UNFAIR LABOUR PRACTICE

Under the 1956 Labour Relations Act, a variety of employment practices, apart from dismissals, were identified as 'unfair' under the general definition of 'unfair labour practice' in force at the time.

The new Labour Relations Act [1] in section 186 (2) defines an unfair labour practice as:-

' (2) "unfair labour practice" means any unfair act or omission that arises between an employer and an employee involving-

(a) unfair conduct by the employer relating to the promotion, demotion, probation (excluding disputes about dismissals for a reason relating to probation) or training of an employee or relating to the provision of benefits to an employee;

(b) the unfair suspension of an employee or any other unfair disciplinary action short of dismissal in respect of an employee;

(c) a failure or refusal by an employer to reinstate or re-employ a former employee in terms of any agreement; and

(d) an occupational detriment, other than dismissal, in contravention of the Protected Disclosures Act, 2000 (Act No. 26 of 2000), on account of the employee having made a protected disclosure defined in that Act.'

From the above, it is clear that only an employer can commit an unfair labour practice.

An employee to succeed in an unfair labour practice dispute must prove that the conduct or practice in dispute falls within the statutory definition. [2]

Unfair conduct is a wider concept than unfair discrimination, because conduct may be unfair without being discriminatory. However, discrimination is clearly a species of unfair conduct.

Disputes about unfair discrimination, as defined in the Constitution and the Employment Equity Act, are required to be referred to the Labour Court or the civil courts for adjudication, unless the parties have agreed to arbitration. Unfair labour practices as defined in section 186(2) above, must be referred to arbitration.

[1] Act 66 of 1995

[2] Nawa & another v Department of Trade and Industry [1998] 7 BLLR 701 LC)