Unreasonable delay in labour disputes may lead to procedural unfairness

Item 2 (1) of Schedule 8 (Code of Good Practice: Dismissal) read in conjunction with section 188 of the Labour Relations Act, 66 of 1995, provides that a dismissal is unfair if it is not effected for a fair reason and in accordance with a *fair procedure*, even if it complies with any notice period in a contract of employment or in legislation governing employment.

Very recently, in *Stokwe v Member of the Executive Council: Department of Education, Eastern Cape and Others (2019) (4) BCLR 506 (CC);*

The Constitutional Court held that disciplinary action must be taken within a reasonable period of time. The Court further held that a dismissal should be procedurally, as well as substantively, fair. The LRA espouses speedy resolution of labour disputes. And so does the Employment of Educators Act which provides that the principles underlying any procedure to discipline an educator include that discipline should be prompt and fair, and that disciplinary proceedings "must be concluded in the shortest possible time frame"

In Gcaba v Minister for Safety and Security and Others (2010) (1) SA 238 (CC); Van der Westhuizen J held as follows;

"One of the purposes of law is to regulate and guide relations in a society. One of the ways it does so is by providing remedies and facilitating access to courts and other fora for the settlement of disputes. As supreme law, the Constitution protects basic rights.

These include the rights to fair labour practices and to just administrative action. Legislation based on the Constitution is supposed to concretise and enhance the protection of these rights, amongst others, by providing for the speedy resolution of disputes in the workplace and by regulating administrative conduct to ensure fairness.

In National Education Health & Allied Workers Union (NEHAWU) v University of Cape Town and Others (2003) (3) SA 1 (CC), the Constitutional Court recognised this principle and held as follows at paragraph 31;

"By their nature labour disputes must be resolved expeditiously and be brought to finality so that the parties can organise their affairs accordingly. They affect our economy and labour peace. It is in the public interest that labour disputes be resolved speedily".

In Toyota SA Motors (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and Others (CCT 228/14); [2015] ZACC 557 at para 1. Nkabinde J emphasised the importance of time frames in the speedy resolution of labour disputes, as well as the detrimental effects any delays may have on employers and employees held thus:

"Time periods in the context of labour disputes are generally essential to bring about timely resolution of the disputes. The dispute resolution dispensation of the old Labour Relations Act was uncertain, costly, inefficient and ineffective. The new Labour Relations Act (LRA) introduced a new approach to the adjudication of labour disputes. This alternative process was intended to bring about the expeditious resolution of labour disputes which, by their nature, require speedy resolution. Any delay in the resolution of labour disputes undermines the primary object of the LRA. It is detrimental not only to the workers who may be without a source of income pending the resolution of the dispute but, ultimately, also to an employer who may have to reinstate workers after many years."

Source: Magate Phala