



GLOBAL BUSINESS SOLUTIONS PRESENTS

APRIL 2010

“LABOUR LAW UPDATE”

WWW.GLOBALBUSINESS.CO.ZA

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CASE 1

DISCRIMINATION

CASE SYNOPSIS

Solidarity obo Mrs R M Barnard v South African Police Services

Barnard is an employee of the South African Police Services, and had been in that employ since 1987. In 2005, the respondent advertised for a post of Superintendent of the National Evaluation Services, for which Barnard applied. The short-listed candidates for the position included herself and three others (in order of ranking--a white female, a coloured female, and a black male). And she got the highest score, and was rated some 17.5% above the fourth candidate. She was recommended by the selection panel as the most suitable candidate. The panel further noted that appointing the fourth candidate to the position would compromise service delivery, whereas appointing Barnard would enhance service delivery. The Divisional Commissioner, however, recommended that the position not be filled because “appointing any of the three preferred candidates would aggravate the representivity status of the already under-represented Sub-Section...and that such appointment would not enhance service delivery to a diverse community.”

The post was consequently left vacant, and subsequently withdrawn. It was, however, re-advertised in 2006 and again, Barnard applied for the position. This time, she was shortlisted with two black males. Once more, the selection panel recommended that she be appointed to the position, owing to her competence and experience and although the Divisional Commissioner this time supported the recommendation, the National Commissioner rejected the recommendation and the post was left vacant. He did so because he claimed that it did not address “representivity” and not filling the post would not affect service delivery as the post was not critical. After exhausting her complaints remedies, Barnard brought the present application claiming unfair discrimination on the basis of race.

In finding that there had been unfair discrimination, the court highlighted that the implementation of affirmative action could not simply amount to the application of numerical goals set out in an Employment Equity Plan. The application had to be informed by certain principles. The first of these was that both the Act and Employment Equity Plan had to be applied “in accordance with the principles of fairness and with due regard to the affected individual’s right to equality.” The second was that “the implementation of employment equity plans should be effected with due regard not only to the individual’s rights to equality, but also to the dignity of affected persons”. Accordingly, the court concluded that the extent to which the implementation of employment equity plans could discriminate or adversely affect individuals was limited by law.

Applying these principles, the court found that were the post could not be filled by a person from an under-represented category owing to wanting suitability, “promotion to that post should not ordinarily and in the absence of a clear and satisfactory explanation be denied to a suitable candidate from another group”. The court held that there must be a rational connection between the provisions of the Plan and the measures adopted to implement these provisions. Service delivery would be one factor to be considered in this regard.

WHAT THIS MEANS FOR YOU

Heard in the Labour Court of South Africa, this case has important bearing on the implementation of both the Employment Equity Act (the Act) and the Employment Equity Plan (the Plan) that the Act calls for. It also has vast implications for the many senior positions within the civil service that have not been filled because no suitable applicant from a designated group could be found.

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“LABOUR LAW UPDATE”

CASE 2

EXECUTIVE SUMMARY

TES AGREEMENTS

CASE SYNOPSIS

Simon Nape v INTCS Corporate Solutions(Pty) Ltd, case JR617/07

The Labour Court held that an agreement between the Labour Broker and the client, where removal, at the client’s request, results in the employee losing his or her employment with the Labour Broker, is against public policy and an unlawful breach of the employee’s right to fair labour practices in terms of the Labour Relations Act.

In this case, the client submitted a request and the Labour Broker removed the employee, disciplined the employee with a final written warning for the conduct reported by the client and returned the employee to the client.

The client did not like the outcome of the disciplinary measures and refused the employee access to its premises. As a result, the Labour Broker in terms of the contractual provisions between the parties had no choice but to remove the employee and, as it could not place the employee elsewhere, retrenched the employee.

The retrenchment was held to be substantively unfair.

The judgment will have far reaching consequences for contracts between Labour Brokers and their clients.

The judgment is based upon the right to fair labour practices for all employees. Employees should not lose their employment just because the client of a Labour Broker does not wish to have the employee on its premises. The principle will also affect termination of the employment of employees on fixed term contracts under similar circumstances.

WHAT THIS MEANS FOR YOU

The Labour Court in a Judgment of 10 March 2010 struck down a popular clause in a labour broking contract between the Labour Broker and the client as unlawful and against public policy. A common provision in agreements between Labour Brokers and their clients oblige the Labour Broker to remove from the client’s premises an employee upon the request of the client. You therefore need to ensure that your contracts and practices comply with the outcome hereof.

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“DIPLOMA IN LABOUR LAW”

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The next step to further your career in Labour Law/Human Resources...

The DaVinci Institute Diploma in Labour Law offers you a credible qualification in a sought after field. The course is facilitated by experienced Labour Law attorneys and lecturers over 3 lecture blocks and covers key aspects of the core legislation regulating Labour Law in South Africa. Completion of the Diploma will create a foundation for progression to a Masters and PhD.

ABOUT:

Global Business Solutions is proud to offer the Diploma in Management of Technology and Innovation (MOTI) with a focus on Labour Law in association with The Da Vinci Institute for Technology Management (Pty) Ltd. (Registered with the Department of Education as a private higher education institute under the Higher Education Act, 1997. Registration Certificate No. 2004/HE07/003)

The decision by GBS to associate with Da Vinci, a leading Private Higher Education Institute, was driven by a number of considerations, including:

- The need to provide holistic labour law learning in the context of the new world of work which is characterised by the management of technology, innovation, people and systems thinking; all of these create an advantage in the marketplace
- The need to build on recurring student feedback that this programme has been a life-changing experience
- The need to entrench a business value-adding driver in order to ensure return on investment for all parties involved
- The need to offer a clearly defined learning pathway

WHATS IN IT FOR YOU?

- An accredited and recognised NQF 6 qualification.
- The skills to consult, apply and advise on core labour law legislation.
- The ability to implement, review and advise on HR, BBBEE and EE Policy

WHO SHOULD ATTEND?

- Human Resource Managers
- Labour Law/Industrial Relations practitioners.
- Business Managers and owners.

WHY ATTEND?

- ✓ Fully accredited
- ✓ National Qualification
- ✓ Experienced trainers

WHERE AND WHEN?

- East London: 26 – 30 July 2010
- Port Elizabeth: 13 – 17 September 2010
- Cape Town: 10 – 14 May 2010
- Durban: 31 May – 4 June 2010
- Johannesburg: 22 – 26 November 2010

ENTRY REQUIREMENTS:

Option 1:

The Certificate (MOTI) (NQF level 5) or a relevant Certificate in Management/ Leadership/ Business Management/ Business Administration at NQF level 5, worth 120 credits.

Option 2:

None of the above, but 5 years working experience combined with a detailed assessment (recognition of prior learning) resulting in conditional access pending successful completion of the first three modules. In this regard, the Management Programme in Labour Relations/ Law offered by GBS would serve favourably in regard to this assessment.

GLOBAL BUSINESS SOLUTIONS – GIVING YOU THE EDGE

REGISTRATION & BANKING DETAILS:

- Complete and fax the attached registration form to: the relevant branch (contact details below)
- Payment is due in advance, make cheques payable to: GLOBAL BUSINESS SOLUTIONS, fax the deposit slip to: 043 721 1027
- Banking Details: Bank: FIRST NATIONAL BANK
Account Name: Goldberg De Villiers and Myburgh (Pty) Ltd
- Account Number: 52131103063
- Branch: 210-121
- All fees are payable in advance.
- Payment options – Cash, check or direct deposit. Quote your invoice number when making payment & fax proof of payment to 043 721 1027.
- Learners will not be able to receive results / graduate unless full payment has been received.
- Private Delegates only may apply for a funding agreement payment option 2. Terms and conditions do apply. To apply for funding agreement documentation please contact ALANA OR ZUKI on 043 7211030.

Faculty Presenters:

- **Jonathan Goldberg:** CEO of Global Business Solutions: B.Com, LLB, MBA; Accredited CCMA Commissioner; Member of Tokiso Dispute Resolution Panel
- **David Pattle:** BA. LLB., Post Graduate Diploma in Labour Law Attorney of the High Court of South Africa and accredited Assessor
- **Grant Wilkinson :** LLB, Attorney of the High Court of South Africa
- **Johann Van Der Walt:** LLB, Consultant and Attorney
- **Jonathan Jones:** B.Com. LLB. LLM, Diploma in Labour Law Attorney and labour law practitioner.

PAYMENT OPTIONS:

OPTION 1:

FEE: R17 100.00 including VAT
Full payment on or before the course start date

OPTION 2:

FEE: R17 100.00 including VAT
Deposit of R6008.30 upon acceptance of the course (before the course).
Followed by monthly payments of R1003.3 over the next 11 months

- For information on payment options please contact Alana on 043 7211030
- Payment must be made in full before the exam is written.

ENGAGEMENT STRUCTURE:

Block 1: 5 Days
Block 2: 3 Days
Block 3: 4 Days
Assignments

LADDER OF LEARNING:

This qualification articulates with the Masters Programme (MSc MOTI) focusing on Labour Law (NQF 8). The Masters Programme can also be accessed by virtue of the student possessing an appropriate NQF level 7 qualification or by participating in a structured bridging year where this Diploma at NQF 6 has been obtained. Further to this, the student can enrol for a Doctorate focusing on Labour Law.

COST:

- The full fee for the Diploma Programme is: R15 000.00 (excluding VAT) and this compares favourably with other qualifications offered at the same NQF level and length.

RPL OR NQF 5 CERTIFICATE



DIPLOMA (NQF 6, 240 CREDITS)



RPL OR NQF 7 CERTIFICATE



MASTERS (NQF 8, 240 CREDITS)



DOCTORATE (NQF 8, 360 CREDITS)

