



LABOUR NEWSLETTER -OCTOBER 2017

Minority Unions

Whereas a labour court had found that an employer cannot conclude a valid agreement for organisational rights with a minority union, the labour appeal court subsequently overturned that decision and stated that even if the union is a minority union, and even where there was a threshold agreement in existence, this would not preclude the conclusion of a collective agreement between an employer and a minority union.

TEMPORARY EMPLOYMENT SERVICES

The Labour Appeal Court was called to interpret the new deeming provisions set out in the Labour Relations Act and its most recent amendments. The amendments were effected to protect the rights of vulnerable workers. It ruled that employees are therefore deemed to be employees of the client and not the temporary employment service. This does not automatically ban temporary employment services but restricts same to genuine temporary employment provision .

GROSS INSURBORDINATION

Were an employee had been found guilty for gross negligence in failing to comply with the rules, the dismissal was held to be fair.

DEMOTION

Where in pre-dismissal arbitration proceedings, the arbitrator had found an employee guilty of charges and had recommended the sanction of a demotion, the subsequent reduction in salary was held to be both lawful and a natural consequence of the demotion.

In a separate Labour Court hearing involving demotion, the court found that the onus of proof correctly rested on the employee in an unfair labour practise dispute relating to demotion. In other words it was for the employee to allege and prove that the employer had not exercised its discretion fairly i.e.: it had acted in a capricious manner.

PROCEDURE

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The court affirmed that there is no need to approach a court to have an arbitration award made an order of court if the award had been certified by the CCMA or Bargaining Council.

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