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**Compiled by: Adv J Delpont
Delpont Labour Consultants**



Rawlins v Dr DC Kemp t/a Centralmed [2010] ZASCA 102

JUDGEMENT: NUGENT JA (NAVSA, SNYDERS and MHLANTLA JJA and BERTELSMANN AJA concurring)

INTRODUCTION

This case arises from the dismissal of Dr Rawlins (the appellant) from the employment of Dr Kemp (the respondent). Soon after the dismissal occurred Dr Kemp accepted that it was unfair. What remained in dispute was only what remedy Dr Rawlins should have. Indeed, the dispute was even narrower than that, because Dr Kemp offered to reinstate Dr Rawlins on numerous occasions but on each occasion the offer was refused. Dr Rawlins said in evidence that she refused the offers because the relationship of trust had broken down. The dispute in the litigation that followed was confined to whether she should be awarded compensation and, if so, what amount that should be.

Now that the appeal was before court the court was of the view that the SCA will not lightly interfere with the decisions of the specialist tribunal that has been established to

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hear appeals in labour disputes. That is consistent with the observation by the Constitutional Court in *Dudley v City of Cape Town* 2005(5) SA 429 (CC) that:

‘[t]he LAC is a specialised appellate Court that functions in the area of labour law. Both the LAC and the Labour Court were established to administer labour legislation. They are charged with the responsibility for overseeing the ongoing interpretation and application of labour laws and the development of labour jurisprudence.’

That applies particularly where the decision of the Labour Appeal Court is the product of a value judgment that is arrived at in its continuing development of its own jurisprudence. The court held that whatever view it might have taken on the matter it seems that it would be remiss if we were not to defer to that court’s value judgment in a matter of this kind. In any event the court agreed with the conclusion of the majority. No doubt Dr Rawlins genuinely felt that there had been a breach of trust. But these are two professional people who might be expected to resolve any acrimony that might earlier have existed. No objective grounds were advanced why any perceived breach of trust between them was not capable of being restored. Dr Rawlins chose not even to explore that possibility but rejected it out of hand. That is not how labour relations should be conducted and the rejection of the repeated offers of reinstatement was unreasonable and she has only herself to blame for her financial loss. The appeal is dismissed.



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