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## LABOUR LAW UPDATE

Enquiries contact: [Johnny@iafrica.com](mailto:Johnny@iafrica.com)  
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### CASE 1

#### Manners matter

#### CASE SYNOPSIS:

*The case of the National Transport Movement obo Machungu / SAA (Pty) Ltd - (2014) 23 CCMA 8.12.1* is again a prime indication that no matter how much tension there is around a workplace issue, there is a common law duty of respect that an employee needs to uphold in respect of his/her employer.

A chairperson raised an issue during a disciplinary enquiry with the representing shop steward. The issue was that the union itself was not recognised.

The shop steward's reaction is what landed him in hot water. The shop steward called the presiding officer a "white boy" who was "less than nothing", referred to Marikana, and threw a book at the presiding officer. The applicant employee said he had done nothing more than "flip" a copy of the disciplinary code in the presiding officer's direction and had "lectured" the hearing on the events at Marikana.

The Commissioner found that the employee had been confrontational and disruptive during a formal disciplinary hearing. The act of flinging a book at the presiding officer amounted to assault.

The dismissal was, accordingly, fair.

#### LESSON LEARNT

Employees, in whatever capacity, need to ensure that they conduct themselves in a manner which is in line with the common law duty of respect.





## CASE 2

### Legalise it?

#### CASE SYNOPSIS:

The question of recreational drug use has cropped up more and more. There are a number of employees who feel that the use of drugs outside the workplace is not the employer's problem, but we all know it may soon become one.

*The case of Kumalo / Lafarge Gypsum - (2014) 23 MEIBC 8.11.1* has raised interesting questions around the recently raised marijuana debate.

The employee was dismissed after a blood test revealed a heavy concentration of dagga in his bloodstream. The employee admitted that he smoked dagga a few times a week, but claimed that he had never done so in the workplace. The employer claimed that it had a zero tolerance approach to drug abuse, and that the applicant had endangered himself and his colleagues.

The Commissioner noted that, although it was common cause that the applicant had an "abnormally" heavy concentration of dagga in his blood, no attempt had been made to establish whether he was nonetheless capable of performing his work as a truck assistant.

The case raised the problem of establishing the dividing line between misconduct and incapacity. The presence of alcohol or narcotic drugs in an employee's bloodstream does not necessarily prove that the employee is incapable of performing his or her work.

In view of the applicant's frank admission that he used dagga for "recreational purposes", the respondent should at the very least have counseled him, as recommended by the Code of Good Practice: Dismissal.

The employee was reinstated with retrospective effect.

#### LESSON LEARNT

Whilst not necessarily agreeing with the outcome of this matter it does again highlight two key considerations when dealing with drugs or alcohol:

- 1) The ability to perform the work/how impaired was the individual
- 2) The need to consider counseling and the incapacity route where an addiction (not casual use) is proven

