

-----LABOUR BULLETIN-----

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FROM THE BENCH

Eastern Cape Tourism Board v Commission for Conciliation, Mediation and Arbitration and Others [2010] ZALC 74

This is an application to review and set aside the arbitration award issued by a CCMA commissioner. In terms of the award the commissioner found the resignation of the employee to have amounted to constructive dismissal which was unfair. The employee who was prior to her resignation employed by the applicant as Chief Financial Officer resigned and thereafter claimed constructive dismissal.

The commissioner found that it was clear that the applicant was alone in her noble crusade of wanting the respondent to have an unqualified audit, it is clear from her evidence that she never had the support from the echelons of the respondent. The commissioner found that this was a frustrating and stressing environment. This was more so where a person held such a high position of CFO and her reasonable



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instructions were wilfully flouted by her subordinates. The subordinates in turn had a full support of her colleagues.

The court however reviewed the arbitration award and held that the employee was not constructively dismissed. The court was of the view that it was not shown that the employer made the employee's working conditions unbearable or that the employer failed to support the employee. The court also held amongst others that the employee could not explain why she did not follow the grievance procedure before resigning.

Molefe v Safety and Security Bargaining Council and Others [2010] ZALC 77

This matter concerns an application to review and set aside the Arbitrator's award issued under the auspices of the Safety and Security Bargaining Council ('the SSBC'). The arbitrator dismissed the applicant's claim of unfair dismissal, in an extensive and closely reasoned award.

Applicant, a SAPS Superintendent, was subjected to a disciplinary enquiry and dismissed from the services of the SAPS in that it was found that life policies both of which nominated the applicant as the beneficiary were taken out on the life of someone



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who had been reported missing to police. Even more strange is the fact that at a time the person had officially been missing for a while, he seems to have taken out a Hollard Life policy presenting himself as the missing person and signed the application form submitted by the applicant to Old Mutual. What is particularly disturbing about the events is that significant life policies were taken out on the life of a missing person who was found dead in mysterious circumstances a few months later.

The court dismissed the review application and held that the grounds of review cited by the Applicant do not cast serious doubt on the reasonableness of the arbitrator's award and that the arbitrator's award is reasonable and justified.

Callagan v Pam Golding Properties [2010] ZALC 73

The applicant in this matter contends that his dismissal for operational reasons was both procedurally and substantively unfair and for those reasons claims that he is entitled to the maximum compensation as provided for by section 194 of the Labour Relations Act 66 OF 1995 (the LRA).



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The court held that the evidence showed that the respondent did not apply its mind to ensuring that proper consultation was in place to ensure that the consensus was reached.

The respondents further failed the test of fairness in the second leg of the selection criteria. Even if it was to be assumed that no consensus was reached in the selection criteria the respondent still failed the test of fairness, because on its own version no selection criteria was applied. In the light of the above analysis, the court was of the view that the dismissal of the applicant was both substantively and procedurally unfair.

LABOUR NEWS AND DEVELOPMENT

Strike action

- Public servants have embarked on strike action over wages, according to News24 reports.
- More workers have joined the Public Service strike, with PSA to follow suit, according to News24 reports.



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- Violence and intimidation was the order of the day at the public servants strike and government issued a notice that it will unilaterally impose a 7% pay hike, according to Legalbrief Today reports.
- NUMSA have embarked on strike action in the motor industry sector, according to News24 reports.

General

- A Manual in accordance with the Promotion of Access to Information Act, has been published for the CCMA, GG 33455, 13 August 2010.
- White males still dominate top management positions according to recent Employment Equality Commission report, per News24 reports.
- The majority of the World Cup volunteers have still not been paid and are likely to only get paid end of August according to News24 reports.

TOPIC FOR THE MONTH

Chapter 4 of BCEA: Particulars of Employment and Remuneration

This chapter does not apply to employees working less than 24 hours a month or to employers having less than five employees in employ.



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Section 34 is a highly contentious part of the BCEA, dealing with deductions and other acts concerning remuneration.

In general this section prohibits any deductions from salary of employees. Should an employer make any unauthorized deductions from an employee's salary, an employee shall be entitled to take legal action.

The following may however be deducted:

- ✚ Deduction in terms of a law (eg. Income Tax)
- ✚ Deduction in terms of a collective agreement (eg. agency shop fee)
- ✚ Deduction in terms of a Court order (eg. emoluments attachment order)
- ✚ Deduction in terms of Arbitration Award (eg. to pay back a bonus an employee was not entitled to)

In terms of **Section 34(a)(1)** a deduction in terms of a debt specified in a written agreement by an employee, may also be deducted.

Normally the terms of a contract of employment states that an employer may make deductions from employee's salary under certain circumstances, which will be regarded as a written agreement which falls under this sub-section.



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Such a term would normally include that an employer would also be entitled to deduct from an employee's salary, any loss or damage caused by an employee. In this regard section 34(2) has the following specific requirements for this type of deduction:

- ✚ The loss or damage occurred during the course of employment with the employer;
- ✚ The loss was due to the employee's fault (it is submitted that fault should be established in a disciplinary hearing);
- ✚ The employer has followed a fair procedure and allowed the employee a reasonable opportunity as to why the deduction should not be made (such as a disciplinary hearing);
- ✚ The debt does not exceed the loss or damage;
- ✚ The total deductions from the employee's remuneration does not exceed one quarter of the employee's remuneration in money.

An example of an agreement reached in a contract of employment, is a term stating that an employee must re-imburse an employer for any training expenses the employer incurred for training the employee underwent, if the employee should leave the employment of the employer within a certain period after having undergone training.

