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EMPLOYMENT ALERT

IN THIS **ISSUE**

DROP IN THE PRESCRIBED RATE OF INTEREST

The Prescribed Rate of Interest Act, No 55 of 1975 (PRIA) provides that if a debt bears interest, the prescribed rate of interest becomes applicable. The only exceptions to this general rule is if a different interest rate is set by any other law, trade custom or agreement between the parties.

THE RIGHT TO A FAIR HEARING IS A TWO-WAY STREET

An arbitrator is obliged to ensure that both parties are afforded a fair hearing when determining a dismissal dispute. The Labour Court confirmed this requirement when it reviewed and set aside an arbitration award in the matter of *Pick n Pay (Bloemgate) V Rampai No & Others (LC) unreported case no JR 108/15 (28 March 2018)*.

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According to the PRIA, the prescribed rate of interest is calculated by adding 3.5% to the repurchase rate. Therefore, in order to calculate the prescribed rate of interest, one relies on the repurchase rate (which changes from time to time).

Litigants must ensure that they use the most recent and correct prescribed rate of interest when instituting any legal proceedings that includes a claim for interest. In terms of claims for interest in certain labour disputes, s143(3) of the Labour Relations Act, No 66 of 1995 is relevant. Section 143(3) states that an arbitration award (sounding in money) earns interest from the date of the award at the prescribed rate of interest. The only exception to this general rule is if the arbitrator makes a ruling to the contrary.

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This alert discusses the recent drop in the prescribed rate of interest. The discussion is important for litigation that involves a claim for interest.

In March 2018, the Monetary Policy Committee of the South African Reserve Bank (SARB) decreased the benchmark interest rates by 25 basis points as follows:

BENCHMARK INTEREST RATE	PREVIOUS RATE	NEW RATE
Repurchase rate	6.75%	6.5%
Prime lending rate	10.25%	10%

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DROP IN THE PRESCRIBED RATE OF INTEREST

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SARB announced that the benchmark interest rates remain unchanged.

According to SARB, the decrease can be attributed to various factors including domestic political developments and recent dollar weakness.

The decrease in the repurchase rate has resulted in a drop in the prescribed rate of interest. On 20 April 2018, the Minister of Justice and Correctional Services published a notice in the Government Gazette on the revised prescribed rate of interest. With effect 1 May 2018, the prescribed rate of interest dropped from 10.25% to 10%.

On 24 May 2018, SARB announced that the benchmark interest rates remain unchanged. The prescribed rate of interest therefore remains at 10% (until further notice).

Aadil Patel, Shane Johnson and Mamello Thulare

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The employee, was dismissed for gross negligence arising from till shortages in the amount of approximately R212 for the month of July 2014.

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On review at the Labour Court, Pick n Pay argued that the Arbitrator unreasonably refused it an opportunity to call a critical witness in order to prove the calculation of the till shortage.

The employee, Mokoena, was dismissed for gross negligence arising from till shortages in the amount of approximately R212 for the month of July 2014. In terms of the employer's (Pick n Pay) disciplinary code, till shortages over an amount of R100 are deemed to constitute gross negligence. Whilst the Arbitrator accepted that the policy in respect of till shortages was valid, known and understood by Mokoena, he found that Pick n Pay was unable to prove that Mokoena breached the policy as Pick n Pay failed to explain the calculation of the till shortage. The Arbitrator subsequently found that the dismissal was substantively unfair but procedurally fair. The Arbitrator ordered Pick n Pay to retrospectively reinstate Mokoena. During the arbitration, the amount of the till shortage became an issue in dispute. The Pick n Pay representative, who also testified as the main witness in the matter, indicated to the Arbitrator that he could not explain the method of calculation and requested a postponement in order to call the appropriate witness who conducts the calculations on a daily basis. The representative explained that he did not anticipate the need to call the particular witness to testify at the arbitration as the amount of the till shortage was not disputed during the disciplinary enquiry. The Arbitrator berated the Pick n Pay representative for not ensuring the presence of the witness and refused to allow the postponement.

At the arbitration, the chairperson of the initial disciplinary enquiry (Du Plooy) was called by Pick n Pay. During cross-examination, Mokoena's representative did not question Du Plooy about the amount of the till shortage. Instead, the Arbitrator elected to question Du Plooy about his finding that Mokoena was responsible for the till shortage. In response, Du Plooy explained that a specific calculated amount was presented during the disciplinary enquiry. Du Plooy stated that this amount was not disputed during the disciplinary enquiry. At the close of Du Plooy's evidence, the Arbitrator simply enquired as to whether Pick n Pay wished to close its case but failed to enquire whether Pick n Pay intended to call a further witness to explain how the amount of the till shortage was calculated.

On review at the Labour Court, Pick n Pay argued that the Arbitrator unreasonably refused it an opportunity to call a critical witness in order to prove the calculation of the till shortage. In addition, Pick n Pay also argued that it was the Arbitrator who raised the point of the calculation of the till shortage whereas Mokoena based her case on the fact that she had already been penalised when the till shortage was deducted from her salary.

The Labour Court found that it was clear that Pick n Pay did not have a reason (prior to the Arbitration) to call a witness to explain the calculation of the till shortage. There was also no evidence before

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This judgment is a reminder that the right to a fair hearing is not solely for the benefit of the employee but also extends to the employer in advancing its case.

the Arbitrator that would infer that the calculation of the till shortage was an issue in dispute during the initial disciplinary enquiry. Once Pick n Pay became aware of this issue, the representative made repeated requests to call the relevant witness and requested a postponement in order to do so. Instead of dealing with the request for a postponement, the Arbitrator chastised the employer for not having secured the witness prior to the commencement of the Arbitration.

The Labour Court found that the Arbitrator's conduct of refusing Pick n Pay an opportunity to call a critical witness was a dereliction of his duty and consequently; this deprived Pick n Pay of a fair hearing. In addition, the Labour Court found that the Arbitrator committed a reviewable irregularity by distorting the effect of a vital finding. Accordingly, the Arbitration Award was set aside and remitted for rehearing before a different Arbitrator consisting of the original record and allowing the parties to call additional witnesses, specifically regarding the calculation of the amount of the till shortage and the appropriateness of the sanction of dismissal.

This judgment is a reminder that the right to a fair hearing is not solely for the benefit of the employee but also extends to the employer in advancing its case. It is also useful to note that a pre-arbitration conference could have avoided this matter entirely as the issues in dispute would have been clarified by the parties beforehand.

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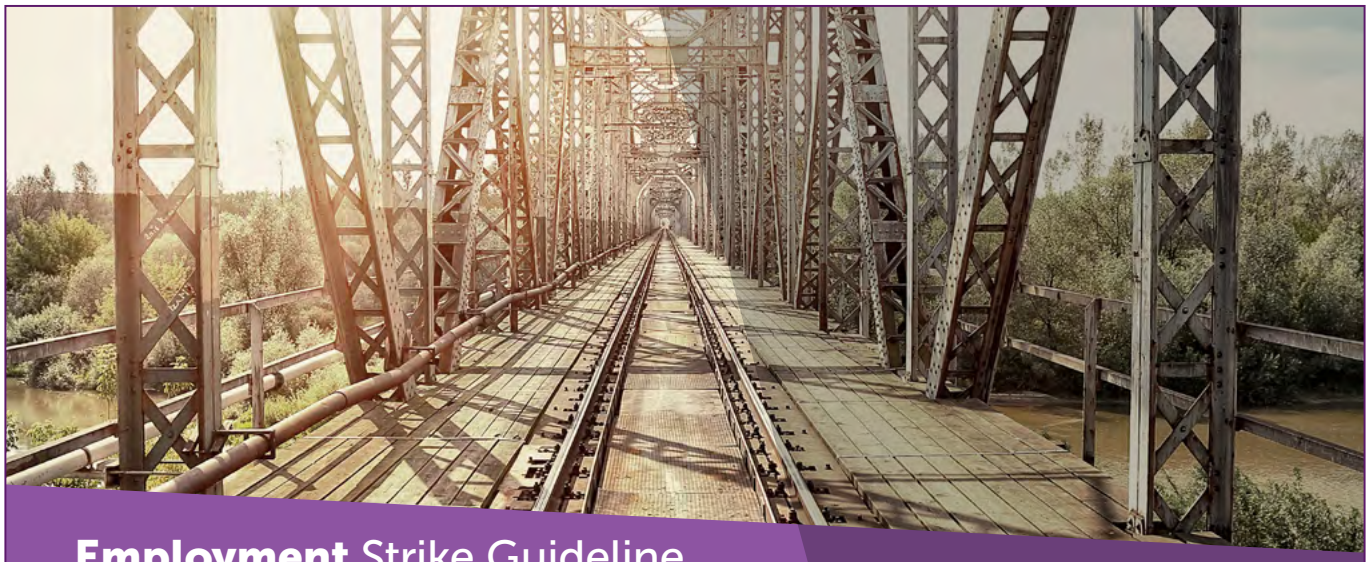

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