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EMPLOYMENT ALERT

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Common purpose in misconduct during strikes

In the court case of *NUMSA obo Aubrey Dhludhlu & Others and Marley Pipe Systems (SA) (Pty) Ltd*, case number JS878/17, the Labour Court had to assess whether more than 100 employees acted with common purpose when they assaulted an employee. The employer argued that all the employees directed their wills and actions towards the achievement of a prohibited result. Those that could get to the employee who was assaulted, physically assaulted him and those that could not, encouraged the others to assault him and rejoiced in the outcome. In considering the matter, the common purpose requirements were restated.

Common purpose in misconduct during strikes

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The court considered *NSCAWU and Others v Coin Security Group (Pty) Ltd t/a [1997] 1 BLLR 85 (IC)* in which the court held the doctrine of common purpose applies when two or more people associate themselves in a course of conduct that results in a criminal act by one or more of them, but by chance or design, the others do not physically perform the actions which brought about the act or result. The court held that when people actively associate themselves with the result and share the perpetrator's guilty state of mind, the guilt of the actual perpetrator extends to them.

Regarding those individuals who disputed being at the scene, the case of *National Union of Metalworkers of South Africa obo Nganezi and Others v Dunlop Mixing and Technical Services (Pty) Limited and Others (CCT202/18) [2019] ZACC 25* was relevant.

In this matter it was held that it was not necessary to place an employee at the scene to prove common purpose and indicated that common purpose could be established by inferential reasoning having regard to the conduct of the workers before, during and even after the incident of violence. It went further to state that any evidence that an employee associated themselves with the violence before it commenced or even after it ended may be sufficient to warrant a complicity in the misconduct. This infers that presence at the scene need not be required but that a subsequent knowledge of the violent act(s) and the necessary intention in relation to the act(s) will still be required.

Ultimately, the Labour Court held that the employee who may not have been at the scene on the day of the assault, had associated himself with the strike and its acts by his actions. The employees in general acted with a common purpose.

These are important principles that must be kept in mind during, amongst others, industrial action. This provides all the more reason to employers to ensure that detailed strike diaries are kept with reference to videos and photographs.

Anli Bezuidenhout and Devon Clarke

EMPLOYMENT

CASE LAW UPDATE 2019

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the employment
relationship during
the current economic
uncertainty.



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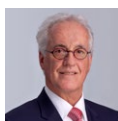
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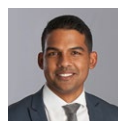
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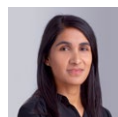
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