

EMPLOYMENT

ALERT

LABOUR BROKING AGREEMENTS UNDER ATTACK

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.

The Labour Court in *Simon Nape v INTCS Corporate Solutions (Pty) Ltd, case JR617/07* held that such an agreement between the Labour Broker and the client, where such removal 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.

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