



EMPLOYMENT

Your Workforce Is Not Your Property

19 February 2026 3 min read

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The Labour Court's judgment in *Man Mining Technical Services (Pty) Ltd v Eagle Creek Investments 278 (Pty) Ltd and others* is a timely and employer-affirming reminder of what section 197 of the Labour Relations Act is – and, just as importantly, what it is not. For employers operating in outsourced, contracting or service-based environments, the decision draws a clear line between employee protection and commercial entitlement.

The case arose after a mining services contractor lost its service level agreement at a mine and was replaced by a new contractor. The incoming contractor concluded employment contracts with 151 employees previously employed by the outgoing service provider. The outgoing employer accepted that section 197 did not apply, but nevertheless approached the Labour Court on an urgent basis, seeking to set aside the employees' new contracts and to have them declared its employees. The claim was framed in the language of section 197, but its substance was plainly commercial. The Court had little difficulty dismissing the application. Its reasoning offers several practical lessons for employers.

First, the judgment re-anchors section 197 firmly in its protective purpose. Section 197 exists to safeguard employees when a business transfers as a going concern. It does not confer proprietary rights on employers to retain a workforce, nor does it entitle a service provider to veto employment contracts concluded between employees and a third party. Employers should take comfort from the Court's clear rejection of any attempt to weaponise section 197 as a commercial restraint.

Secondly, the Court confirmed that standing matters. An employer cannot invoke labour-law remedies to vindicate its own commercial interests. Where employees have chosen to accept employment with a new employer and do not themselves challenge that relationship, a former employer has no locus standi to do so on their behalf. The fact that the workforce may be integral to the outgoing contractor's business does not convert a contractual grievance into a labour dispute.

Thirdly, the judgment draws a sharp distinction between labour law and commercial law. Complaints about the termination of a service agreement, loss of intellectual capital, or reputational harm belong squarely in the civil courts. Employers who attempt to recast contractual disputes as section 197 disputes risk swift dismissal and adverse cost orders. The Labour Court will not entertain claims that fall outside the architecture of the LRA simply because they are framed in labour-law terminology.

The Court was also unmoved by the applicant's reliance on urgency. While section 197 disputes are often urgent where employee security is at stake, urgency cannot be manufactured to protect a commercial position. Where employees remain employed and no employment rights are threatened, the rationale for urgent intervention falls away.

Finally, the costs order is telling. While the Court stopped short of a punitive costs order, it made clear that misusing the urgent roll and invoking section 197 without a legal foundation warrants censure. For employers on the receiving end of such applications, this is a welcome signal that courts will protect the integrity of labour-law processes.

The broader takeaway is a simple but important one. Employees are not assets, and workforces are not transferable property. Section 197 protects continuity of employment, not continuity of commercial advantage. Employers who respect that boundary — and who keep their commercial disputes where they belong — will avoid costly and ultimately futile litigation. For employers operating in competitive, outsourced environments, the message is reassuringly clear: losing a contract does not mean losing legal certainty, and labour law will not be stretched to rescue commercial expectations.



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