

Carrying weapons during strike action can get you dismissed

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In the case of *Pailpac (Pty) Ltd v De Beer N.O and Others*, the Labour Appeal Court (LAC) recently confirmed that it is fair to dismiss employees who carry weapons during a strike and that employers can reasonably expect employees to know that having dangerous weapons at work (or during a strike) is unacceptable and a dismissible offence.



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The dismissed employees were Numsa members employed by Pailpac, who participated in a protected strike, during which they carried weapons (sticks, PVC rods, sjamboks, and golf clubs). They were charged for "brandishing and wielding weapons during a strike".

The employees referred an unfair dismissal dispute to the Metal and Engineering Industry Bargaining Council (MEIBC) for arbitration, where their dismissals were found to be unfair. Pailpac applied to the Labour Court to review the arbitration award but the Labour Court upheld it. Pailpac then appealed to the LAC.

Awareness of strike rules

The primary issue was to determine whether the dismissed employees were aware of the rule not to carry weapons during the strike. The picketing rules were placed on the official notice board where employees obtained various work-related information, for example what doctors they could see etc. It was clear to the LAC that the dismissed employees were fully aware of their obligation to read the notices and other communications posted on the board. Accordingly, the LAC found that the employees were aware, or could reasonably have been expected to be aware, of the picketing policy. While this judgment turned on the question of employees being aware of workplace rules, the LAC stated that any reasonable employee would in any event know that having dangerous weapons at work is not acceptable.

In terms of the sanction of dismissal, the LAC therefore held that:

“ [30] As acknowledged by the arbitrator in her award, any reasonable employee would know that bringing a dangerous weapon to work would not be tolerated. Thus, to do so in flagrant disregard of a clear workplace rule which prohibits such conduct during a picket or strike, and expressly warns that the consequence of the breach is the sanction of dismissal. ”

The practical relevance of this judgment is the test to be applied when employees claim that they were not aware of workplace rules. The correct test is not only whether the employees were aware of the rule, but also whether they could reasonably be expected to be aware of it. It is also relevant that the LAC confirmed that sticks, pipes, sjamboks, and golf clubs are "dangerous weapons", a term which is usually found in picketing rules.

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