right or wrong but rather on the process and on the way in which the decision-maker came to the challenged conclusion (See **Rustenburg Platinum Mines Ltd (Rustenburg Section) v Commission for Conciliation, Mediation and Arbitration 2007 (1) SA 576 (SCA)**. Describing the enquiry that this calls for Cameron JA at paras [30] and [31] at 589G - 590A in **Rustenburg Platinum Mines**' case said the following:

> 'The question on review is not whether the record reveals relevant considerations that are capable of justifying the outcome. That test applies when a court hears an appeal: then the inquiry is whether the record contains material showing that the decision - notwithstanding any errors of reasoning - was correct. This is because in an appeal the only determination is whether the decision is right or

> wrong. . . . In a review the question is not whether the decision is capable of being justified . . . but whether the decision-maker properly exercised the powers entrusted to him or her.'

4. In **Tao Ying Metal Industry (Pty) Ltd v Pooe NO and Others** *(supra),* Nugent JA pointed out that, It is only if the award is found not to be in accordance with law that the second enquiry arises. The second enquiry concerns the fate of the dispute that was the subject of the award once the award is set aside. The course that a court will follow to achieve the resolution of the dispute will necessarily depend upon the particular circumstances. It is then that a court might consider whether the material before the arbitrator nonetheless justified the award.

5. It is important that an arbitrator ensures at the outset that the ambit of the dispute has been properly circumscribed, even if the dispute has many facets, for that defines the authority that the arbitrator has to make an award on. The authority of an arbitrator is confined to resolving the dispute that has been submitted for resolution and an award that falls outside that authority will be invalid (See **Tao Ying Metal Industry (Pty) Ltd v Pooe NO and Others** *(supra)* at para 5). It would seem that arbitrators must be guided by at least three considerations. The first is that they must resolve the real dispute between the parties. Second, they must do so expeditiously. And, in resolving the labour dispute, they must act fairly to all the parties (See **CUSA v Tao Ying Metal Industries and Others 2009 (2) SA 204 (CC)**). The labels that parties attach to a dispute cannot change its underlying nature. An arbitrator is required to take all the facts into consideration including the description of the nature of the dispute, the

outcome requested by the parties and the evidence presented during the arbitration. The material that an arbitrator will have prior to a hearing will consist of standard forms which record the nature of the dispute and the desired outcome. The informal nature of the arbitration process permits an arbitrator to determine what the real dispute between the parties is on a consideration of all the facts. The dispute between the parties may only emerge once all the evidence is in.

6. If an arbitrator awards on issues which have not been left to him for decision, he commits misconduct and may also be acting in excess of jurisdiction (See Sir Michael J Mustill and Stewart C Boyd **the Law and Practice of Commercial Arbitration in England 2 Ed at 317**. See, too, at 554 – 5). Indeed, '[t]he binding force of an award must depend in every case on the submission. If the question which the arbitrator takes upon himself to decide is not in fact within the submission, the award is a nullity. The arbitrator cannot make his award binding by holding contrary to the true facts that the question which he effects to determine is within the submission.'(See **Produce Brokers Co Ltd v Olympia Oil and Cake Co Ltd [1916] 1 AC 314 (HL) at 327; McKenzie NO v Basha 1951 (3) SA 783 (N) at 787H - 788A).** An award may also not be founded on matters that occur to the arbitrator but that the parties have had no opportunity to address. (See **Steeledale Cladding (Pty) Ltd v Parsons NO and Another 2001 (2) SA 663 (D) at 672F - 673C**. See, too, Russell on ***Arbitration*** 22 Ed by David St John Sutton and Judith Gill in paras 5-060 and 6-085). In arriving at her decision the Arbitrator had to act *bona fide*, not be prompted by any ulterior motive and properly apply her mind to the matter. Included under the rubric of

failure to apply the mind to the matter is capriciousness, a failure to appreciate the nature and limits of the discretion to be exercised, a failure by the person concerned to direct his thoughts to the relevant data or the relevant principles, reliance on irrelevant considerations, an arbitrary approach, and an application of wrong principles (See **Northwest Townships (Pty) Ltd v The Administrator, Transvaal, and Another 1975 (4) SA 1 (T) at 8F - G; Goldberg and Others v Minister of Prisons 1979 (1) SA 14 (A) at 48; Dempsey v Minister of Law and Order and Others 1986 (4) SA 530 (C) at 532G – I)**. With the aforementioned comments in mind, we proceed to consider the case before us.

PROCEEDINGS BEFORE THE DIRECTORATE OF DISPUTE PREVENTION AND RESOLUTION, (DDPR)

7. The appellants had initially referred their dispute with the respondent to the Directorate of Dispute Prevention and Resolution, (DDPR). In essence, the complaint of the appellants before the DDPR was that they had received underpayments of their mountain allowances for the period they were in the employment of the respondent. They complained that, whilst they were only paid M300.00 per month for this item, the Human Resource Manual of the respondent provided for a mountain allowance of M1, 800.00 per month. They reasoned that their contracts of employment, which were entered into with the respondent's special project called Katse Lejone Matsoku Water Supply Sanitation and Refusal Disposal Facilities

Program (KLM-WATSAN) and which provided expressly for only M300.00 per month, were not valid [to this extent].

8. The grounds for any review as well as the facts and circumstances upon which the applicant wishes to rely have to be set out in the founding affidavit. These may be amplified in a supplementary founding affidavit after receipt of the record from the presiding officer, obviously based on the new information which has become available. Section 228F of the **Labour Code (Amendment) Act 2000** provides for 'review of arbitration awards' by the Labour Court *inter alia* as follows:

> **228F Review of arbitration awards**
>
> (1) ….
> (a) ….
> (2) ….
> (3) ….
> (4) The [Labour Court] may set aside an award on any grounds permissible in law and any mistake of law that materially affects the decision.".

9. As I understand it, a *mistake of law* as used in this section, is a misconception that occurs when a person with complete knowledge of the facts reaches an erroneous conclusion as to their legal effect. Not every mistake of law would vitiate an arbitral award under the section. The Act allows only that mistake of law "that materially affects the decision." The reason for this is perhaps because a mistake not amounting to misconduct appearing on the face of an award was, in the Roman-Dutch law, of no consequence than one not so appearing, and would not justify the setting aside of an award, although in English law an award might be set aside if a mistake of law appeared on its face, even when it did not amount to

misconduct (See **Dickenson & Brown v Fisher's Executors 1915 AD 166 at p170**). It was submitted on behalf of the respondent that the present "complaints point to findings on the facts and on the law and not any irregularity in the conduct of the arbitration proceedings" and therefore not reviewable. It may be true that the *in casu* complaints point to findings on the facts and on the law and not any irregularity in the conduct of the arbitration proceedings. However, an examination of the authorities reveals that the distinction between a mistake of fact and a mistake of law is often tenuous. We are fortunately not called upon to determine the extent of this tenuous distinction. It suffices to say that all we have to consider now are the grounds contained in the affidavits before us.

10. The Appellants relied on five grounds in their review application. They are contained in para 8 of the founding affidavit of the first Appellant. We however do not have to consider all of them. In para 8.3 of the said affidavit, the appellants complain that the Arbitrator erred, misdirected herself and committed a mistake of law which materially affected her decision in holding that, the first respondent's Human Resource Manual did not apply to the Appellants as part of their contracts of employment, which could not be changed without their consent, after finding that the Appellants were employees of first Respondent. In para 8.4 of the said affidavit, the appellants complain that the Arbitrator erred, misdirected herself and committed a mistake of law which materially affected her decision in holding that, the first respondent was entitled to treat the Appellants differently in law, or exempt appellants from the application of the first respondent's Human Resource Manual contrary to the provisions

of the Personnel Regulations and Human Resource Manual of the first respondent.

11. The review criterion relevant to this case is whether the record contains material showing that the decision - notwithstanding any errors of reasoning - was correct. Thus, the question is whether the arbitrator properly exercised the powers entrusted to her. As indicated above, the authority of an arbitrator is confined to resolving the dispute that has been submitted for resolution and an award that falls outside that authority will be invalid.

12. The case of the Appellants as stated in the special Referral Form in the DDPR was one of a breach of contract. It was the case of the appellants that the respondent had underpaid them their mountain allowances contrary to the provisions of the Human Resources Manual of the respondent, which provides that all workers of the respondent who are placed in rural areas are paid M1, 800.00 per month as a so-called mountain allowance. Notwithstanding these clear outlines of the case, the Learned Arbitrator proceeded to say that: "THERE ARE BASICALLY TWO POINTS THAT I HAD TO DETERMINE: WAS THE CONTRACT BETWEEN APPLICANTS AND RESPONDENT VALID?" She then proceeded to determine this one issue as formulated by her and thereafter dismissed the application.

13. There was evidence before the Arbitrator of the Human Resources Manual which provided in part that (to mention but a few)**, t**he regulation, policies and procedures contained in this manual shall apply to all employees of the LHDA (See para 2.4.1). It further provided that where these policies and procedures are in conflict with the terms and conditions of contracts for

employees, the contracts shall prevail, unless agreed otherwise between such employee and LHDA. (See para 2.4.2). The Human Resources Manual provided further that in some cases exemptions from policies and procedures laid down in this manual may be necessary. In these circumstances, the HR branch shall authorize the exemptions in writing after obtaining approval from the chief executive, subject to LHWC approval. Had the arbitrator considered all these issues, she would have in all probability come to a different view. Her failure to consider the Human Resources Manual which constitutes the law or personnel regulations of the respondent was a clear error of law which materially affected her decision. This is because she ignored a relevant consideration.

14. The Learned Arbitrator clearly committed a mistake of law in determining the issue of *validity* as opposed to *breach* of contract. She therefore erred in law by considering and determining an issue that was not before her. It is true that appellants canvassed the issue of validity in evidence which was not the issue before the arbitrator. However, that was not the issue that the learned arbitrator had been called upon to determine.

15. The next issue is whether this was a mistake of law "that materially affects the decision." It is clear from her award that she dismissed the referral precisely on this basis. It is precisely this kind of situation that is contemplated by 228F (4) of the **Labour Code (Amendment) Act 2000**, and which constitutes the basis for review.

THE LABOUR COURT'S APPROACH TO THE TEST FOR REVIEW

16. It is the contention of the appellants before us that the Labour Court has erred in not finding that the Courts will interfere where the Arbitrator has committed an error or mistake of law. It was contended on behalf of the respondent that, it has become established law that an error of law constitutes a ground for appeal, but not for review. Mr Loubser for the respondent submitted that, in the premises, this ground is without any merit *in casu*. For this contention, the Learned Counsel relied on the comments by Corbett CJ in the South African Appellate Division decision in **Hira *v Booysen*, 1992 (4) SA 69 (A),** in which the Learned judge pointed out that "[w]here the complaint is that the tribunal has committed a material error of law, then the reviewability of the decision will depend, basically, upon whether or not the Legislature intended the tribunal to have exclusive authority to decide the question of law concerned." Mr. Loubser for the respondent then submitted that where, as here, the Legislature intended the tribunal to have exclusive authority to decide the question of law concerned, the courts have no jurisdiction to interfere on review. It will be remembered that in ***Hira v Booysen*, 1992 (4) SA 69 (A),** the Court was dealing with a statutory administrative tribunal, and not review of arbitration proceedings or awards. Apart from the fact that it does not appear that he intended to propound a rule applicable to compulsory arbitrations, the rule would in any event prevent the review of material errors of law because the arbitrator was, subject to the limitations in the Act, intended to have exclusive jurisdiction over questions of fact and law. That follows from the provisions of the Act, which exclude appeals and limit reviews. (See **Telcordia Technologies INC v Telkom SA Ltd 2007 (3) SA 266**

(SCA) at para 65). It was in that context that Corbett CJ expressed his view as indicated above. Indeed, In ***Hira v Booysen*****,** (supra) at 83G-H, 85I-J, 87A, 89B-C., Corbett CJ was also at pains to draw a distinction between common-law reviews and those based on statute and to state expressly that the quoted rule (and the others mentioned by him) applies to the former. As Botha JA mentioned in ***Paper, Printing, Wood & Allied Workers' Union v Pienaar NO*** **1993 (4) SA 621 (A) at 639E-F**, the statutory grounds are narrower than the common-law grounds.

17. The Labour Court considered this argument when the matter was before it. This was when the Court considered whether the DDPR had committed a material error of law, and came to the conclusion in para 22 of its judgement purportedly on the authority of this Court's decision in **JDG Trading (Pty) Ltd t/a Supreme Furnitures v Monoko and two Others LAC/REV/39/04 (unreported)** based on **Hira's** case that if the DDPR committed a "material" mistake of law as alleged by Appellants, and that error relates to the application or interpretation of a contract of employment the courts will refrain from interfering as the principle of finality of arbitral awards as contained in section 228E(5) of the Act will be strictly adhered to. This section provides that an award issued by the arbitrator shall be final and binding and shall be enforceable as if it was an order of the Labour Court.

18. When read in isolation, a statutory provision such as that contained in section 228E (5) of the Act that an award is final and not subject to appeal, and that each party to the reference must abide by and comply with the

award in accordance with its terms, clearly indicates that the Legislature intended the arbitral tribunal to have exclusive authority to decide whatever questions were submitted to it, including any question of law. This does not however imply that the arbitrator has the exclusive right to decide the scope of his jurisdiction because if he exceeds his powers the award is reviewable on that ground.

19. Even assuming the jurisdiction to review on the ground of material error of law, the question arises as to what is meant by the adjective 'material'. An error of law may lead an arbitrator to exceed his powers or to misconceive the nature of the inquiry and his duties in connection therewith. **Hira v Booysen** concerned the scope of the tribunal's mandate or 'jurisdiction'. The tribunal had to determine whether Hira had done something 'in public'. It misconstrued this term, which defined its powers, and, accordingly, committed a 'material' error.

20. If what the Labour Court meant *in casu* by the term “material” mistake of law which would not be reviewable is a mistake of law “that materially affects the decision” of the arbitrator, then I respectfully do not agree with the Labour Court’s decision on this point. In my view, firstly, if the mistake of law under consideration by the Labour Court is one which materially affects the decision of the arbitrator, the Labour Court must intervene on review. This is the very situation in which the Legislature has provided for the intervention of the Labour Court in section 228F (4) of the Act. This in my view is exactly the sort of situation that Corbett CJ contemplated in

Hira's case when he said that, this is a matter of construction of the statute conferring the power of decision. The Labour Court ought to have considered not only section 228E (5) which was the statute conferring the power of decision, but also section 228F (4) of the Act. Had it done so, it would have found that this was a clearly reviewable error of law.

APPEAL PROCEEDINGS BEFORE THE LABOUR APPEAL COURT

21. When the matter commenced before us, this Court enquired from counsel for the parties whether it was common cause that the Appellants were employees of the respondent, or whether the respondent's case was that Appellants were not its employees. Both counsel informed the Court that it was common cause that the Appellants were employees of the respondent, and that they had been deployed at the KLM-WATSAN after being so employed by respondent. That being the case, it became clear that the issue whether they were or were not to be covered by the HR Manual ought to have been considered by the DDPR.

22. We now turn to the appeal before us. The grounds of appeal advanced by the appellants in this Court may be summarized as follows:

(a) The learned President of the Labour Court misdirected himself in finding that the appellants' points of review constituted a completely different case from that referred to the DDPR, which was a case of a breach of contract.
(b) The Learned President of the Labour Court misdirected himself in finding that the appellants sought to appeal under the cloak of a review.

(c) That the learned President of the Labour Court misdirected himself in finding that the ground of review in the founding affidavit of the first appellant's dismissal failed the test of a review.
(d) That the said President erred in finding that, where the Arbitrator has committed a mistake of law, the courts will refrain from interfering notwithstanding that the said error materially affected the decision of the Arbitrator.
(e) That the President erred in finding that the appellants were not entitled to relief for breach of contract.

23. As indicated above, the first ground is that, the Labour Court misdirected itself in finding that the appellants' points of review constituted a completely different case from that referred to the DDPR.

24. The starting point in determining this ground therefore should be the content of the Referral Form themselves. In our view, it would be inconceivable for the Appellants to have anticipated that the Arbitrator would misdirect herself so that exactly the same case could have been formulated for consideration by the Arbitrator. The question of a different case appearing on review resulted from the misdirection by the Arbitrator which could have not been foreshadowed in the Referral Forms. It would thus be unfair to criticize Appellants for having foreshadowed a different case from the one on review when they could have not anticipated what conduct the Arbitrator could adopt in considering the case before her.

25. The second complaint is that, the Labour Court erred and/or misdirected itself in holding that, the appellant sought to appeal under the cloak of review. The question therefore is whether the case before the Labour Court

was a review properly so called or whether it was an appeal masquerading as a review. This then raises the issue as to the distinction between an appeal and review. As was correctly stated by De Villiers CJ in the South African case of **Klipriver Licensing Board v Ebrahim 1911 AD 458 at 462**, "[e]very appeal is in the nature of review." I must however hasten to point out that not every review is in the nature of an appeal. In the case of **Teaching Service Commission and Others v Learned Judge of Labour Appeal Court and Others C of A (CIV) No. 21 of 2007**, L.S. Melunsky JA pointed out that**:**

> [6] The distinction between an appeal and a review is well-known and hardly requires elaboration. Appeal is the appropriate procedure where a litigant contends that a court came to an incorrect decision whether on the law or on the facts. Review, however, as Schutz JA emphasized in Pretoria Portland Cement Co. Ltd and Another v Competition Commission and Others 2003 (2) SA 385 (A) at 401 I to 402 C (pars [34] and [35]), is not directed at correcting a decision on the merits. It is aimed at the maintenance of legality, being a means by which those in authority may be compelled to behave lawfully. In Johannesburg Consolidated Investment Co v Johannesburg Town Council 1909 TS 111, Innes CJ said at 114 that a review is:
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> > "... the process by which .... the proceedings of inferior courts of justice, both civil and criminal, are brought before the court (i.e. the reviewing superior court) in respect of grave irregularities or illegalities

> occurring during the course of such proceedings."
>
> It only needs to be added that in an appeal the court is bound by the record of proceedings, whereas in review proceedings facts and information not appearing on the record may be placed before the reviewing court.

28. As Trollip J held in **Ticky and Others v Johannes NO and Others 1963 (2) SA 588 (T) 590F – 591A**, an appeal usually falls into one of the following categories:

> (i) an appeal in the wide sense, that is, a complete re-hearing of, and fresh determination of the merits of the matter with or without additional evidence or information;
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> (ii) an appeal in the ordinary sense, that is, a re-hearing on the merits but limited to the evidence or information on which the decision under appeal was given, and in which the only determination is whether that decision was right or wrong and more importantly as far as the instant case is concerned;

29. I do not agree that the case before the Labour Court was an appeal masquerading as a review. As indicated earlier, the sort of mistake of law complained of *in casu* is one that under statute amounts to a ground of review and not appeal. It is true that the Labour Court found that the grounds of review as set out in the founding affidavit of the first appellant, do fail the test of a review. I am however unable to agree. In my opinion, an

error of law that materially affects the decision of an arbitrator is a valid ground of review under the Act.

31. Lastly, the appellants complain that the President of the Labour Court misdirected himself in finding that the appellants were not entitled to relief in terms of a breach of contract. The breach of contract referred to here by the appellants, obviously refers to a breach of contract between appellants and respondent, which is failure to comply with the provisions of the HR Manual by the respondent. It was also argued on behalf of the respondent that it was correctly found by the Court below that the contracts of employment in question were valid contracts in any event, and that the provisions of those contracts superceded the provisions of the HR Manual, which provisions were in any event not applicable to the appellants.

32. It is trite law that a reviewing court is limited to deciding the issues that are raised in the review proceedings and that a reviewing court may not raise issues not raised by the party who seeks to review an arbitration award. However, there is an exception to this rule as confirmed by the Constitutional Court in **CUSA v Tao Ying Metal Industries & Others 2009 (2) SA 204 (CC)** and that is where parties proceed on a wrong perception of what the law is. An example would be where the Court raises the issue of the jurisdiction of the DDPR. The role of the reviewing court is limited to deciding issues that are raised in the review proceedings. It may not on its own raise issues which were not raised by the party who seeks to review an arbitral award. A party who seeks to review an arbitral award is bound by

the grounds contained in the review application. We find ourselves in comfortable company of the Constitutional Court in **CUSA v Tao Ying Metal Industries & Others** in this regard and agree that these principles are, subject to one qualification: Where a point of law is apparent on the papers, but the common approach of the parties proceeds on a wrong perception of what the law is, a court is not only entitled, but is in fact also obliged, *mero motu,* to raise the point of law and require the parties to deal therewith. Otherwise, the result would be a decision premised on an incorrect application of the law. That would infringe the principle of legality. In the present case, the question of the validity of the contracts was not one raised and presented for consideration by the Labour Court. It could not therefore have correctly determined that issue.

33. To sum up, the issue before the DDPR was one of breach of contract. The DDPR did not address this issue. It ignored even considering the HR Manual provisions which were relevant to the case before it. In doing so, the DDPR erred and failed to apply its mind to the issues before it. This let the DDPR to the decision it ultimately came to, that of dismissing the referral due to the commission of this mistake which materially affected its decision. The DDPR has to express its opinion on the issue that had been placed before it, and not the Labour Court. It was also not for the Labour Court to determine the issue of breach of contract. That is the province of the DDPR.

34. In the result we order as follows:

(a) The appeal succeeds and the order of the Labour Court is altered to read "the award of the DDPR is reviewed and set aside".

(b) This case is remitted to the DDPR for hearing *de novo* before a different arbitrator.

(c) The respondent is to bear the costs of this appeal.

35. This is a unanimous decision of the court.

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Dr. K.E.MOSITO AJ

Judge of the Labour Appeal Court

FOR THE APPELLANTS: Advocate B. Sekonyela

FOR THE RESPONDENT: Advocate P.J. Loubser