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NEWSLETTER 16

SACCAWU & others v Primserv ABC Recruitment (Pty) Ltd t/a Primserv Out Sourcing Incorporating [2007] 1 BLLR 78 (LC)

Dismissal – Operational requirements – Employer purporting to rely on expiry or employee’s “limited-duration” to dismiss them for operational requirements – Dismissal unfair.

Dismissal – Fixed-term contracts – Employer purporting to rely on expiry or employee’s “limited-duration” to dismiss them for operational requirements – Dismissal unfair.

Dismissal – Remedies – Reinstatement – Period in which reinstatement order may be made retrospective not limited to 12 months, but Labour Court has discretion to limit retrospectivity to date subsequent to dismissal in interest of fairness.

Summary

The individual applicants, all employed by the respondent labour broker, worked as packers on a contract with one of the respondent’s clients. After they were handed letters informing them that their limited duration contracts would terminate, the applicants claimed that they had been unfairly dismissed. The respondent claimed that it had released the employees because its client had claimed it was overstaffed.

The court held that the applicants’ contracts were not “limited duration contracts”, as the respondent claimed. The respondent was accordingly obliged to consult the applicants if it wished to dismiss them for operational requirements. It had not done so.

Turning to relief, the Court noted that the applicants sought reinstatement. The respondent had not made out a case for why that relief should not be granted. The Court noted further that there were conflicting judgments of the Labour Appeal Court regarding the time for which a reinstatement order may be made retrospective [See **Kroukam v SA Airlink (Pty) Ltd [2005] 12 BLLR 1172 (LAC)** and **CWIU & others v Latex Surgical Products (Pty) Ltd [2006] 2 BLLR 142 (LAC)**]. The Act clearly indicates that an unfairly dismissed employee may be reinstated or compensated. Since there was no limitation apart from the date of dismissal on the time for which a reinstatement order may be made retrospective, the court held that a reinstatement order in excess of 12 months is competent. .

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