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EMPLOYMENT ALERT

INTERDICTING DISCIPLINARY HEARINGS

Recent judgments in the Labour Court (Court) show that there are still employees who seek to urgently interdict disciplinary proceedings against them. Employees do so even though the Labour Court has repeatedly indicated that it will only afford an employee such a drastic remedy in very select circumstances.

An interdict is a court order barring a party from a specific act. The applicant must show a clear right (or *prima facie* right in the case of an interim interdict), that irreparable harm will be suffered if the interdict is not granted and that there is no reasonable alternative remedy available. As most of these applications are heard on an urgent basis, the employee must also convince the Court that the matter is indeed urgent, objectively speaking, and that it cannot wait its turn in the cue of other applications pending before Court.

In most instances, employees seeking to interdict disciplinary hearings fail because they do have a clear alternative remedy to wrongs committed during a disciplinary process. Employees may lodge a dispute at the Commission for Conciliation, Mediation and Arbitration (CCMA) if they were subjected to unfair disciplinary processes. Most employees know that they can lodge a dispute at the CCMA if they feel that they have been unfairly dismissed. However, they may use this avenue even if they were not dismissed from service, but issued with a disciplinary sanction short of dismissal (eg a written warning or final written warning). Employees may also lodge a dispute at the CCMA where they feel aggrieved about unfair conduct by the employer relating to suspension.

Employees can also not rely on urgency that is self-created. Where an employee is aware of the salient facts that prompt the dispute, but then waits for days or weeks before going to Court, no sympathy should be expected from the judge hearing the matter. The Court will not come to the assistance of the party seeking to enforce his or her rights where the party does not act with due diligence in pursuing the claim.

In a Labour Court judgment delivered on 1 March 2012 (*Hermanus v Overberg Municipality, unreported case no. C 144/12*), Judge Steenkamp again confirmed the principles relating to interdicting disciplinary proceedings. He held that the employee failed to satisfy the requirements relating to urgency. He drew an adverse inference from the employee's failure to advise him that he earned a substantial salary, yet claimed that his limited resources were the cause for the delay in bringing the claim. This, the judge pointed out, is at odds with the impression gained when considering the frequent and lengthy letters written by his attorneys to the employer about the disciplinary process in the past two years.

The Judge confirmed further the court's position in relation to interdicting disciplinary hearing by referring, with approval, to the judgments in *Booysen v The Minister of Safety and Security & others [2011] 1 BLLR 83 (LAC)*; *City of Cape Town v SAMWU & others (unreported LAC judgment of 7 February 2012, CA 7/08)*. He stressed that the Court "… will only grant urgent relief interdicting disciplinary hearings in exceptional circumstances."

continued

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He ordered that the application be struck from the roll for want of urgency.

This case is even more curious because the judgment shows that no arrangements were made by the applicant's representatives to have the matter enrolled for hearing. The judge then showed that judicial officers are not as drab and grey as they are sometimes portrayed when he allowed the matter to be heard, stating that "…the applicant [has] the leap year benefit of an extra day in February."

Employees seeking to interdict disciplinary hearings should avoid running to court on a whim. Even where they do find a judge with a good sense of humour, they may still part with a substantial sum in legal costs and be no better off than by participating in the hearing and exercising their rights at the CCMA afterwards.

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