



EMPLOYMENT

Balancing union duties and job performance: Association of Mineworkers & Construction Union obo Ntuli v Ferrogllobe Silicon Smelters (Pty) Ltd

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by Jacques van Wyk, Director and Mike Searle, Candidate Attorney

In the construction and engineering sectors, senior employees often juggle high-stakes operational responsibilities with union leadership roles. A recent Labour Court decision, *Association of Mineworkers & Construction Union obo Ntuli v Ferrogllobe Silicon Smelters (Pty) Ltd*, offers clear guidance on where the line is drawn.

The Labour Court's Findings

Mr Elliot Ntuli ("**The Employee**"), an engineering superintendent with over 25 years at the company, was also an Association of Mineworkers & Construction Union ("**AMCU**") branch chairperson and shop steward. He was dismissed for poor work performance, conflict of interest and misconduct in 2018. The Employee claimed his dismissal was automatically unfair under s 187(1)(d) the Labour Relations Act ("**LRA**") because it was linked to his union role as branch chairperson and shop steward.

Ferrogllobe Silicon Smelters (Pty) Ltd ("**The Employer**") contended that the Employee was dismissed for poor work performance because he failed to meet deadlines and complete projects despite multiple counselling sessions, training and time to improve. He

was also dismissed for misconduct on two charges, the first being a conflict of interest in that he neglected his duties by prioritising union activities over scheduled meetings and operational tasks without proper permission and the second being disorderly conduct where he led a disruptive, unprotected protest after a union meeting.

The Labour Court considered the issue of poor work performance and found that, as a senior employee, the Employee was expected to self-monitor performance and ensure operational obligations were met without close supervision. Despite being given training, counselling and the opportunity to improve his performance, he failed to do so.

In relation to the conflict of interest charge, the Labour Court found that the Employee, as a senior employee, neglected his contractual duties by failing to attend key meetings and engagements, instead attending to union duties without proper authorisation, thereby constituting misconduct. His union duties did not excuse this dereliction.

The Labour Court then considered the disorderly conduct charge and found that the Employee led AMCU members in a disruptive protest with the intention to interfere with disciplinary proceedings and intimidate management. This conduct fell outside the legitimate scope of his duties as a shop steward.

The Labour Court held that the Employee failed to show a credible link between his dismissal and his union activities. It applied the test for determining the true reason for a dismissal by determining the main, dominant and proximate cause of the dismissal and found that evidence showed consistent underperformance and misconduct unrelated to his role as shop steward and indicated that shop steward protections do not shield employees from discipline when they neglect contractual duties or disrupt operations.

The court ruled that the Employee's conduct in relation to each charge was serious enough to warrant the sanction of dismissal and held the dismissal to be substantively fair.

Why This Matters for the Construction Industry

The construction environment demands strict adherence to project deadlines, safety compliance and client commitments. This case reinforces that senior employees are held to higher standards of accountability and that delays or procedural non-compliance may justify dismissal. While employees have the right to perform union duties, these responsibilities do not override their operational priorities since contractual work obligations remain paramount.

Employers must ensure that performance management is well-documented, with detailed records of counselling, training and project delays often proving critical in defending dismissal decisions. Finally, the case highlights that the protected status of union representatives has limits: disruptive or unauthorised actions fall outside the scope of lawful union activities.

Employers should ensure clear role expectations for senior staff who hold union positions. Set boundaries around union duties, obtain written agreements on authorised absences and keep thorough records of performance management efforts.



Jacques van Wyk

Director

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