



EMPLOYMENT

You can’t have it both ways: Contractors who act like businesses must live with the consequences

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When you run your work as a business, invoice for your services, and elect to skip the obligations that come with being an employee, you cannot turn around and claim employee protection when the relationship ends. The Labour Appeal Court in *Sun International Management Ltd t/a Wild Coast Sun v Powell* has sent a clear message: sophisticated operators must stand by the choices they make. If you act like a contractor, you will be treated like one.

The facts illustrate the point. Powell had a long history with Sun International, working as an employee until 2015. He then shifted gears and started providing his services through a labour broker. Later, in 2018, he returned to Sun International on a new arrangement. He invoiced the company for R50,000 a month. He received payment against those invoices, not on a payroll system. The company made no deductions for PAYE, UIF, or pension contributions. Powell enjoyed the cash flow advantages of this setup. He never once demanded payslips or queried why his tax was not deducted.

In January 2019, Sun International told Powell that the arrangement would end at the close of that month. They invited him to apply for a formal post if he wanted to. Powell did not secure another post. Instead, he claimed that he had in fact been an employee all along and referred an unfair dismissal case to the CCMA.

The CCMA commissioner sided with him. The commissioner said Powell was an employee and had been unfairly dismissed. The commissioner even ordered reinstatement and more than half a million rand in back pay. The Labour Court upheld the award, saying the decision fell within the bounds of reasonableness.

The Labour Appeal Court took a very different view. The LAC stressed that the case dealt with a jurisdictional issue: whether Powell counted as an employee. Jurisdictional issues require a test of correctness, not reasonableness. That meant the court had to decide the issue afresh. The court did so and ruled emphatically: Powell was not an employee. He was a contractor who elected to operate outside of the employment framework.

The court highlighted the evidence. Powell invoiced monthly. He received gross payments with no statutory deductions. He never questioned his status during the contract period. He accepted benefits and risks different from those of Sun International's staff. His actions painted the picture of a business-to-business service arrangement, not an employment relationship.

The LAC also noted the importance of sophistication. Powell was not a vulnerable worker exploited by a powerful employer. He was a seasoned operator who had worked in senior roles and understood the implications of how he structured his engagement. He elected to run his relationship with Sun International as an independent contractor. The court made it clear: once you make that election, you cannot later disavow it because it no longer suits you.

The ruling delivers an important lesson. South African labour law protects employees robustly, but it does not extend that protection to individuals who knowingly contract as independent businesses. If you want the shield of unfair dismissal protection, you must step into the framework of employment. If you prefer the advantages of contracting—higher gross pay, flexibility, tax structuring – you must also carry the downside risk of not having job security.

Employers should take heart from this decision. When contractors who know what they are doing try to claw back employment rights, courts will examine the full factual picture. If the facts show an independent business relationship, the CCMA will have no jurisdiction.

Contractors should also absorb the message. You cannot enjoy the fruits of contracting and then cry employee when the contract ends. Courts will not let you rewrite history. Sophisticated operators must live with the consequences of their own choices.



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