

The Labour Court accordingly set aside the award and referred the matter to the Bargaining Council to hear the matter afresh.

The matter was taken on appeal to the Labour Appeal Court. It found that it was clear from the record of the arbitration proceedings that the commissioner displayed a level of intolerance towards one of the parties and that this behaviour was inappropriate. The court held that judicial temperament is inherent in a commissioner's duties and is an important element of the realisation of justice for all.

The Labour Appeal Court also referred to the minority decision of the Constitutional Court in *Toyota SA Motors (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and Others*, wherein the court held that any decision by a commissioner which prevented a party from cross-examining a witness on a crucial aspect of a case will be seen as a gross irregularity, justifying the setting aside of the award.

The court concluded by stating that "the right to cross-examine a witness goes to the root of a fair hearing" and a failure to allow a party to cross-examine a witness will constitute a reviewable ground.

What is clear from the Labour Appeal Court judgment is that cross-examination is a fundamental procedural aspect of a fair arbitration hearing, as parties have the right to test each other's evidence.

It is also apparent from the Labour Court judgment that the failure to allow cross-examination of a witness, even if this did not impact on the outcome of the award, may still amount to a reviewable irregularity.

The Labour Appeal Court decided that the evidence of the witness whose cross-examination was curtailed was essential to the question of whether the dismissal was effected for a fair reason.

It is important for representatives conducting arbitrations to be fully aware of their rights during arbitrations to ensure that their case is properly ventilated.

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