

THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
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STATUS Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment.

***Harry Mathew Charlton v Parliament of the Republic of South Africa
(680/10) [2011] ZASCA 132 (16 September 2011)***

Media Statement

In an appeal concerning several exceptions raised by Parliament to Mr Charlton's claim of unfair dismissal, the Supreme Court of Appeal (SCA) today delivered judgment upholding the appeal against the judgment of the Labour Appeal Court (LAC). The LAC had upheld the exceptions which had previously been dismissed by the Labour Court (LC).

Mr Charlton was the Chief Financial Officer for Parliament and held this position until he was dismissed in 2006, ostensibly on the grounds of work-related misconduct. He, however, insists that he was dismissed for being a whistleblower in relation to fraud perpetuated by Members of Parliament in respect of their travel benefits – what has popularly become known as the 'Travelgate scandal'.

Mr Charlton challenged his dismissal. In his statement of claim he raised various causes of action. For the purposes of the appeal only two are relevant. First he claimed that his dismissal was automatically unfair in terms of the Labour Relations Act (LRA) because he was dismissed for having made protected disclosures as envisaged in the Protected Disclosures Act (PDA). Second he claimed that his dismissal was substantively and procedurally unfair (the ordinarily unfair dismissal claims). Parliament excepted to the statement of claim.

First, Parliament claimed that Members of Parliament are neither 'employees' nor 'employers' for purposes of the PDA and thus his dismissal was not automatically unfair in terms of the LRA. The LC dismissed this exception and Parliament appealed to the LAC against this finding. The SCA held that it was established law that the dismissal of an exception is generally not appealable. This is because the order is not final in effect as there is nothing to prevent an aggrieved party from raising and arguing the same issue at the trial. Leave to appeal should not have been given by the LC and the LAC ought to have struck Parliament's appeal from the roll.

Second, Parliament argued that the ordinarily unfair dismissal claims had to be resolved through arbitration in the Commission for Conciliation, Mediation and Arbitration (CCMA) and not through adjudication in the LC and thus the LC lacked jurisdiction legitimately to adjudicate the exception. The SCA found that in dealing with the exception the LC did not in fact decide on the issue of jurisdiction. In effect it declined to determine the issue at that stage. The raising of an exception in this regard was misconceived. As there was no final judgment or order on this exception, no appeal could arise in relation thereto and the LAC ought to have struck the matter from the roll.

The SCA consequently upheld the appeal with costs and replaced the order of the LAC with an order striking the appeal from the roll with costs.

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