

SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN SUPREME COURT OF APPEAL

FROM: The Registrar, Supreme Court of Appeal

DATE: 28 SEPTEMBER 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.

HAMILTON NTSHANGASE v MEC: FINANCES: KWAZULU-NATAL AND ANTOTHER

[1] In a judgment delivered on 28 September 2009, the Supreme Court of Appeal dismissed an appeal against a judgment of the Labour Appeal Court.

[2] Having been found guilty at a disciplinary hearing of twelve counts of misconduct, involving allegations of wilful or negligent mismanagement of finances amounting to approximately R1m and unauthorised expenditure amounting to R500 000,00, the presiding officer imposed a sanction of a final written warning and not a dismissal on the appellant. The second respondent failed in an application to the Labour Court to have the sanction imposed by the presiding officer reviewed and set aside. On appeal to the Labour Appeal Court, the decision of the Labour Court was set aside and the second respondent's application for review granted. The Labour Appeal Court set aside the sanction of a final written warning imposed on the appellant and replaced it with a sanction of dismissal with immediate effect.

[3] On appeal to this court, the appellant attacked the finding by the Labour Appeal Court that the decision of the presiding officer of the disciplinary hearing qualifies as administrative action and is therefore reviewable under s 158(1)(h) of the Labour Relations Act 66 of 1995; further that the second respondent did not have *locus standi* to bring its own act on review and last that the Labour Appeal Court erred in, instead of referring the matter to the disciplinary hearing for a

reconsideration of an appropriate sanction, it imposed a sanction of dismissal with immediate effect.

[4] On appeal the Supreme Court of Appeal dismissed the appeal holding that the decision taken by the presiding officer during the disciplinary hearing qualifies as an administrative action; that it is reviewable under s 158(1)(h) of the LRA; that second respondent had *locus standi* to bring the review application, and further that, given the gravity of the misconduct committed by the appellant, the Labour Appeal Court acted correctly in imposing a sanction of dismissal with immediate effect instead of referring the matter to the disciplinary hearing as the sanction of a dismissal was the only appropriate sanction. The Supreme Court of Appeal held that in the circumstances it would serve no practical purpose to refer the matter to the disciplinary hearing for a reconsideration of an appropriate sanction.