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EMPLOYMENT

Be careful what you wish for: Lessons from the LAC

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1. On 13 October 2021 the Labour Court ("**LC**") found the dismissal of the employee to be automatically unfair. This was after the Labour Court found that the employee's dismissal was as a result of a protected disclosure and ordered that the employee be reinstated.
2. Dissatisfied with the decision, the employer took the matter on appeal challenging the LC's order. The appeal was against the order declaring that the employee's dismissal was automatically unfair and, importantly for the purpose of this article, against the order of reinstatement.
3. Before the LC the employee did not plead or seek an order for reinstatement in case the court found his dismissal to be unfair. The employee sought compensation equal to 24 months. However, during his evidence the employee contended that he wanted to be reinstated. The LC found that the employee's dismissal was automatically unfair and ordered that the employee be reinstated because section 193(2) of the Labour Relations Act 66 of 1995, as amended (the "**LRA**") obliged it to order reinstatement as a remedy since there was no evidence whatsoever from the employer's witnesses who testified before the court that there were any of the exceptions set out in paragraphs (b) – (d) of section 193 of the LRA.
4. In *Railway Safety Regulator v Kekana* (JA126/2021) [2023] ZALAC 28[1] the Labour Appeal Court (the "**LAC**") disagreed with the LC. The LAC found that in coming to its conclusion the LC overlooked and did not consider the pleadings and the pre-trial minute which defined the issues between the parties. According to the LAC, parties are required to be held strictly to their pleadings and it is not open for a court to ignore the pleadings and grant an order not sought by the employee. Further, so reasoned the LAC, the LC was bound by the order sought by the employee in his pleaded case and the LAC grated the employee 24 months compensation. The LAC found that the employee's evidence that he wanted to be reinstated was inconsistent with the pleaded case and was therefore inadmissible. The LAC granted the employee 24 months compensation as sought in his pleadings.
5. This case serves as a reminder to litigants that parties should carefully consider the order(s) they plead and seek before the court, because the court will give them what they want. It seems now the court will give litigants ONLY what they want.

[1] [2024] 1 BLLR 40 (LAC); (2024) 45 ILJ 284 (LAC) (18 October 2023)



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