

Employment Law update

Manyi ordered to pay back the money

Labour Court orders DSTV News Channel: Afro Worldview to follow retrenchment procedures after being shut down.

It is well-known that employers are legally obliged to issue a notice to employees inviting them to consult on their possible redundancy, the moment the employer even thinks about this as a possibility. But what are the consequences if the employer deliberately or negligently shirks this legal obligation? The short answer is there are very serious consequences and many remedies available to the impacted employees. For example, they will likely have strong claims for an unfair dismissal. However, a more attractive remedy is available and they can interdict the whole process and request a Court to intervene by setting aside illicitly obtained "settlement agreements" or "retrenchment agreements" and the like, and order the employer to consult meaningfully with the employees.

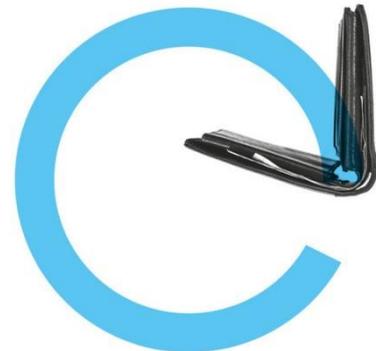
The remedy of an interdict, although not commonly used, was recently used with success by Eversheds Sutherland in a matter that had all the excitement and intrigue of any enthralling TV show.

The matter concerns the DSTV news channel, Afro Worldview (formerly the Gupta owned ANN7), of which Mr Mzwanele Manyi ("**Mr Manyi**") is the Chief Executive Chairman. Representing the trade union, Communication Workers Union ("**CWU**") and its members, Eversheds Sutherland brought an urgent application to the Labour Court on behalf of CWU seeking an urgent declaratory order directing the news channel to comply with its legal obligations in terms of section 189 and 189A of the Labour Relations Act.

On 31 January 2018, Multichoice provided ANN7 (as the channel then was) with six months' notice of its intention not to renew the five year contract it had with the channel, which was due to expire in December 2018. Multichoice then went out on tender to find a replacement for the news channel. In April 2018, ANN7 then rebranded itself to Afro Worldview and tendered for the channel. However, on 20 August 2018, Multichoice abruptly shut the channel down and all staff were subsequently instructed not to report for duty. The channel, together with Mr Manyi, were left stranded and alone in something that resembled a dramatic break-up scene in your favourite soapy.

To rub salt into the open wounds of Afro Worldview and Mr Manyi, on 28 August 2018, Multichoice announced that the tender for the news channel, to be broadcasted on channel 405 of the DSTV bouquet, was awarded to Newsroom Africa, a new and completely distinct news channel.

On 3 September 2018, and with his back up against the wall, Mr Manyi then communicated to all staff that the company had no other option but to wind up the operations. Thereafter, Mr Manyi personally



embarked upon an aggressive (and rather distasteful) strategy to have as many employees as possible sign mutual separation agreements, voluntary severance packages and/or retrenchment notices.

On the basis of these facts, CWU came to the rescue and launched an urgent application to Court to declare that Afro Worldview follow sections 189 and 189A of the Labour Relations Act.

Afro Worldview, now playing the role of the pantomime villain, opposed the application. Its opposition was premised mainly on two arguments: (i) that the application was premature in that the company had not yet contemplated dismissing any employees for operational requirements and (ii) that a section 197 transfer has or would apply with the result that the employees will be transferred to the news channel that successfully bid to be broadcast on channel 405.

Unsurprisingly, Van Niekerk J rejected both arguments and on 20 September 2018 handed down an order in favour of the applicants with costs. The Labour Court declared that the company had contemplated dismissing its employees for operational requirements and was in breach of sections 189 and 189A of the Labour Relations Act. The Court then ordered the company to comply with a fair procedure in terms of section 189 and 189A prior to dismissing any of the employees. Finally, the Court also ordered that all employees who had already signed retrenchment notices must be reinstated in order for a fair consultation process to be done in terms of sections 189 and 189A. The villain was successfully defeated and all employees rejoiced in the victory.

The judgment was a wonderful victory for the CWU, its members but also for employees in general and the rule of law in relation to dismissals for operational requirements. Eversheds Sutherland is immensely proud to have represented the CWU and obtain such a momentous victory for it and its members.

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