



THE SUPREME COURT OF APPEAL  
REPUBLIC OF SOUTH AFRICA

**MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL**

From: The Registrar, Supreme Court of Appeal

Date: 27 March 2009

Status: Immediate

*Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal*

On 27 March 2009 the Supreme Court of Appeal handed down judgment in *Shoprite Checkers (Pty) Ltd v CCMA and others*. This was an appeal against a judgment of the Labour Appeal Court, in terms of which it reinstated an employee with retrospective effect to the date of his dismissal.

The labour dispute culminating in the appeal has had a long, gruelling and unsatisfactory journey. The employee concerned, Mr Jan Maake, was dismissed by the appellant, Shoprite Checkers (Pty) Ltd, on 2 December 2000 for unlawfully consuming food belonging to it in areas in which such consumption was prohibited. This occurred on at least two occasions. On each occasion Mr Maake, who worked as a supervisor in the delicatessen at Shoprite's Silverton store, removed an item from a plate and consumed it. The value of the food he consumed was not established.

Shrinkage in the store, due to a variety of factors, was an increasing problem leading to the installation of surveillance cameras which caught Mr Maake in the acts that led to his dismissal.

Mr Maake's dismissal followed upon internal disciplinary proceedings. Mr Maake's union, the Retail and Allied Workers Union, referred the matter, on his behalf, to the Commission for Conciliation, Mediation and

Arbitration (the CCMA), initially for conciliation and later for arbitration. On 3 April 2001 a Commissioner found that Shoprite had not acted substantively or procedurally fairly and ordered Mr Maake's reinstatement retrospective to the date of his dismissal.

On 10 May 2001 Shoprite, intent on a dismissal, launched a review application in the Labour Appeal Court in terms of s 145 of the Labour Relations Act 66 of 1995 (the LRA). The Labour Court held that the Commissioner had acted improperly in ordering retrospective reinstatement, set aside the award and referred the matter back to the CCMA for arbitration afresh. The review process took almost a year to run its course.

A new arbitration commenced on 13 September 2002 and was finalised almost 11 months thereafter on 7 August 2003. The new Commissioner, Mr Mbha, the second respondent, found that Mr Maake was guilty of the conduct complained of. He held that dismissal was not peremptory. He took into account that Mr Maake had been employed by Shoprite for almost 30 years and had a clean record. Mr Mbha held that Mr Maake should be given a final written warning valid for six months. He ordered Shoprite to reinstate Mr Maake from the date of the award rather than from the time of dismissal.

Shoprite, in its pursuit of a dismissal, once again took the award on review before the Labour Court. This time a transcript of the CCMA proceedings was missing. The parties agreed that a transcript of the Commissioner's written notes could be used to reach a decision. The Labour Court disagreed and on 13 August 2004, once again, referred the matter back to the CCMA for arbitration afresh.

Shoprite appealed that order to the Labour Appeal Court (the LAC) which heard the matter on 15 September 2006 and handed down judgment more than 15 months later on 21 December 2007. The LAC set aside the order of the Labour Court and the award of Commissioner Mbha, substituting it with an order that Mr Maake be reinstated to the date of dismissal.

This court granted Shoprite leave to appeal only against the propriety of the reinstatement order. It upheld the appeal. This court considered the test to be applied in reviewing an award by the CCMA and held that Commissioner Mbha's reasoning and conclusions could not be faulted. It found that he had exercised his discretion in relation to reinstatement properly. This court was critical of the numerous delays in this matter. It

expressed concern that labour matters took so long (eight years) to finalise considering the hardships faced by workers and the impact on employers. The Registrar was directed to bring the judgment to the attention of the Director of the CCMA. This court was confident that both the Labour Court and the Labour Appeal Court would take appropriate steps to ensure that this kind of delay would be averted in the future.