



EMPLOYMENT

Discrimination – it's not unfair when its fair

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In a notable judgment delivered on 6 November 2024, the Labour Appeal Court (LAC) in *Passenger Rail Agency of South Africa v Hoyo* ([2024] ZALAC 57) addressed the complexities surrounding claims of unfair discrimination based on race and unequal pay within the workplace.

The employee, Mr. Hoyo, employed by the Passenger Rail Agency of South Africa (PRASA) since 1999, held the position of Production Manager in the Mainline Passenger Services division from 2012. In July 2016, he lodged a grievance asserting that he had been acting as Maintenance Operations Manager without appropriate acting allowances and that his remuneration was inferior to that of two subordinates. PRASA contended that organizational restructuring had led to standardized roles and disputed any formal acting appointment.

The Labour Court found in favour of Mr. Hoyo, determining that PRASA had unfairly discriminated against him on the grounds of race and unequal pay for equal work, in violation of Section 6(1) of the Employment Equity Act (EEA). The court awarded compensation for non-patrimonial damages, with the amount to be determined subsequently.

PRASA appealed the decision, and the LAC scrutinized the evidence presented and made findings in respect of a number of critical legal issues. Firstly, the LAC noted the absence of concrete evidence confirming Mr. Hoyo's formal appointment to the role of Maintenance Operations Manager or entitlement to an acting allowance. Further, while acknowledging that Mr. Hoyo's

subordinates earned higher salaries, the LAC emphasized that such disparities, without demonstrable linkage to race or unfair discrimination, do not inherently contravene the EEA. The court reiterated that the onus rests on the claimant to establish prima facie evidence of discrimination. The LAC concluded that Mr. Hoyo failed to substantiate claims that the salary differences were attributable to racial discrimination or that his work was of equal value to that of his higher-paid colleagues.

The LAC overturned the Labour Court's ruling, finding that PRASA had not engaged in unfair discrimination against Mr. Hoyo. This judgment underscores the necessity for employees alleging discrimination to provide compelling evidence directly linking differential treatment or remuneration to prohibited grounds under the EEA.



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