



LABOUR LAW UPDATE

Enquiries contact: Johnny@iafrica.com
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CASE 1

CASE SYNOPSIS:

Agreements regulating conditions of employment

Johannesburg Metropolitan Bus Services (Pty) Ltd v SAMWU & others – [2011] 3 BLLR 231 (LC)

When the company decided to amend its drivers' shifts to enable it to service routes more effectively, the respondent unions referred a dispute to the Local Government Bargaining Council concerning alleged unilateral change to their members' terms and conditions of employment, demanding a reversion to the former shift system. The company denied that the employees' terms and conditions of employment had changed, and claimed that it was complying with the council agreement regulating working hours. When the unions threatened strike action, the company sought an urgent order declaring a strike over the issue unprotected. An interim order was granted. On the anticipated return date, the unions contended that a strike over the issue would be protected.

The Court noted that the original shift system consisted of three shifts spread over 24 hours, subject only to agreed maximum working hours, to compliance with a schedule relating to routes, to the drivers' right to choose shifts according to their seniority and to payment of shift allowances. The parties had also agreed that the company would not amend shifts without consulting. The Court accepted that the company had consulted adequately before altering the shifts. The new system satisfied all the conditions of the agreement.

The only change was that some drivers left the depot later. The unions had been unable to refer the Court to any aspect of the applicable collective agreements that had been infringed, the new shifts accordingly constituted nothing more than change of work practice, not a unilateral variation of the drivers' terms or conditions of employment.

The Court ruled that the unions did not have a right to strike over a unilateral change to terms and conditions of employment in terms of section 64(4) of the LRA.

The rule *nisi* was confirmed.

WHAT THIS MEANS FOR YOU:

A change to (for example shifts) done in terms of a collective agreement and which overall has no substantial effect on the terms of conditions of employment of staff will not be viewed as a unilateral change in conditions of service, especially if there is proof of consultation with the other side. This would then negate the threat of strike action.





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CASE 2

CASE SYNOPSIS:

Practice and Procedure – Appeal and review

Dell v Seton South Africa (Pty) Ltd & others - [\(2011\) 20 LAC 1.11.14](#)

After employer's overseas directors ordered an inquiry into the employee's remuneration as managing director of its South African operation, they found that his package was higher than that generally paid to executives in South Africa, and that the employee had not disclosed all his earnings. He was suspended, charged with seven counts of misconduct, found guilty of five, and dismissed. The CCMA commissioner ruled the dismissal substantively and procedurally fair, and a subsequent review application failed. On appeal, the employee contended that the commissioner and the court a quo had erred by not finding the dismissal substantively and procedurally unfair.

On the merits, the Court noted that the employee's main criticism of the commissioner's findings related to conclusions he had drawn from evidence that was largely common cause. The commissioner had assessed the evidence in relation to each charge, and had reasonably preferred the evidence presented by the employer. The ultimate conclusion that the employee had deliberately withheld information to cover up the manipulation of his remuneration was also reasonable. The Court also rejected the employee's argument that he had not been charged with a breach of trust, and should not therefore have been found guilty of breaching his fiduciary duties. The evidence clearly indicated that the employee had placed his own interests above that of his employer. The Court held that the appeal had to fail because the employee had failed to prove that the commissioner had committed any reviewable misdirection.

The appeal was dismissed with costs.

WHAT THIS MEANS FOR YOU:

A clear indication of what gets taken into account for review proceedings. Also, an employee deliberately withholding information to cover up the manipulation of his remuneration is guilty of dishonesty and it must be seen in this serious light and dealt with accordingly.

