
Trade Union Membership: Managerial employees

There are still some employers who are of the opinion that an employee who is appointed or promoted to a management post may not be a member of a trade union, and if the employee is a member, such employee must resign his membership of such union.

This is because employers are of the opinion that as a manager the employee represents management, and is expected to discipline employees should there be a need. The manager as a trade union member will therefore not be able to function effectively as manager, as there will be a conflict of interest.

As can be seen from case law, although employees in management positions have the right to join and hold office in trade unions, the employee is still bound by the requirements of the employment contract in so far as to be diligent in the carrying out of his or her duties, the furthering of the employer's business, the safe guarding of confidential information etc..

In **IMATU & others v Rustenburg Transitional Council**¹ the court held that *“senior managers have an unfettered right to join and hold office in trade unions, but are still bound to perform duties for the employer. Employees who breach duty of fidelity towards employers in the course of trade union activities may still be disciplined, but not for holding union office per se”* (my emphasis).

Similarly, in **FOOD & ALLIED WORKERS UNION & ANOTHER v THE GOLD CHAIN**² the court held, *“that an employee enjoys an absolute right in terms of the Constitution 1996 and ss 4 and 5 of the LRA to join a trade union and to take part in its activities. Where, therefore, an employee was appointed to a managerial position on condition that he gave up his position as a shop steward, and where he accepted the post but refused to relinquish his union position, the court found the employer's demand unlawful, and that the employee's subsequent dismissal automatically unfair.”*

¹ [1999] 12 BLLR 1299 (LC)

² [2007] 28 ILJ 1593 (LC)