



LABOUR LAW UPDATE

Enquiries contact: Johnny@iafrica.com
www.globalbusiness.co.za



CASE 1

Often strikes get out of hand and no-one claims responsibility. Recent judgments have put an end to this "Washing of the hands".

CASE SYNOPSIS:

In **ABSA Bank Ltd v SA Clothing & Textile Workers Union (SACTWU)**, the court granted an interim interdict restraining SACTWU inter alia from encouraging or permitting its members to interfere with, threaten, harass, intimidate employees, representatives or customers when marching, gathering, protesting, demonstrating or otherwise grouping in the vicinity of ABSA's premises in Durban.

The judge found that ABSA had a clear right to be protected against the unlawful conduct that had occurred and that the balance of convenience was undoubtedly in ABSA's favour. The damage caused to ABSA's reputation as a result of the intimidation of its customers was not something easily quantifiable and even though ABSA would be able to sue SACTWU for any physical damage caused to its premises an adequate remedy for reputational damage was absent.

ABSA had established a clear right to be protected against further unlawful conduct.

An employer should be entitled to interdict such harm by reference to a collective unit where a group of employees acts as a collective unit and unlawfully causes physical and economic harm to the employer.

The Judge further confirmed that the court was not dealing with a labour dispute but unlawful behaviour that had to be interdicted and that it was appropriate to grant an order against SACTWU itself.

The court applied a similar balancing of the rights that was set out in the judgment of Growthpoint v SACCAWU in balancing the rights of unions as to the perimeter of the strike and the rights of third parties who may be impacted by the strike.

LESSON LEARNT

If you arrange a strike you need to take responsibility for the fallout. Further, not only may patrimonial damages be taken into account in a claim, but also reputational damage.





CASE 2

Traditional healers

CASE SYNOPSIS:

The matter of National Union of Mineworkers obo Mahlaela / Tubatse Chrome (Pty) Ltd - (2014) 23 MEIBC 8.17.1 raises the issue of traditional healers once again.

The applicant employee was dismissed for desertion after being absent without leave for seven days. The matter was remitted to the council to be heard afresh after a review overturned the original decision. The employee claimed that she had stayed away from work in response to a call from her ancestors to undergo training as a sangoma. The employer contended that the certificates which purported to confirm the employee's claim that she had undergone sangoma training during the period concerned were false.

The commissioner found that it was clear from a text message she had sent to her supervisor on the first day of her absence that she had been under the impression that one day would suffice for the consultation with the sangoma.

The Commissioner was prepared to accept that the letters the employee had presented upon her return to work were indeed written by the sangoma, and that the sangoma had advised her to undergo a course to train as a traditional healer. But the fact remained that, after the first days' absence, the employee had failed to contact her supervisor to explain her further absence.

The employee had, accordingly, breached the respondents' disciplinary code by staying away from work for more than five days without contacting her supervisor, which justified the dismissal.

LESSON LEARNT

This is an interesting matter as it clearly sets out the principle that the employee still has to contact the company to advise regarding their absence even, if they have a certificate. It also raises the interesting question of traditional healers?

