



LABOUR LAW UPDATE

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CASE 1

CASE SYNOPSIS:

To arbitrate or not to arbitrate...that is the question

In recent times, we have found our clients more and more wary of the threat that strikes pose to their organisations.

Due to the lack of trust between unions and employers, the lack of faith in the collective bargaining process and the tendency of trade unionists to push rapidly to strike phase, employers are often asking whether the route of interest arbitration is not the way to go.

This is a choice of the lesser of two evils in their eyes as they don't necessarily trust that such arbitration is the best route either. Clients feel that this award would indicate anyway what the commissioner would have worked towards in a conciliation process but rather that than an extended strike with its inevitable violence, damage to company property and loss of production.

The case of ***National Education, Health and Allied Workers Union obo Members / Huis Silwerjare (2014) 23 CCMA 3.1.1*** deals with this question in an essential services environment but reignites the debate on the feasibility of this approach being used in private sector disputes.

There was a wage dispute between the parties and at the time of process engagement their positions were far apart. The dispute was referred to conciliation and arbitration in terms of Section 74 of the Labour Relations Act after deadlock was reached between the parties.

It was noted that the Labour Relations Act lays down no criteria for striking a balance between the needs of the parties in matters of this nature, although the former Public Service Labour Relations Act had provided that an arbitrator must consider, amongst others, "the employer's financial circumstances and priorities, the restraints of the budgetary process, the national interest and the circumstances of the employees." This, it would seem, was the test that was applied.





CASE 1 continues...

In the end an across-the-board wage increase of R150 per month was ordered, while other allowances were left unchanged or an amount was ordered in between the union's demand and the employer's offer. Practice is that the Arbitrator attempts to arrive at what the parties may have arrived at had they negotiated until conclusion, whilst being reasonable and fair. It is unclear how the amounts in this matter were arrived at.

LESSON LEARNT

Interest arbitrations may not be the answer for everyone but it does raise an interesting debate at least.





CASE 2

CASE SYNOPSIS:

Tragic kingdom

Our national broadcaster has met with some hard times (what with 80's reruns in prime time and all) and seems to be in the headlines for all the wrong reasons. Much has been said about recent appointments and the lack of action for misrepresenting of qualifications. These conversations raise even more questions around consistency when one considers the case hereunder.

In ***Duda / South African Broadcasting Corporation Soc Ltd - (2014) 23 CCMA 8.23.1*** the employee, then the respondent's Chief Financial Officer, faced several charges of misconduct arising out of her approval of a partnership between the SABC and the "ITC Indaba", committing the Corporation to provide free promotional airtime to the value of R2m and to pay a further R1m in cash to the Indaba organisers, and approving payment of that amount to the organiser as a promotional fee. The employee was also charged with appointing consultants to assist her to carry out her tasks as CFO, with approving salary increases for the staff of the finance department without authority and by appointing a service provider without following tender procedures.

In dealing with the sanction, the Commissioner noted that all employees are expected to serve their employers with diligence and integrity. A breach of that duty undermines the trust relationship. The chairperson of the SABC had submitted a sworn statement that the board had lost confidence in the employee. The employee had not only been charged with acts of gross negligence, but also with knowingly misrepresenting facts to the CEO. Progressive discipline need not be considered where an employee has acted dishonestly and shown no remorse.

The employee's case was dismissed.

LESSONS LEARNT

Dishonesty is dishonesty and any act thereof calls for dismissal. More is expected of an employee of this stature. The acts of gross negligence undermine the trust relationship so dearly required between the employer and employee and justify dismissal, even at first offence.

Cases referenced from irNetwork

