Employment Law

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SOUTH AFRICA

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Are employers that hire equipment and machinery in the civil industry covered by the Bargaining Council for the Civil Engineering Industry?

The world of civil engineering and its scope of work is vast and varied. This is because it encompasses everything from construction and infrastructure projects to land and sea defence works. The complexity of the industry in the world of employment law often leads to interpretation disputes over demarcation with reference to the specific nature of work being carried out by employers.

The scope of coverage under the Bargaining Council for the Civil Engineering Industry (BCCEI) has accordingly given rise to much uncertainty, particularly in recent years. Employers will be pleased to learn that a demarcation award was recently issued by the Commission for Conciliation, Mediation and Arbitration (CCMA) in *Ruwacon Plant and Equipment (Pty) Ltd v Bargaining Council for the Civil Engineering Industry* [2024] 3 BALR 314, which now provides the necessary clarity.

Ruwacon (Pty) Ltd (RWE) was required by the BCCEI to register its subsidiary company, Ruwacon Plant & Equipment (Pty) Ltd (RPE), with the BCCEI. The rationale was that RPE was part of a group of companies involved in the civil engineering industry and also hired its equipment and machinery within the group. RWE argued that RPE's business activities, which involved the letting/hiring of plant, equipment and vehicles along with certified operators, did not fall within the scope of the BCCEI as RPE was not engaged in work in the civil engineering industry. RPE argued that the company's business model, as well as the breakdown of its revenue, showed that a considerable portion of its business was derived from various construction sites, which further supported the argument that its primary business fell outside of the scope of the industry.

Additionally, the definition of "*industry*" within the BCCEI clearly outlines the type of activities that fall within the civil engineering industry. These include various construction-related activities, such as the construction of aerodrome runways, bridges, dams, excavation work, the construction of foundations, asphalting and other related activities. Also, the definition outlines exclusions, such as work in connection with the erection of structures, amongst others. A large portion of RPE's revenue was derived from clients engaged in industries other than civil engineering and RPE's competitors were other businesses renting out plant, equipment and specialised machinery.

The precedent set by the Labour Court in *NUM and Another v Sylco Plant Hire Association and others* [2017] 38 ILJ 2346 (LC) further supported the employer's position, as it demonstrated that similar companies carrying out the same business activities have previously been found not to fall within the scope of the civil engineering industry.

The CCMA found that RPE does not fall within the scope of the BCCEI and, in coming to its conclusion, also took into account that RPE and RWE are both private companies with their own legal standing. The award may be sought to be reviewed in the Labour Court. Time will tell.

For now, plant and equipment companies can breathe a sigh of relief with this demarcation award and be able to work out with a little better certainty within which bargaining council they fall, if any.

Imraan Mahomed and Alysa Bunting

Political parties' involvement in workplace affairs

It has become a common feature in South Africa for political parties to want to become embroiled in workplace issues. This initially gained prominence with the Economic Freedom Fighters (EFF,) a well-known opposition national political party. The Labour Court has, however, already taken a strong stance against the EFF in two reported judgments: *Calgan Lounge v EFF and Others* [2019] 40 ILJ 342 (LC) a matter in which Cliffe Dekker Hofmeyr (CDH) represented Calgan Lounge in 2018, and *Gordon Road Spar v The Economic Freedom Fighters and Others* [2021] 42 ILJ 1953 (LC) which was subsequently overturned by the Labour Appeal Court (LAC) in 2023 for technical legal considerations. We reported on these judgments in our 12 November 2018, 4 October 2021 and 24 January 2022 Employment Law Alerts. The *Gordon Road Spar* judgment, however, needs to be heeded by employers who are faced with a similar dilemma and who intend to engage the assistance of the court.

At the point at which an employer wants to interdict the reach of political parties in the workplace, they will always face the question of which court to approach.

This is because the failure to approach the correct court has disastrous effects – as the application will not be considered by the court where it does not have jurisdiction. This is precisely what occurred in the recent case of *CCI South Africa (Pty) Ltd v ANCYL and Others* which was considered by the LAC. The judgment was handed down on 6 March 2024.

The ire of CCI management was provoked, and the company was prompted to seek an interdict, after they came across a leaflet bearing the African Nation Congress Youth League (ANCYL) logo, along with Facebook posts and WhatsApp voice notes, demanding CCI's shutdown and listing various employment-related issues. On 15 February 2022 CCI then obtained an interim interdict from the Labour Court, against the ANCYL. Shortly thereafter, on 23 February 2022, CCI was notified of a second proposed march to its premises, which was scheduled to begin at a public area and end at CCI's premises. The ANCYL secured permission to march to CCI South Africa's offices under the Regulation of Gatherings Act 205 of 1993 (RGA). The march, scheduled for 25 February 2022, was publicised through various channels, including newspaper articles, posters and flyers, with demands outlined and a call for public participation in the upcoming march to CCI's offices. CCI sought an interdict against the ANCYL, arguing that the ANCYL's participation was in breach of the Labour Relations Act 66 of 1995 as it was not a registered union.

Political parties' involvement in workplace affairs

CONTINUED

Chambers Global 2024 Results

Employment Law

Chambers Global 2014–2024 ranked our Employment Law practice in:
Band 2: Employment.

Aadil Patel ranked by Chambers Global 2024 in **Band 1**: Employment.

Fiona Leppan ranked by Chambers Global 2018–2024 in **Band 2**: Employment.

Imraan Mahomed ranked by Chambers Global 2021–2024 in **Band 2**: Employment.

Hugo Pienaar ranked by Chambers Global 2014–2024 in **Band 2**: Employment.

Chambers TOP RANKED Global 2024 Cliffe Dekker Hofmeyr

The ANCYL objected to the jurisdiction of the Labour Court and also argued that the march was not a strike, protest action, or conduct in furtherance of either, as employees continued to work. The Labour Court found that it lacked jurisdiction, which decision was upheld on appeal for the following reasons:

- The absence of an employment relationship between CCI and the ANCYL.
- The authorisation of the march under the RGA.
- The lack of CCI employees seeking assistance from the ANCYL (which is very different from the other cases referred to above).
- The absence of the involvement from a trade union.
- The court acknowledged that the almost exclusive focus on labour issues did not inherently categorise the march as a matter governed by employment laws.
- The court affirmed that under section 17 of the Constitution, individuals can protest against labour right violations as long as it is conducted lawfully under the RGA. However, if such protests involve employees and their unions, they must adhere to the provisions of employment law. The court again endorsed its earlier decision in *ADT Security (Pty) Ltd v National Security And Unqualified Workers Union (NSUWU) and Others* [2015] 36 ILJ 152 (LAC) to highlight that protests authorised under the RGA can be interdicted by the Labour Court where they are circumventing the provisions of employment law.
- If the protest falls within the scope of employment law, an interdict is to be sought from the Labour Court. If not, the RGA applies and only the High Court would have jurisdiction to interdict.

Where does this leave employers who are faced with politicians at their gates?

The LAC accepted the existing principle that political parties are permitted to assist in employment matters in an advisory capacity. So, there is no blanket objection to a political party showing up. If the matters are squarely employment law related and the political party is representing the interests of workers, the audience of the Labour Court may be sought. Where it is not a clear employment law matter and there is no authorisation under the RGA, the audience of the High Court will need to be engaged.

In short, in the heat of the moment when faced with an emotionally charged and escalating situation it is vital to properly understand the issues at the heart of the dispute to determine how to best to deal with the issues at hand and which court to approach, if this becomes necessary because, as was the case in *CCI South Africa*, the approach to the incorrect court meant that the ANYCL was eventually entitled to continue to make its advance to the workplace.

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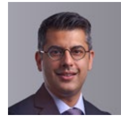

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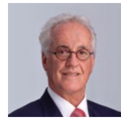

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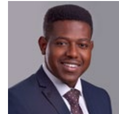

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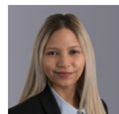

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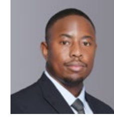

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BBBEE STATUS: LEVEL ONE CONTRIBUTOR
Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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