

HIGHLIGHTS OF THE INDUSTRIAL LAW REPORTS

Contempt of Court

In *Compensation Solutions (Pty) Ltd v Compensation Commissioner & others* (at 1625) the Supreme Court of Appeal relied on the recent Constitutional Court judgment in *Eke v Parsons* 2016 (3) SA 37 (CC) which found that, once a settlement agreement has been made an order of court, the terms of the settlement agreement become an enforceable court order. The SCA found that the Compensation Commissioner's persistent and unexplained failure to comply with a settlement agreement which had been made an order of court showed his utter disdain for the court, its procedures and its orders. This conduct was scandalous and warranted committal to prison. In *Pikitup Johannesburg (Pty) Ltd v SA Municipal Workers Union & another* (at 1710) the Labour Court found the union and its general secretary to be in contempt of a court order which instructed them to take steps to ensure that all the union's members complied with an order interdicting unprotected strike action.

Bargaining Council Agreements — Extension to Non-parties

The High Court has found that s 32(2) of the LRA 1995, which requires the Minister of Labour to extend collective agreements concluded at bargaining councils to non-parties, does not violate the principle of legality under the Constitution 1996. The court distinguished the minister's powers under s 32(2) and s 32(5); considered the status of bargaining councils; dealt with the nature of bargaining council resolutions and whether they constituted administrative action; and generally discussed the policy of self-regulation on the basis of majoritarianism and voluntarism (*Free Market Foundation v Minister of Labour & others* at 1638).

Strike — Unprotected Strike

The Labour Court found, in *Professional Transport & Allied Workers Union on behalf of Khoza & others v New Kleinfontein Gold Mine (Pty) Ltd* (at 1728), that the employees had participated in an unprotected strike and that their dismissal had been both substantively and procedurally fair. The employer gold mine claimed just and equitable compensation in terms of s 68(1)(b) of the LRA 1995 for loss attributable to the strike. Although the mine had suffered enormous losses as a result of the two-day strike, the court found that the mine had only raised the issue of liability after the strike had ended when the union was unable to do anything to minimise its exposure to liability. Earlier notification to the union could have concentrated the minds of the union leadership to consider the wisdom of persisting with the unprotected strike. The court, therefore, declined to award compensation.

Unfair Discrimination — Equal Pay for Work of Equal Value

In *Mzobe & others and Fencerite (Pty) Ltd* (at 1767) the CCMA commissioner noted that, in a claim in terms of s 6(4) of the Employment Equity Act 55 of 1998, the factors taken into consideration when assessing whether the work performed is the same, similar or of equal value to the comparator include: the responsibility of the work; the skills, qualifications and experience required to perform the work; the physical, mental and emotional effort required to perform the work; the conditions under which the work is performed; and any other relevant factor.

Dismissal — Breakdown in Trust Relationship

Where an employer had failed to lead evidence about the breakdown in the trust relationship resulting from the employee's misconduct, a CCMA commissioner found that he was bound by the decision of the Supreme Court of Appeal in *Edcon Ltd v Pillemer NO & others* (2009) 30 ILJ 2642 (SCA), and that the employer had failed to discharge the onus of proving that dismissal was the appropriate sanction (*Mthembu and Telkom SA SOC Ltd* at 1754).

Costs

In *Crosnier v Easigas (Pty) Ltd* (at 1686) the Labour Court found that the court's power to make costs orders in terms of s 162 of the LRA 1995 is not confined to matters that arise under the LRA; the court's discretion to order costs according to the requirements of law and fairness applies regardless of the statute under which the court exercises its jurisdiction in any particular dispute, for instance when it adjudicates a contractual dispute in terms of s 77(3) of the Basic Conditions of Employment Act 75 of 1997.

In *Mantshiyane v Kopanong Local Municipality & others: In re Kopanong Local Municipality v Mantshiyane & others* (at 1695) the Labour Court awarded costs de bonis propriis against two firms of attorneys which had failed timeously to prosecute a review application by the municipality. The court found that taxpayers should not be burdened with funding litigation conducted with reckless disregard of the LRA 1995 and the rules of court. Similarly, in *Ngobeni v Passenger Rail Agency of SA Corporate Real Estate Solutions & others* (at 1704) the court warned litigants that the abuse of the right to urgent relief that the court affords in appropriate circumstances would be met with punitive orders for costs, including orders that legal representatives should forfeit their fees.

Practice and Procedure

A CCMA commissioner declined to grant a postponement of an arbitration hearing, noting that commissioners must adopt a strict approach to granting postponements — if they were granted every time a party was absent, the CCMA would fail to meet the legislative objective of the speedy resolution of labour disputes (*Seema and Fast Move Electrical* at 1778).

Quote of the Month:

Lagrange J in *Pikitup Johannesburg (Pty) Ltd v SA Municipal Workers Union & another* (2016) 37 ILJ 1710 (LC), when commenting on the importance of complying with court orders:

‘[W]hen prominent public figures, civil institutions like trade unions, organs of state or private corporate bodies which exercise economic power are selective in the respect they display for court orders, that kind of conduct tends to promote a view that compliance with court orders is a matter of preference rather than an unavoidable legal obligation. When persons or institutions in positions of power or influence express those sentiments, such conduct can powerfully affect public sentiment and in turn undermine the rule of law as a foundational principle of our constitutional order. We no longer labour under an undemocratic order where the legitimacy of certain laws and court orders made under them was questionable. Obviously that does not mean courts are above criticism. Moreover, parties who are aggrieved by a court’s decision are not remediless and may seek leave to appeal.’