



Please note that Rand Water v Bracks NO and Others (2007) 28 ILJ 2231 (LC) has been overturned by Scheme Data Services (Pty) Ltd v Myhill NO and Others [2009] 4 BLLR 381 (LC)

Rand Water held that, in the event of a single retrenchment as envisaged in s 191(13) of the LRA, the CCMA had jurisdiction only to consider the substantive fairness (and not procedural fairness) of the retrenchment.

In Scheme Data Services, Commissioner Myhill arbitrated the dispute in its entirety.

He held that the employee's retrenchment was both substantively and procedurally unfair. He awarded seven months' remuneration as compensation.

The arbitration award was taken on review, it was argued that the commissioner committed an irregularity when he considered the procedural fairness of the employee's retrenchment.

In Scheme Data Services, the Labour Court held that the decision in Rand Water is clearly wrong. The court accordingly rejected the argument in Rand Water that procedural issues are too complex to be determined by the CCMA and that only the Labour Court has jurisdiction over such matters.

The CCMA now has jurisdiction to determine an alleged substantive and procedurally unfair dismissal dispute for a single retrenchment