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EMPLOYMENT

EMPLOYEES MAY APPROACH THE LABOUR COURT DIRECTLY TO ENFORCE THEIR RIGHTS UNDER THE BASIC CONDITIONS OF THE EMPLOYMENT ACT

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By Jacques van Wyk, Director; Andre van Heerden, Senior Associate; and Chelsea Roux, Candidate Attorney

ISSUE

Whether the Labour Court has jurisdiction to determine a claim under the Basic Conditions of Employment Act 75 of 1997 ("**BCEA**") even though it has not previously been referred to a labour inspector.

SUMMARY

The Labour Court has exclusive jurisdiction to determine matters arising from the BCEA regardless of the stage at which the proceedings are at. In limited instances namely, the determination of any matter concerning a contract of employment, the Labour Court shares jurisdiction with the civil courts. The BCEA does not contemplate a situation where an employee should first approach a labour inspector before seeking relief from the Labour Court.

FACTS

In *Amalungelo Workers' Union and Others v Philip Morris South Africa (Pty) Limited and Another* [2019] ZACC 45, the Amalungelo Workers' Union and 75 of its members alleged that the Respondents had contravened section 34 of the BCEA. Section 34 of the BCEA prohibits an employer from making deductions from an employee's remuneration, subject to certain exceptions. The Respondents deducted tax in respect of company cars from the employees' salaries. The Applicants approached the Labour Court for an order compelling the Respondents to refund the amounts deducted as well as an interdict restraining the Respondents from making these deductions in the future.

The Labour Court held that it lacked jurisdiction to hear the matter because it could not directly enforce provisions of the BCEA if it was not alleged that those provisions formed part of contract of employment. In this regard, the Labour Court referred to section 77(3) of the BCEA. Section 77 of the BCEA deals with the jurisdiction of the Labour Court, and provides as follows:

(1) Subject to the Constitution and the jurisdiction of the Labour Appeal Court, and except where this Act provides otherwise, the Labour Court has exclusive jurisdiction in respect of all matters in terms of this Act.

(1A) The Labour Court has exclusive jurisdiction to grant civil relief arising from a breach of sections 33A, 43, 44, 46, 48, 90 and 92.

(2) The Labour Court may review the performance or purported performance of any function provided for in this Act or any act or omission of any person in terms of this Act on any grounds that are permissible in law.

(3) The Labour Court has concurrent jurisdiction with the civil courts to hear and determine any matter concerning a contract of employment, irrespective of whether any basic condition of employment constitutes a term of that contract.

(4) Subsection (1) does not prevent any person relying upon a provision of this Act to establish that a basic condition of employment constitutes a term of a contract of employment in any proceedings in a civil court or an arbitration held in terms of an agreement.

(5) If proceedings concerning any matter contemplated in terms of subsection (1) are instituted in a court that does not have jurisdiction in respect of that matter, that court may at any stage during proceedings refer that matter to the Labour Court.

The Applicants applied for leave to appeal, which was dismissed. They then applied for leave to appeal to the Labour Appeal Court ("**LAC**") which also dismissed the application. The Applicants then applied to the Constitutional Court ("**CC**") who granted leave to appeal.

CC'S EVALUATION

The CC held that the sole issue for determination was whether the Labour Court has jurisdiction to adjudicate the claim. The CC considered the correct interpretation of section 77 of the BCEA. It held that any interpretation of the BCEA must be in line with the Constitution.[1] Courts are duty-bound to promote the spirit purport and objects of the Bill of Rights. In doing so, section 77 must be interpreted in a manner which gives effect to the advancement of rights.

It was held that section 77 of the BCEA was designed to promote access to the Labour Court in relation to claims based on the BCEA. Thus, section 77 must be given a meaning that promotes access to the Labour Court rather than one that prevents access. On a proper reading of section 77 as a whole the Labour Court enjoys exclusive jurisdiction in respect of all matters arising from the BCEA. This implies that as soon as a dispute is ripe for litigation, the claimant is entitled to refer it to the Labour Court directly.

Section 77(3) of the BCEA provides further that the Labour Court has concurrent jurisdiction with the civil courts to hear and determine any matter concerning a contract of employment, irrespective of whether any basic condition of employment constitutes a term of that contract. In terms of section 77(3), the jurisdiction of the Labour Court is shared with the civil courts.

Turning to the issue before them – whether the Labour Court's jurisdiction under the BCEA is deferred until a matter has been referred and resolved by a labour inspector – the CC held that the question was whether they had the power to resolve disputes where they have arisen or to determine legal claims.

Section 63 of the BCEA provides for the appointment of labour inspectors. Their functions are set out in section 64 and they are, amongst others, obliged to promote, monitor and enforce compliance with an employment law by:

(a) advising employees and employers of their rights and obligations in terms of an employment law;

(b) conducting inspections in terms of Chapter Ten;

(c) investigating complaints made to a labour inspector;

(d) endeavouring to secure compliance with an employment law by securing undertakings or issuing compliance orders;

(dA) referring disputes to the CCMA concerning failure to comply with this Act, the National Minimum Wage Act, 2018, the Unemployment Insurance Act and the Unemployment Insurance Contributions Act;

(dB) appearing on behalf of the Director-General in any proceedings in the CCMA or Labour Court concerning a failure to comply with the legislation referred to in paragraph (dA); and

(e) performing any other prescribed function.

The CC held that no provision in the BCEA provides that a party should first approach a labour inspector before the Labour Court. Prior to certain amendments to the BCEA, it was possible to appeal decisions of labour inspectors to the Labour Court. The provisions of the BCEA which facilitated appeals has now been repealed.

In addition, none of the functions listed in section 64 cover dispute resolution. If the Labour Court did not have jurisdiction, no court would be able to enforce the BCEA. Furthermore, section 77(5) of the BCEA provides that a matter may be transferred to the Labour Court at any stage in the proceedings. The function of the Labour Court is to adjudicate legal claims and to hold otherwise would frustrate the objects of the BCEA.

The Labour Court was incorrect in its proposition that it may not determine a dispute regarding compliance with the BCEA. The CC ordered that the matter be remitted to the Labour Court for determination.

IMPORTANCE OF THE CASE

Section 77 of the BCEA provides that the Labour Court has exclusive jurisdiction over matters arising out of the BCEA. Section 77(3) provides a caveat to this by sharing this jurisdiction with the civil courts in matters pertaining to employment contracts. The BCEA did not contemplate a situation where a party would have to first approach a labour inspector to determine a dispute and await an outcome from the labour inspector before being able to approach the Labour Court. Employees may bring any dispute arising out of the BCEA directly to the Labour Court and need not approach a labour inspector first.

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[1] Section 39(2).



Andre van Heerden

Director

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Jacques van Wyk

Director

View Profile