

Employment Law

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In this issue

SOUTH AFRICA

Determining the forum:
The jurisdictional boundaries of courts in
employment disputes



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Determining The forum: the jurisdictional boundaries of courts in employment disputes

The appellant is Dario Investments, which carries on business in the food retail sector and owns and operates Tembisa Super Spar. The respondents were former employees of the appellant and members of a trade union.



Facts

In May 2023, the respondents, via their trade union, demanded a bonus, worth four weeks of remuneration, and a 10% salary increase. The appellant could not meet these demands and a dispute was referred to the Commission for Conciliation, Mediation and Arbitration (CCMA). On 4 July 2023, the CCMA issued a certificate of non-resolution, allowing for strike action to follow. A strike commenced on 26 August 2023. The appellant brought two urgent applications to interdict the strike, without success. The respondents were issued with notices to attend a disciplinary hearing on 30 August 2023, facing charges including intimidation, sabotage and misconduct. Most of the respondents either did not attend or disrupted the hearing. The chairperson found them guilty and recommended a sanction of dismissal. The respondents were dismissed with effect from 26 August 2023.

The respondents approached the High Court seeking to declare their dismissals unlawful and sought reinstatement.



The law

This case concerned how an employee frames an employment dispute, whether as a breach of contract or unfair dismissal. This is relevant for purposes of determining which court has jurisdiction to determine the dispute as courts will look beyond labels to assess the true nature (substance) of the claim.

The Labour Court has exclusive jurisdiction over matters regulated by the Labour Relations Act 66 of 1995 (LRA), such as unfair dismissal, unfair labour practices, retrenchments and strikes.

However, the High Court shares concurrent jurisdiction with the Labour Court in two key instances:

1. Section 157(2) LRA: Where the claim involves constitutional rights arising from employment.
2. Section 77(3) of the Basic Conditions of Employment Act 75 of 1997 (BCEA): In disputes concerning contracts of employment, e.g. breach of contract and/or enforcement of contractual rights.

Determining The forum: the jurisdictional boundaries of courts in employment disputes

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Application of law in this matter

While the three judges came to the same conclusion in relation to the success of the appeal, and found in favour of the appellant, the basis on which they upheld the appeal were different.

Two judges upheld the appeal on the basis that the High Court lacked jurisdiction in the first instance to adjudicate the respondents' claim for unlawful dismissal. The dispute concerned a dismissal arising from a strike, which falls within the scope of the LRA. Therefore, under section 157(1) of the LRA, the Labour Court has exclusive jurisdiction, not the High Court. Although the respondents framed their claim as one of unlawfulness and relied on section 77(3) of the BCEA (which provides for concurrent jurisdiction with civil courts for employment contracts), this was artificial. The true nature of the dispute related to the fairness of the dismissal following disciplinary action, thus falling under the LRA's unfair dismissal provisions and the Labour Court's exclusive domain.

The third judge found that the High Court had jurisdiction under section 77(3) of the BCEA, which gave it concurrent jurisdiction over employment contracts, and proceeded to deal with the merits of the case. The respondents claimed breach of the right to be heard, or the *audi* rule, and the company's policy. The appeal court found that the chairperson's unchallenged report indicated that the respondents had adequate notice and some respondents elected to disrupt or not participate in the hearing. Furthermore, there was no evidence placed before the court regarding the internal policy or specific breaches thereof.

Also, the court found that the respondents' alleged violation of constitutional rights due to financial hardship was not properly pleaded.

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Takeaways

The High Court has concurrent jurisdiction with the Labour Court only for disputes about contracts of employment (section 77(3) BCEA) or claims involving an alleged violation of constitutional rights (section 157(2) of the LRA).

If the real issue is about the fairness of a dismissal and/or the fairness of the employer's conduct (i.e. a labour practice dispute under the LRA), then the matter falls exclusively within the Labour Court's jurisdiction (section 157(1) LRA). The courts will scrutinise pleadings to determine what is truly at issue and "unlawfulness" must not be used to disguise "unfairness."

Parties must properly plead the issues and details (for example, the contract, any breach and the relief) – something which the respondents failed to do adequately.

Employees claiming unfair process (e.g. lack of hearing) must clearly allege how their right to be heard was denied. Vague or inconsistent claims will not suffice.

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