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categorisation of
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	(a) On what basis did the labour court <i>in casu</i> find that there is a common misconception, especially in relation to urgent applications, that it has jurisdiction to entertain any dispute concerning a work-related grievance or to deal with any allegation of unfair conduct by the employer?	4
	(b) With reference to, <i>inter alia</i> , <i>Besani v Maquassi Hills Local Municipality</i> (2016) 37 ILJ 1386 (LC) and <i>Gcaba v Minister for Safety and Security and Others</i> 2010 (1) SA 238 (CC), what are the requirements identified by the labour court <i>in casu</i> to be met in order for jurisdiction to be established?	4
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	(a) <i>In casu</i> , the employee ... CCMA and claim ... arbitrator ... and ...	

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remedies would be wiped out, because the labour court (being a creature of statute with only selected remedies and powers) does not have the power to deal with the common law or other statutory remedies' (see also *Mogothle v Premier of the North West Province and Another* [2009] 4 BLLR 331 (LC)).

identification of conclusions reached by the various fora

LAC conclusions

24. To sum up, the appellant's pursuit of his unfair dismissal claim in the CCMA did not extinguish his claim for enforcement of his contractual rights in terms of his contract of employment which the labour court has the power to enforce. That the appellant had pursued a separate claim in the CCMA to enforce his LRA right not to be unfairly dismissed, and that that claim had been decided against the appellant, was simply irrelevant - *a fortiori* because it was a different claim with a different cause of action from the appellant's contractual claim.
25. For these reasons, the appeal had to succeed.

identification of the content of the orders or awards/ rulings handed down

order

26. In the result, the appeal was upheld and the order of the labour court was set aside. The matter was remitted to the labour court for determination of the merits and there was no order as to costs

unique categorisation of the content of the workbook

1.1.3 UNLAWFUL DISMISSAL AND OPERATIONAL REQUIREMENTS OF EMPLOYER

Pilanesberg Platinum Mines (Pty) Ltd v Ramabulana
Unreported case no JA91/2016
(2019) 40 ILJ 2723 (LAC)
[2020] 1 BLLR 24 (LAC)
(2019) 30 SALLR 165 (LAC)

case references to other publications

- (a) According to the labour appeal court *in casu*, is termination for operational reasons in the contractual environment to be equated with dismissal on the basis of an employer's operational requirements, in terms of s189 of the LRA?
- (b) According to the labour appeal court *in casu*, once an employee elects to pursue a matter on contractual terms in terms of the BCEA, do fairness considerations in terms of the LRA play any role?
- (c) According to the labour appeal court *in casu*, it is simply not enough for an employee to raise non-compliance with the term of a contract, but the onus is also on the employee to prove that the preconditions for the employer to comply with such contractual terms were not met. How did the labour appeal court apply this approach on the factual matrix *in casu*?
- (d) What are the differences identified by the labour appeal court *in casu* between contractual disputes in terms of the BCEA and statutory fairness disputes in terms of the LRA as to the following elements:
 - (i) onus?;
 - (ii) relief?;
 - (iii) compensation and?;
 - (iv) costs?

identification of the relevant issues to be considered per judgment/ award/ruling



and explain the complaint or the issue that arises from the facts which will be subject of the enquiry or is the basis for the decision it has made.

LAC: labelling of a decision not always necessary – all that is required is for the employer to set out the facts and explain the complaint or the issue that arises from the facts that will form the subject matter under consideration

findings of the various fora are analysed and summarised

FINDINGS OF THE LABOUR APPEAL COURT

Waglay JP (Phatshoane ADJP and Kathree-Setiloane AJA concurring)

an evaluation of important principles provided

evaluation

10. In this matter, the appellant terminated the respondent's contract of employment because it was confronted with a conflict between its material shareholders and its employee.
11. The employer had alleged that the community was its shareholder and stakeholder. It ordinarily engaged the community on a number of economic, production and social matters and the consent and input of the community were essential for its successful operation. The complaints against the employee were of a serious nature and, instead of ensuring, as she was required to do, that new employees were members of the community, the employee had dishonestly employed people from outside the community by deceitfully creating the impression that these people were from the community. The community was so outraged at her conduct that they threatened her. The employer had, therefore, escorted her to her home and informed her that, for her own safety, she should remain there. She was neither suspended nor was her salary withheld. The employer also repeatedly informed the employee as to the reasons for being requested not to tender her services. It was while the employee was at home that the employer set in motion the termination of her employment.

issues/principles/factual considerations are analysed and summarised

LAC: on the papers, the employer simply had no other choice than to terminate the employee's services – termination is not unlawful – it might have been unfair but that was not the issue for the court to decide

12. It did not enquire from the respondent if the community's complaint against her was valid nor did the respondent volunteer any response. The appellant attempted to negotiate with the community for the respondent's return to work. When this failed it was, according to it, compelled to terminate the employment relationship, and this after a period of eight months. On the papers as they stand, the appellant simply had no other option. In such circumstances, the termination of respondent's employment could not constitute an unlawful termination. It might have been unfair but that was not what the labour court was called upon to decide.

LAC: non-compliance with the term of a contract does not automatically result in a breach of contract – employee required to show that the preconditions for the employer to comply with the contractual terms were applicable

13. The respondent disavowed reliance on the LRA when it sought relief in terms of the BCEA and on unlawfulness of dismissal rather than approaching the CCMA on the basis of an unfair dismissal. She relied on contractual law as opposed to equity and fairness. The respondent's contention was that the appellant was bound by the terms agreed upon with regard to the process of termination and that it had failed to comply therewith and, hence, was in breach of their agreement. However, she failed to recognise that she could not simply raise non-compliance of a term of a contract as a breach. She had to show that the preconditions for the appellant to comply with the clauses of the agreement were met.

the precondition for clause 6.1.1 to be applicable, namely, that the employee had not committed misconduct or been incapacitated, not relevant in cases of unfair dismissal



LEGISLATION 1 JULY 2019 TO 30 JUNE 2020

Compiled by Daphne Burger, Lexinfo CC

A. Basic Conditions of Employment Act 75 of 1977

1. Film and Television Industry: Intention to deem persons as employees for purposes of some parts of the BCEA & LRA.
RGN1591 GG 42900 p 4 12 Dec 2019
2. Regulations (RGN 1438 of 13 November 1998 as amended): Amendment.
RGN39 GG 42965 p 4 22 Jan 2020 (Corrected by RGN83 GG 42986 p 4 31 Jan 2020, in turn corrected by RGN174 GG 43026 p 4 17 Feb 2020)
3. Sectoral Determinations

Sectoral Determination 6: Private Security Sector, South Africa
Correction notice to GG 39156 of 1 September 2015.
RGN317 GG 43102 p 3 18 Mar 2020

Sectoral Determination 9: Wholesale and Retail Sector, South Africa
Amendment of RGN443 in GG 36626 of 14 April 2016.
RGN1036 GG 42615 p 4 02 Aug 2019 (Corrected by RGN1320 GG 42766 p 4 18 Oct 2019)

B. Compensation for Occupational Injuries and Diseases Act 130 of 1993

1. Annual increase in Medical Tariffs for Medical Services Providers:
 - Ambulance, Private Hospital and Blood Services.
GenN188 GG 43118 p 3 20 Mar 2020
 - Occupational Therapy.
GenN189 GG 43119 p 3 20 Mar 2020
 - Physiotherapists
GenN190 GG 43120 p 3 20 Mar 2020
 - Renal Care, Wound Care and Social Worker Psychology.
GenN191 GG 43121 p 20 Mar 2020
2. Data cleansing on all active pensions in the compensation fund.
GenN638 GG 42887 p 207 06 Dec 2019
GenN651 GG 42902 p 273 13 Dec 2019
3. Increase of Maximum Amount of Earnings on which the Assessment of an Employer shall be calculated to R484 200.00 per annum as from 1 March 2020.
GenN236 GG 43203 p 3 03 Apr 2020
GenN243 GG 43220 p 3 09 Apr 2020
4. Notice of intention to increase Monthly Pensions; and Amendment of Schedule 4: Manner of Calculating Compensation: Invitation to comment within 60 days from date of publication.
GenN242 GG 43221 p 3 09 Apr 2020
5. Notice on Compensation for Occupationally-Acquired Novel Corona Virus Disease (COVID-19).
GenN193 GG 43126 p 3 23 Mar 2020
6. Notice to Compensation Fund Medical Service Providers: Compulsory invoicing requirement in medical claims
GenN354 GG 42561 p 45 05 Jul 2019
7. Return of Earnings: Period on which ROE should be submitted in 2020: 1 April – 31 May 2020
GenN174 GG 43104 p 3 18 Mar 2020

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<i>Association of Mineworkers and Construction Union and Others v Northam Platinum Ltd and Another</i> 2016) 37 ILJ 2840 (LC)	203, 206
<i>Association of Mineworkers and Construction Union and Others v Royal Bafokeng Platinum Ltd and Others</i> (2020) 41 ILJ 555 (CC); [2020] 4 BCLR 373 (CC); (2020) 31 SALLR 1 (CC)	111, 113
<i>Association of Mineworkers and Construction Union v Anglo American Platinum Ltd and Others</i> (2018) 39 ILJ 2280 (LC)	285
<i>Auto Industrial Group (Pty) Ltd and Others v Commission for Conciliation, Mediation and Arbitration and Others</i> (2019) 40 ILJ 550 (LC)	149

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<i>Besani v Maquassi Hills Local Municipality</i> (2016) 37 ILJ 1386 (LC)	4, 6
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