

To command and obey - employer vs employee rights at the SABC

 By [Johan Botes](#)

7 Jul 2016

The current situation at the SABC brings into question the rights of employers to issue commands and the duty of employees to obey and carry out such instructions.



© jason salmon – [123RF.com](#)

The public broadcaster suspended three journalists from duty because the employer appears to feel aggrieved by the journalists' refusal to conform in respect of the broadcaster's policy decision in respect of broadcasting public protests. This follows the reported dismissal of eight journalists (and issuing of final written warning to 12 others) for chasing away a political youth leader who wanted to address journalists at their workplace.

Around four out of five dismissal disputes referred to the employment tribunal Commission for Conciliation, Mediation and Arbitration (CCMA) relate to dismissals for misconduct. A valid misconduct dismissal requires proof that the employee breached a valid or reasonable workplace rule or standard.

Adhering to lawful instructions

Inherent in the common law duties of the employee is the obligation to submit him or herself to the directions of the employer. The employee is subordinate to the employer and has to adhere to lawful instructions issued by the employer. Even under common law, an employer may not issue unlawful instructions and expect the employee to follow it blindly. An employer may not instruct an employee to break the law, whether it is to commit murder, cook the books, assault a colleague or fail to adhere to a statutory obligation.

In *Maneche & others v CCMA & others*, the Labour Court confirmed that an instruction to employees to work overtime was unlawful where the employees had not agreed to work such overtime. Whilst such consent is normally captured in an employment contract or collective agreement, in the absence of prior agreement, the employees have to consent as and when required. The court held that the instruction was not lawful as it contravened the protection offered to employees in the Basic Conditions of Employment Act (that requires an employee to consent to working overtime).

Unreasonable instructions

Issuing instructions that are unlawful are thus clearly wrong and would offend public morals. However, what about instructions that do not contravene legal duties or obligations, but may otherwise be unreasonable? When can an employee refuse to carry out an instruction because he or she feels it to be unreasonable? Will conflicting obligations owed to society or an industry body meet the test for refusing an order issued in contravention with such a duty?

Many professions are answerable to an industry body, code or greater societal oversight. Pilots are not only subject to the instructions of the airline employing them, but they also have to adhere to the prescripts of civil aviation legislation and regulations. Doctors and health professions have to act in accordance with the rules and guidelines of the Health Professions Council. Attorneys are bound by the rules of the Law Society, advocates by the same issued by the Bar Council, teachers owe a duty of care to the learners they teach.

In all instances, the employees employed in such a position may be faced with a conflict where their employers may issue them with instructions that contrast with their obligations to society or an industry body. When, if ever, may an employee disregard an employer's instruction and act in accordance with a wider responsibility owed?

The short answer is that employees should act with care and diligence in determining whether they may disregard or refuse an instruction issued by their employer. Employees who indicate that they are not willing to be bound by the rules or prescripts of their employer run the risk of dismissal.

Many employers will swiftly terminate the service of an employee who blatantly refuses to follow orders. Allowing employees to select which instructions demand adherence is a shortcut to anarchy in the workplace. Courts are unlikely to have sympathy for employees who give the employer the two-finger salute, unless the employees can convince the court that the instruction was so unreasonable that no reasonable person in their position should have been expected to act differently.

The steps taken by employees prior to (or short of) refusing to carry out the instruction may also be telling in determining the rationality of their decision. Where possible, it is always better to engage the employer in discussion in explaining why the rule will impugn the employees' or industry's standard of reasonableness. Appeals to higher levels of management, filing grievances and declaring disputes at the employment tribunal, whilst doing the work under duress, are usually likely to offer the employees better protection in subsequent legal proceedings. Refusal to implement an unreasonable instruction should be a last-resort measure for employees at their wits end or who are confronted with morally repugnant choices.

Journalists, news reporting

Journalists have a duty to report news and events accurately and fairly. In terms of the code of conduct of the Broadcasting Complaints Commission, employers (broadcasters) have to ensure that their employees understand the importance and significance of the code. The same code obliges licensees (the broadcaster) to "...report news truthfully, accurately and fairly." It further provides that "news must be presented in the correct context and in a fair manner, without intentional or negligent departure from the facts, whether by distortion, exaggeration or misrepresentation, material

omissions; or summarisation.”

It may be that a court would be willing to accept that an instruction issued by a broadcaster that will prevent a journalist from doing so is unreasonable. The constitutional rights to freedom of opinion and expression may come into play when a tribunal or court has to consider the reasonableness of an instruction or workplace rule. The importance of the role played by journalists in an open and democratic society based on human dignity, equality and freedom may also convince an arbitrator or judge that the employees acted within the interests of society in disobeying the instruction.

Employees in the horns of such a dilemma may consider the protection offered in terms of the Protected Disclosures Act (PDA) should they suspect that there is unlawful or wrongful conduct in the workplace. The PDA protects employees from occupational detriment where they act in good faith to report wrongdoing and then suffer as a result. Whilst it does not protect disclosures made for an ulterior motive, reporting wrongdoing that falls within the scope of the PDA could provide an additional level of protection against employees in vulnerable positions. Dismissing employees who made protected disclosures will probably be an even more sensational news story, but employees should ensure they could rely on this protection before making decisions that could negatively affect their employment.

ABOUT JOHAN BOTES

Johan Botes is Head of the Employment Practice for Baker McKenzie in Johannesburg. He has a Master's Degree in Labour Law, and regularly appears in the CCMA, Bargaining Councils, Labour Court and High Court. Contact Johan: Tel: +27 (0) 11 911 4400, mobile: +27 (0) 82 418 0157, switchboard: +27 (0) 11 911 4300, fax: +27 (0) 11 784 2855
Johan.Botes@bakermckenzie.com

- Ruling clarifies discrimination due to criminal history in the employment process - 14 May 2024
- #BizTrends2024: Adapting to change and the growing call for DEI - 18 Jan 2024
- Claiming constructive dismissal - take advice from your wingman - 21 Sep 2023
- Too sick to work, but well enough to march? Not so fast... - 26 Jul 2023
- #BizTrends2023: Quitting quiet quitting - balancing the needs of employers and employees - 23 Jan 2023

[View my profile and articles...](#)

For more, visit: <https://www.bizcommunity.com>