

### **Jenkin v Khumbula Media Connexion (Pty) Ltd [2010] ZALC 78**

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This is a case concerning the insolvency of the employer. The Applicant employee alleged that his employment continued in exactly the same fashion as before, after insolvency of the employer, except for the name change of the employer to that of the Respondent. The Respondent held the view that when it took over the business of the insolvent employer, the Applicant's employment contract terminated.

The court held that a transfer of business in terms of section 197(A) had taken place and therefore the severance pay should be calculated according to the years of service with the old employer as well.

### **BEMAWU obo Mohapi v Clear Channel Independent (Pty) Ltd [2010] ZALC 83**

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This is a case where the applicants are claiming that their dismissal for operational requirements were automatically unfair and procedurally unfair. The Respondent informed the applicants at a sales meeting that their salaries would be restructured to take the form of a cost to company package and that they would

no longer be paid commission. The restructuring of Applicant's salaries amounted to a change in terms and conditions of employment which they rejected. They were dismissed.

The court held that the dismissals were not automatically unfair, since it was not conditional upon accepting the changes the respondent wished to impose but was permanent as a result of the respondent's operational needs.

In further evaluation the court found that the dismissals were substantively and procedurally unfair, since there were no proper joint consensus seeking process before dismissal and the procedure in terms of section 189 were also not met.

**Inzuzu I.T. Consulting (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and Others [2010] ZALC 85**

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This application concerns an Order for costs which the applicant has sought against the CCMA and the Commissioner respectively. The application has its origin in the dismissal of third respondent by the applicant and her subsequent reinstatement by the Commissioner in terms of an arbitration award granted by default.

The employer applied for rescission of the award, for, amongst other things, that the address used by employee of the employer was incorrect and therefore the employer never received notice of the con/arb. The commissioner made a ruling dismissing the the rescission application.

The Labour court held that the commissioner failed in his duties to properly consider the rescission and committed a gross dereliction of duty. The court ordered cost against the CCMA and commissioner, jointly and severally.

## LABOUR NEWS AND DEVELOPMENT

### General

- The representation of white South Africans in the professional sector, decreased radically between 1994 and 2008, according to the Solidarity Research Institute. Further information is available on News24 site.
- After extensive public sector strike action throughout the country, and many public servants having returned to work, a wage agreement is expected soon, according to News24 reports.
- Government has set up various funds to create and save jobs amidst the economic crisis, such as: Training Layoff Scheme; Industrial Development

Corporation fund(for companies in distress); development bond for job creation and a Clothing and Textiles Competitiveness programme, according to News24 reports.

### **Government notices**

- Notice given of intention to vary the scope of the Transnet Bargaining Council in line with the new structure of Transnet Ltd: **GN 835 GG 33500, 3 September 2010**
- Application for variation of scope of Bargaining Council for the Furniture Manufacturing Industry KZN to also include activities that comprise of shop fitting: **GN 885 GG 33540, 17 September 2010**
- Application for variation of scope of National Bargaining Council for the Wood and Paper Sector to broaden the definition of sawmilling sector **GN 886 GG 33540 17 September 2010**
- Bargaining Council for the Fishing Industry, renewal of main agreement **GN 809 GG 33541, 17 September 2010**
- Occupational Health and Safety Act, New regulations for lift, escalator and passenger conveyer, **GN 828 GG 33561, 17 September 2010**

**TOPIC FOR THE MONTH**

## **Chapter 4 of BCEA: Particulars of Employment and Remuneration**

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This chapter does not apply to employees working less than 24 hours a month.

**Section 35** deals with calculation of remuneration and wages.

**Remuneration** is a broader term than wages and is defined in the BCEA definition section as payment in **money or in kind**, or **money and in kind** made or owing to a person in return for work.

**Wage** is defined as the amount of **money** paid or payable to an employee for hours of work.

Payment of employees can be in money, in kind or in money and in kind. Employees don't need to be paid a basic salary but can also be paid on a basis other than time, such as commission. In such a case remuneration or wage of an employee should be calculated on average of the past 13 weeks' earnings.

A wage is calculated with reference to the hours ordinarily worked by an employee. A monthly wage is **four and one third** of the weekly wage of an employee.

Unless the contrary is clear the employee is deemed to ordinarily work 45 hours a week and nine hours in a day if an employee works five days a week. If an

employee works more than five days a week he is deemed to work seven and a half hours a day.

The Minister may determine in Government Gazette that certain categories of payment forms part of remuneration. The Minister has already determined that the following categories form part of remuneration for the purpose of calculating leave pay and notice pay:

Housing allowance; car allowance; company's medical aid; provident and/or pension fund contributions; funeral or death benefit schemes; cash payments.

The following category of payments do not form part of remuneration:

Transport allowance; relocation allowances; tips and gifts; entertainment allowance; share incentive scheme; schooling or educational allowance; discretionary bonuses.

Remuneration is an essential term of any employment contract. If the employer fails to pay remuneration it amounts to breach of contract and legal action can be instituted in the Labour Court or Civil Courts.

A claim for remuneration or other statutory payments can also be lodged together with an unfair dismissal dispute or severance pay dispute at the CCMA.

Employees earning less than R149 736.00 per annum can also approach the Department of Labour to claim remuneration.