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SLIP AND TRIP ALERT NOTICE 17 OF 2024

- In the contract of employment, the following is stated: 'The employee will retire at the end of the month in which he or she reached the age of 60.' In the retirement policy, the following is stated: 'When the employees reach the age of retirement, as stipulated above, their contracts of employment will terminate automatically on the basis of effluxion of time.' The labour court recently had to deal with the aforesaid scenario and the application of same where an employer employed an employee when he/she had already passed the retirement age. Is the defence contained in s187(2)(b) of the LRA, entailing that, when an employee reached the normal or agreed retirement age, then a dismissal on the basis of age is not established, available to the employer under these circumstances?

- In *Motor Industry Staff Association and Another v Great South Autobody CC t/a Great South Panel Beaters* (2022) 33 *SALLR* 268 (LAC), the labour appeal court specifically alluded to the fact that s187(2)(b) does not prescribe a timeframe within which the dismissal should take place, provided it is after the employee has reached his/her agreed or normal retirement date. However, the labour appeal court also indicated that, for this defence to be applicable, the proximate cause of the dismissal must be that the employee has already reached the retirement age. How did the labour court recently apply this approach with reference to the aforesaid scenario?

- The scenario is as follows: the CCMA arbitration record shows that the arbitrator did not have regard to the provisions of the Law of Evidence Amendment Act 45 of 1988 but that he simply admitted the evidence of timesheets on the basis that the employee had relied on such evidence in order to argue that he was at work on a day(s) that the employer alleged in its charge sheet that he was absent from work. With reference to s3(1)(c) of such Act, on what basis did the labour appeal court recently indicate that this scenario does not amount to an irregularity or error having a distorting effect on the arbitrator's conception of the enquiry, the delimitation of the issues to be determined and the ultimate outcome?

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- What are the requirements for a charge sheet to be fair, as identified in *EOH Abantu (Pty) Ltd v CCMA and Others* (2019) 40 *ILJ* 2477 (LAC), and restated and applied by the labour appeal court?

- What are the consequences if an employee formulates a misconduct charge with reference to certain dates and these dates change at the disciplinary enquiry, but the employee was not afforded adequate notice of same, with reference to the approach adopted in *EOH Abantu supra*?

- In *Fidelity Cash Management Service v CCMA and Others* (2008) 29 *ILJ* 964 (LAC), the labour appeal court stated that it was an elementary principle of labour law that the fairness or otherwise of a dismissal must be determined on the basis of the reasons for such dismissal which the employer gave at the time of the dismissal. How did the labour appeal court recently apply such approach?

- What is the approach to be adopted in interpreting a charge sheet underpinning a disciplinary enquiry, with reference to *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA)?

- The scenario is as follows: in terms of a collective agreement between an employers' organisation and various unions, provision is made for the accreditation of medical schemes by the relevant bargaining council so that employees may enjoy the benefits of selecting and joining a scheme to which their employers contribute. The marketing of the various schemes, in the period before the employees make a selection, secures competition between the schemes to enhance informed choices by the employees. The supreme court of appeal recently had to deal with the issue as to whether or not the aforesaid scenario gives rise to any enforceable rights on the part of an accredited medical scheme. What approach did it follow?

- With reference to *Total SA (Pty) Ltd v Bekker NO* 1992 (1) SA 917 (A), what approach did the supreme court of appeal recently take as to whether or not a collective agreement may be a contract for the benefit of a third party? – *in casu*, such third party is an accredited medical scheme in terms of a collective agreement between an employers' organisation and various trade unions.

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- With reference to the aforesaid scenario, on what basis did the supreme court of appeal recently find that the accreditation of a medical scheme by a bargaining council under the above circumstances (a collective agreement between an employers' organisation and unions providing for accreditation of medical schemes by a bargaining council) constitutes an agreement between such medical aid schemes and the local bargaining council?

- The supreme court of appeal recently, with reference to *Lanco Engineering CC v Aris Box Manufacturers (Pty) Ltd* 1993 (4) SA 378 (B), *Masstores (Pty) Ltd v Pick n Pay Retailers (Pty) Ltd* 2017 (1) SA 613 (CC) and *Country Cloud Trading CC v MEC, Department of Infrastructure Development* 2015 (1) SA 1 (CC), stated that a cause of action founded upon the delict of unlawful interference with contractual relations exists with reference to a medical scheme accredited by a bargaining council. What are the requirements identified when an employer interferes with such contractual relations for it to constitute a delict?

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