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EMPLOYMENT ALERT

IN THIS ISSUE

LEAVE YOUR POLITICS AT THE DOOR: EFF REPRIMANDED FOR INTERFERING WITH WORKPLACE ISSUES

“Where it comes to the EFF and its functionaries, it should simply not stick in its nose where it does not belong”. These were some of the Labour Court’s words in the judgment of *Calgan Lounge v EFF & Others* (J2648/18) handed down on 9 October 2018.

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The case concerned an urgent application to the Labour Court to interdict employees of Calgan Lounge (Pty) Ltd (Calgan) from participating in unprotected strike action. In addition, Calgan also sought to interdict the EFF and its members from interfering in the employment relationship between Calgan and its employees.

From June 2018, representatives of the EFF had convened meetings with Calgan's employees during working hours in order to address purported workplace issues. The EFF handed over a lengthy memorandum to Calgan, on an EFF letterhead, containing various allegations. Most of these allegations were inflammatory. In the memorandum, the EFF indicated that unless their demands were met, it would intensify its next mass protest action against Calgan.

Calgan responded through its attorneys stating, amongst other things, that the EFF, as a political party, had no legal status or entitlement to engage with Calgan on workplace-related issues. Notwithstanding this, the EFF responded with further inflammatory and aggressive correspondence to Calgan.

Calgan then began experiencing a go-slow and employees began refusing to obey instructions, claiming that the EFF would protect them. The EFF then sent a further letter to Calgan indicating that it "would be intensifying its next programme of action, supported by a new mandate of the employees".

Eventually, the employees downed tools completely and proceeded to protest inside and outside Calgan's premises, at all times led by the EFF.

The EFF and the employees persisted with this protest action over the next few days, forcing Calgan to approach the Labour Court on an urgent basis to interdict such conduct.

Calgan successfully obtained an interim order declaring the strike action unprotected, and further restraining the EFF from interfering in the employment relationship. Notwithstanding this and during the Labour Court proceedings, a representative of the EFF addressed the court stating that the employees would continue to persist with their strike action, irrespective of what the Labour Court ordered.

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It was further held that there is no place for the involvement of political parties in the employment relationship and that the workplace should be free of political influences.



After the granting of the interdict, more of the same industrial action continued outside Calgan's premises, again at the behest of the EFF.

At the return date Calgan applied to have the interdict made a final order of court. The relief sought was opposed by the employees who had throughout supported the EFF, however their opposition was made in the absence of having filed any opposing papers. The Labour Court held that:

"...where it comes to the involvement of the EFF and its two representatives, Mashala and Matsheve, there are several issues that need to be addressed. There can be no doubt, on the evidence, that these respondents were directly involved in, if not the instigators of, all the events that followed giving rise to this matter".

The court considered the EFF's role in workplace issues, especially where Calgan's workplace already contained a majority trade union. The judge held that the simple answer was that the EFF had no business whatsoever in involving itself in workplace-related matters. It was further held that there is no place for the involvement of political parties in the

employment relationship and that the workplace should be free of these kinds of political influences.

The judge referred to the memorandum of grievances submitted by the EFF as a "political manifesto" as opposed to a genuine grievance designed to resolve workplace issues. He further held:

"The EFF is not entitled to organise employees in the workplace in matters concerning the employment relationship."

In the premises the court confirmed the interim interdict. When considering the issue of costs, the court considered the fact that the EFF came to court without filing any opposing affidavits, sought relief never prayed for and in effect simply attempted to bypass all the dispute resolution processes prescribed in the Labour Relations Act. The court concluded that there was no prospect of any kind of rehabilitation between Calgan, the striking employees and the EFF. As such costs were also awarded against the EFF.

Nicholas Preston and Sean Jamieson

** CDH represented Calgan in the above matter.*



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