

EMPLOYMENT ALERT

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The employee had previously been employed by the employer on an apprenticeship contract during which he was required to complete a statutory trade test to qualify for the position for which he was subsequently employed by the employer. After the employer conducted an internal audit to establish the authenticity of the trade certificates that had been issued to its employees, the employer dismissed the relevant employee for having provided false evidence in the form of a false trade certificate to secure employment with the mine.

The main thrust of the employee’s defence was that he had not “provided” false evidence due to the fact that the trade certificate in question was never handed to him but had been issued and sent directly to his employer by the agency responsible for maintaining accurate records of trade qualifications – namely the Quality Council for Trades and Occupations (QCTO). It was argued that the employee had not acted dishonestly as he had not been instrumental in providing the false trade certificate to the employer.

After the CCMA Commissioner had found that the dismissal of the employee was substantively unfair, the employer took

the decision on review in the Labour Court. The court was faced with the question whether the only reasonable inference to be drawn from the evidence presented at the arbitration was that the employee knew he had not obtained the requisite qualification and had secured his employment in a dishonest manner. In assessing the evidence, the Labour Court found that the only person who stood to gain from a certificate that purportedly demonstrated that he was qualified for the position, when in fact he was not, was the employee and that the notion that a third party had independently, and for no known reason, produced a false certificate without any assistance from the employee was “fanciful to say the least”.

The Labour Court held that it was inconsequential that the employee had not “provided” the false evidence to the employer himself. The reasonable inference was that the employee had knowledge of the fact that he was employed by the employer under a false impression about his qualified status – a clear expression of dishonest conduct on the part of the employee justifying his dismissal. The Labour Court found that the Commissioner failed to consider the unavoidable implication of inconsistencies in the documentation in support of the

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The Labour Court reviewed and set aside the finding of the CCMA Commissioner and replaced it with a finding that the dismissal was substantively fair.



employee's so called qualification. The Commissioner failed to confront and evaluate the probabilities of the mutually exclusive versions of the witnesses who testified. In the absence of evidence why the employer would want to falsely implicate the employee who had been working for it for a number of years, and how it would have contrived to ensure that the QCTO records corroborated the falsehood, the court found that there was no factual basis for drawing the inference which the Commissioner had drawn, namely that it was all a result of the employer's handiwork.

The Labour Court reviewed and set aside the finding of the CCMA Commissioner and replaced it with a finding that the dismissal was substantively fair. Furthermore, and in emphasising its distaste towards the level of dishonesty on the part of the employee, the Labour Court granted a costs order against the employee and its representative union.

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Fiona Leppan and Liam Sebanz



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The political party had received reports that the Prestons’ workers were being exploited and that the promotional prices of the store were misleading.

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The applicants (and employers) in this case were the trustees of the Athina Trust, which conducts business as a retailer of liquor products under the name and branding of Prestons Liquor Stores (Prestons). The political party had received reports that the Prestons’ workers were being exploited and that the promotional prices of the store were misleading. In response, the political party requested a meeting with Prestons’ management, failing which the political party would occupy Prestons’ stores. Prestons agreed to meet but asked for more information to allow them to prepare. The political party then gathered that the request for a meeting was declined and elected to act on its threat.

On 21 April 2018, approximately 25 people, wearing political party regalia, entered Prestons and disrupted the business operations by preventing access to aisles and tills. According to some members of the Prestons staff, customers felt intimidated. Ultimately, the store closed and Prestons obtained an interim interdict. A similar scenario occurred on 16 June 2018, however, the political party denied any involvement. Again, tills were blocked.

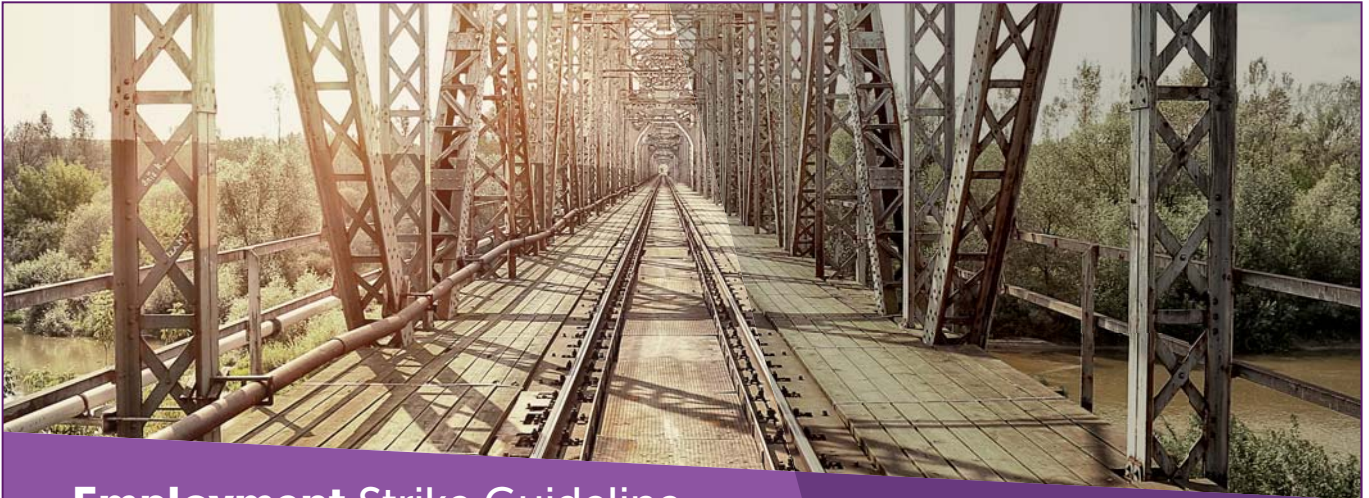
On the return date, the court reiterated the requirements for a final interdict to be granted: “The applicant must establish a clear right; an infringement of that right; an injury actually suffered or a reasonable apprehension of such harm; and that there is no other satisfactory remedy available.”

In considering the matter, the court importantly held that Prestons is under no legal obligation to meet with the political party in relation to the issues “which bear upon contractual employer-employee relations or which bear upon matters affecting consumer interests.”

It was not for the political party to demand a meeting as of right. Employment matters are regulated by the Labour Relations Act, No 66 of 1995 – this legislation recognises trade unions and provides for the appropriate structures and forums in which employee-related disputes and concerns can be discussed and resolved.

The Regulation of Gatherings Act, No 205 of 1993 sets out mechanisms and guidelines for those who wish to enjoy the constitutionally enshrined right to protest. In granting the final interdict, the court acknowledged that political parties may, if they so wish, protest but they are obliged to do so lawfully. What is “not open to political parties, or any person for that matter,” is “to ride roughshod over the established legal process by engaging in unlawful conduct”.

Aadil Patel, Anli Bezuidenhout and Louise Kotze



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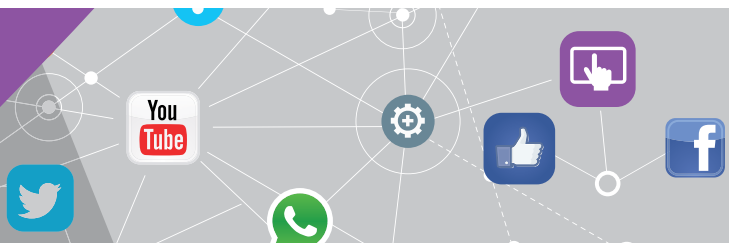
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