

EMPLOYMENT ALERT

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MINE HEALTH AND SAFETY: REGULATIONS RELATING TO COMPETENT PERSONS FOR EXPLOSIVES

On 14 September 2018, the Minister of Mineral Resources, Gwede Mantashe, amended Chapter 4 and Chapter 22 of the Regulations under s8(1) of the Mine Health and Safety Act, 1996 (Act, No 29 of 1996) (MHSA).

WORDS, WORDS AND MORE WORDS: THE CORRECT INTERPRETATION OF COLLECTIVE AGREEMENTS

The eminent German philosopher, Friedrich Wilhelm Nietzsche, concerned with the (im)possibility of our understanding of 'truth' is quoted as saying, 'All things are subject to interpretation whichever interpretation prevails at a given time is a function of power and not truth'.

MINE HEALTH AND SAFETY: REGULATIONS RELATING TO COMPETENT PERSONS FOR EXPLOSIVES

With the promulgation of these amendments, the MHSa regulations now prescribe the form and manner of appointment(s) of a competent person(s) who work with explosives.

Amendments will take effect three months after publication (ie on 14 December 2018).

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Chapter 4 of the Regulations to the MHSa deals with explosives. In particular, regulation 4.4 (1) dictates that a competent person should be appointed to be a custodian of explosives and blasting procedures.

With the promulgation of these amendments, the MHSa regulations now prescribe the form and manner of appointment(s) of a competent person(s) who work with explosives.

Chapter 22.4 of the regulations has been amended and it provides as follows:

"22.4 Competent persons for explosives

22.4.1 For purposes of regulation 4.4(1) "competent person" means a person who is a holder of the following certificates recognized by the Department for this purpose, valid for the class of mine to which the mine belongs:

- (a) Blasting certificate issued by the Department until 30 June 2009; or
- (b) Rock breaker or equivalent certificate issued by the Mining Qualifications Authority from 1 July 2009 to 31 May 2017; or

- (c) Blasting certificate issued by the Department with effect from 1 June 2017."

"22.4.2 For the purposes of regulation 4.4(3) "competent person" means a person who:

- (a) has been assessed and found competent against a skills programme issued by the Mining Qualifications Authority for this purpose; or
- (b) is qualified by:
 - (i) virtue of his/her knowledge, training, skills and experience to perform the activities contemplated in regulation 4.4(3);
 - (ii) being familiar with the provisions of regulation 4 which apply to the work to be performed by such person; and
 - (iii) being trained to recognise any potential or actual danger to health or safety that may arise from the work to be performed by such person."

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MINE HEALTH AND SAFETY: REGULATIONS RELATING TO COMPETENT PERSONS FOR EXPLOSIVES

CONTINUED

Chapter 4 of the Regulations in the MSHA sets out the various obligations and responsibilities on employers when it comes to explosives.



Chapter 4 of the Regulations in the MSHA sets out the various obligations and responsibilities on employers when it comes to explosives, which include inter alia the following:

- what security steps an employer must take when it comes to explosives and the accessibility of explosives;
- employer's obligations in relation to the receipt storage and transportation of explosives as well as how to dispose explosives upon mine closure;

- approved explosives and usage of explosives at mines; and
- individuals competent to perform blasting and the management control over explosives;
- certification of blasting equipment.

These amendments will take effect three months after publication (ie on 14 December 2018).

*Ndumiso Zwane and
Nonkululeko Sunduza*



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WORDS, WORDS AND MORE WORDS: THE CORRECT INTERPRETATION OF COLLECTIVE AGREEMENTS

The Banking Insurance, Finance and Assurance Workers Union brought an application seeking to review an arbitration award.

On 20 July 2012, SAFA issued a notice to all its employees, informing them that it intended to initiate a restructuring process at the workplace.



The eminent German philosopher, Friedrich Wilhelm Nietzsche, concerned with the (im)possibility of our understanding of 'truth' is quoted as saying, 'All things are subject to interpretation whichever interpretation prevails at a given time is a function of power and not truth'.

Jurists are not bona fide philosophers, although, there is merit in the proposition that the foundational principles of law and the credence of philosophical thought are overlapping magisterium. To illustrate, in *BIFAWU obo Members v Commission for Conciliation, Mediation and Arbitration and Others* (JR306/13) [2018] ZALCJHB 303 (27 September 2018) the court was required to consider whether a collective agreement was indeed 'interpreted' to give effect to the 'true' intention of the parties.

The Banking Insurance, Finance and Assurance Workers Union (BIFAWU) brought an application seeking to review an arbitration award following a dispute regarding the interpretation of a collective agreement concluded between itself, and the South African Football Association (SAFA).

On 6 July 2012, a Recognition Agreement was concluded between BIFAWU and SAFA, which regulated, *inter alia*, the collective bargaining rights of the parties and set out the procedure applicable in the event of a possible restructuring of the workplace.

Clause 4 of the Recognition Agreement stated that the Employer agreed that in the event of a major change to the workplace, it would, in terms of sections 84 of the Labour Relation Act (LRA), consult with the workplace forum. Conversely, clause 19 set

out that the parties agreed that, in the case of retrenchment, a retrenchment collective agreement shall come into force and in the absence of such an agreement, s189 of the LRA shall apply.

On 20 July 2012, SAFA issued a notice to all its employees, informing them that it intended to initiate a restructuring process at the workplace. As no retrenchment collective agreement had been concluded, the restructuring process was conducted in terms of s189 of the LRA.

BIFAWU alleged that clause 4(b) of the Recognition Agreement and by implication, section 84(1)(a) of the LRA, was applicable and that the Employer was required to consult with BIFAWU prior to the intended restructuring.

Following extensive attempts at conciliation, the matter was referred to arbitration at which the Commissioner found that, based on the wording of the SAFA's notice and the collective agreement, clause 4(b) did not apply.

In its application to the Labour Court, BIFAWU alleged that the Commissioner had, *inter alia*, committed misconduct in relation to his duties as an arbitrator and had ignored the fact that the Recognition Agreement imposed a legal obligation on the Employer to consult with the Union prior to commencing the restructuring process.

WORDS, WORDS AND MORE WORDS: THE CORRECT INTERPRETATION OF COLLECTIVE AGREEMENTS

CONTINUED

In respect of the interpretation of the Recognition Agreement, the Court held that the Commissioner's interpretation was fair as it gave effect to the words of the agreement.



The Labour Court reaffirmed the principle that, when interpreting collective agreements, arbitrators must strive to give effect to the intention of the agreement and must give the words used by the parties their ordinary and popular meaning if no ambiguity is present.

The Court held that s84 of the LRA related to workplace forums and as the parties to the Recognition Agreement had not established a workplace forum, clause 4(b) and s84 were clearly not applicable, but rather clause 19 and s189 of the LRA were.

In respect of the interpretation of the Recognition Agreement, the Court held that the Commissioner's interpretation was fair as it gave effect to the words of the agreement, ie their ordinary and popular meaning in the absence of ambiguity. Thus, the Commissioner had properly applied his mind to the issues before him.

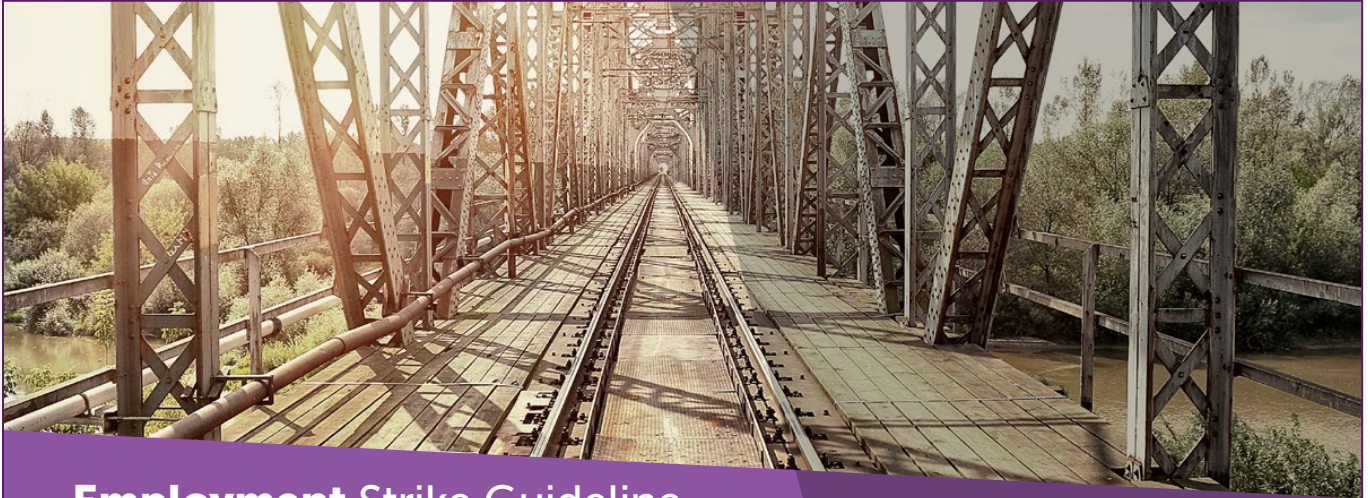
The Application to review was therefore dismissed.

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**Samiksha Singh and
 Khensani Hlongwane**





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