Labour law has limits to employee protection; employers are entitled to fair treatment too

By Bradley Workman-Davies

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South African labour laws have been deliberately crafted in order to create a protective regulatory environment for employees.

Image source: Getty Images

Additionally, labour dispute resolution forums such as the Commission for Conciliation, Mediation and Arbitration (CCMA) have been deliberately designed to provide easy and affordable access to litigants who may wish to pursue a case there. It takes relatively little knowledge and effort to refer a dispute to the CCMA, and other than in special circumstances, it does not require any legal representation.

This avoids generally unaffordable legal fees and encourages access to a specialised court to deal with the intricacies of South African labour law. Even the Labour Court and Labour Appeal Court, although rule bound, tend to adopt a more relaxed approach when dealing with labour disputes.

However, it is clear that there is a line to be drawn with regard to how far the rules can be bent, and that employees wishing to avail themselves of the protections of labour law, should not present hopeless cases to the dispute resolution forums, and also take at least reasonable efforts to formulate their claims in an intelligible manner before referring them to these resources.

This is important for a number of reasons, not least taking into account the fact that the CCMA is one of the busiest dispute resolution forums in the world, and deals with an extraordinarily large number of cases on an annual basis, and as such has limited resources to step into and make out a case for employees when this is not clear.

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Trying case

A recent case in this regard shows the extent to which the CCMA or the Labour Courts may find it a bridge too far when being asked to assist employees to make their case for them.

In the July 2023 case of *Thembelani Peter v Truworths Limited*, the Labour Court had to consider whether or not Peter had been unfairly dismissed by Truworths. However, in lodging her claim, Peter had initially referred a dispute to the CCMA for unfair labour practice which sought to challenge the outcome of a disciplinary hearing that had resulted in her dismissal.

She later approached the Labour Court for relief in this regard and in making her statement of claim to the Labour Court to support the allegation that she had been unfairly dismissed, made a number of very broad, conflicting and sometimes repetitive statements around a basic allegation that she had been dismissed. The statement also referred to approximately 270 pages of documents, none of which were cross-referred or appropriately referenced in her statement of claim.

In this regard, Peter seemed to take the approach that the cause of her action, and the evidence proving that she had been unfairly dismissed was somewhere contained in the documentation that she lodged with the court. She also alleged that Truworths had voice recordings and video footage in its position which would have corroborated her claim that she had been unfairly dismissed.

However, she failed to make out any clear case or to demonstrate to the court where in the supporting documentation such evidence was to be found, and in fact failed to link the allegation to any evidence that the disciplinary inquiry process which the employer had undertaken had resulted in a substantively unfair outcome or had been procedurally unfair.

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In light of the foregoing, the Labour Court adopted the approach that there were no material facts, or even basic facts, that Peter had set out which supported her contention that she had been unfairly dismissed. The judge found that although the former employee was a self-represented lay litigant and recognise that a degree of latitude should be afforded to such persons by not holding them to the same standard of accuracy, skill and precision in the presentation of a case required of lawyers, in this case there was simply no attempt to set out the facts on which the claim was supposedly based.

Accordingly, when Truworths took an exception that there was not sufficient particularity in Peter's statement of claim to enable it to respond thereto, the Labour Court agreed with the statement and upheld Truworth's exception.

Protection of all rights

This case is important to demonstrate that although South African labour law is generally regarded as being protective of and even biased towards employees, labour laws in South Africa provide a balanced system which provides for the protection of both employers' and employees' rights.

Employers are also entitled to be treated fairly and are not required to answer to cases where bald or unsubstantiated allegations are made against them, and which would require them to essentially make the employees case for him or her, and then defend it. Employers should take comfort that they are entitled to a modicum of detail when dealing with employee disputes in order to be able to put them in a position to fairly respond and defend themselves against such allegations.

ABOUT THE AUTHOR

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