



## ***LABOUR NEWSLETTER - April 2017***

### **FAILURE TO ENGAGE CONSTRUCTIVELY**

The Trade Union in this matter adopted a confrontational and obstructive approach. It refused to attend consultations and placed many unnecessary and irrelevant obstacles in the employers' way whilst the employer was trying to conduct the retrenchment process.

This forced the employer to abandon the retrenchment consultation process. The court stated that it would not condone such behaviour, that this was patently unacceptable and that the Union could not then approach the court for relief.

### **SUSPENSION OF A DISMISSAL**

The court recorded that an employee's dismissal cannot be suspended if an internal appeal has been noted.

### **DEFAMATORY REMARKS**

A defamatory statement which is made during a CCMA hearing such as arbitration enjoys some privilege, if it can be shown that it was relevant, is based on reasonable grounds and was not motivated by malice.

## **CORRECT REMEDY IN A DISMISSAL WHICH IS SUBSTANTIVELY UNFAIR**

The court yet again stated that when a dismissal is found to be substantively unfair the primary remedy should be reinstatement.

## **ONE EYE**

The court had found that when one employee had called the other one eye as a result of him having lost an eye previously this did not constitute discrimination, as the employer had taken action against the offending employee and he had subsequently apologised to his co-worker.

## **SUSPENSIVE CONDITIONS**

When a bank inserted into its contract of employment that a work permit had to be obtained prior to employment that became a condition of employment. Once it suspected that the permit provided to it by the employee was fraudulent it immediately suspended the employee. However, the court found, that the suspension was unlawful and that the bank could take no action until such time as it had determined whether the permit was indeed invalid.

### **CAPE TOWN OFFICE :**

SUITE 501,5<sup>TH</sup> FLOOR , THE COLOSSEUM, 3 ST. GEORGES MALL , CAPE TOWN,8001I TEL: (021) 425 5570 FAX: (021) 425 5574

### **JOHANNESBURG OFFICE :**

22 HURLINGHAM ROAD , CNR FRICKER STREET , ILLOVO BOULEVARD, ILLOVO TEL NO: (011) 268 6697

**P.O. BOX 5266 , CAPE TOWN 8000**

join us on Facebook or visit: [www.facebook.com/malcolmlyonsbrivik](http://www.facebook.com/malcolmlyonsbrivik)

**E-MAIL: [cape.office@lyonsbriviklaw.com](mailto:cape.office@lyonsbriviklaw.com) | WEBSITE: [www.lyonsbriviklaw.com](http://www.lyonsbriviklaw.com)**

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**DIRECTORS:** MALCOLM HENRY LYONS BCOM LLB (WITS), TZVI BRIVIK BCOM LLB (WITS) REG NO:2000/009232/21

**ASSOCIATES:** NICOLA J. LYONS BA LLB (WITS) SOLICITOR OF THE HIGH COURT OF ENGLAND AND WALES;  
CARLA A.T. GRIFFITH LLB (UNISA)

**PROFESSIONAL ASSISTANT:** LIZANNE VAN HUYSSTEEN BCOM LLB (UJ); ELMARIE ERASMUS BCOM LLB (NMMU)

**CANDIDATE ATTORNEYS:** URSULA PRINSLOO RN (DIP. GEN, Midwife Nursing Sciences) LLB (UNISA); SHERI-LEE WINIK BCOM LLB (WITS); FRANCESCA SMITH BA LLB (RHODES)