



LABOUR LAW UPDATE

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CASE 1

CASE SYNOPSIS:

Intimidation disallowed

This burning issue in the South African labour market was dealt with in the matter of ***National Democratic Change & Allied Workers Union and others v Cummins Emission Solutions (Pty) Ltd - (2014) 23 LC 8.29.2***

A group of employees claimed to have been dismissed for participating in a protected strike. The matter was referred to the respondent Bargaining Council, and the respondent Commissioner ruled that because the applicants were of the view their dismissals amount to harassment and discrimination, the council lacked jurisdiction to arbitrate the dispute. In their subsequent referral of the matter to the Labour Court, the Applicants claimed that their dismissals were automatically unfair because they were on a protected strike.

After consideration of the facts of the matter, and the fact that the employees bore the onus, it became apparent that they had been dismissed for intimidating non-striking employees. That the employees happened to have been on strike at the time did not mean that they were protected from being charged with misconduct committed during the strike. The Court held further that the employees had also failed to prove that they were discriminated against. They could also not prove grounds of discrimination.

The Court went further to state that threats of violence in the workplace warrant dismissal. The fact that the employer's Disciplinary Code did not mention intimidation as an offence was immaterial; the Code was merely a guideline.

It was found that dismissal was not automatically unfair as alleged by the employee.

LESSONS LEARNED

1. Violence and intimidation in strikes is unacceptable and the fact that the strike is protected does not condone the unlawful acts
2. Employees currently bear the onus to prove discrimination – this will change post the amendments
3. A Code is a guideline and as such action can be taken outside of same.





CASE 2

CASE SYNOPSIS:

Leave to Appeal/Substance of Award

Titancor Sixteen (Pty) Ltd v South African Equity Workers Association & 8 others js 1068/11

This case is an application for leave to appeal to the Labour Appeal Court against the entire judgement and order declaring the dismissals of the employees invalid and null and void

The applicant appeared to be suggesting that the order granted was vague in that it did not specify that the applicant should reinstate the second to the ninth respondents and from which date this was to be done. As it can be discerned from the order, the dismissal of the second to the ninth respondents was declared invalid, null and void. The effect of declaration of invalidity entails that the dismissal of the respondents was of no force or effect and therefore the status *quo* had to be restored with immediate effect.

There is no ambiguity in the order. It was not necessary for the Court to set it out in so many words that the applicant had to reinstate the respondents to the positions they occupied prior to their dismissals because reinstatement is inherent and manifest in the order made. Simply put, the respondents had to resume work as if they had never been dismissed.

In determining whether to grant an application for leave to appeal the traditional test is whether there is a reasonable prospect that another court may come to a different conclusion. See *Karbochem Sasolburg (A Division of Sentrachem Ltd) v Kriel & others (1999) 20 ILJ 2889 (LC)* at 2890B; *Ngcobo v Tente Casters (Pty) Ltd (2002) 23 ILJ 1442 (LC)* at 1443 para 2, *Tsotetsi v Stallion Security (Pty) Ltd (2009) 30 ILJ 2802 (LC)* at 2804 para 14.

The judge was not swayed that there were reasonable prospects of a successful appeal. In his view, the application was without merit and accordingly dismissed.

LESSON LEARNED

One should look at the substance of an award and not pick on a word here or there. One needs to find out practically what the intention is and give effect to it.

