The Labour and Employment Disputes Review

Third Edition

Editor
Nicholas Robertson

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THE

Labour and Employment Disputes Review

Third Edition

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PREFACE

It is commonplace for the senior management of a business to describe their employees as the best assets that the business has. Equally, in troubled times, it not unusual to find employers voicing concern that employees may vote with their feet and leave the organisation (irrespective of any legal claims they may have) to work for competitors.

However, the truth of the matter is that, in many jurisdictions, fine words about the rights of employees are mixed with an increasingly uncertain future for employees. One frequently hears comments about the future impact of technology on many types of jobs. This technology will know no boundaries and the only safe prediction is, I think, that the jobs most affected will include some surprises. Already we see significant friction between the attempts by businesses to organise employees into a low-cost, allegedly lower-skilled and fully flexible workforce and the conflicting desires of employees and, in many countries, legislators to have stable employment relationships underpinned by statutory and contractual rights. The battles that Uber and other 'disrupters' are facing are symptomatic of that tension.

In the United Kingdom, of course, we have now seen Brexit, finally, become a reality, although the detail of what this will mean for employers and employees remains frustratingly vague.

A similar phenomenon is at play in relation to the #MeToo movement, and its impact on workplace behaviours and relationships. The desire for those in the workplace to inhabit an environment free of unlawful discrimination has undoubtedly made progress, giving voice to employees who might previously have felt, for legal, cultural or commercial reasons, that they had no option but to accept inappropriate behaviour. The corollary of this strengthening of employees' rights is that it makes the workforce less insecure.

Indeed, in the United Kingdom, the extended debate about the degree to which it is ever permissible for employers to use non-disclosure agreements to resolve matters privately is an indication of how far the debate has moved. A time-travelling employment lawyer from 10 years ago (if such an individual existed) would be astonished at the pace of change.

In these circumstances, a book such as *The Labour and Employment Disputes Review* offers an opportunity not only to look at the bigger themes, but also to measure some of the changes taking place, year on year, as the world of work continues to evolve.

Nicholas Robertson
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London
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Chapter 15

SOUTH AFRICA

Ross Alcock and Peter le Roux[1]

I INTRODUCTION

During the period of transition to democracy between 1990 and 1998, a series of statutes regulating labour relations and employment were enacted. The most important of these were the Labour Relations Act 66 of 1995 (LRA) the Basic Conditions of Employment Act 75 of 1997 (BCEA) and the Employment Equity Act 55 of 1998 (EEA). Taken together, these statutes, as amended, formed a detailed legal framework for the regulation of labour relations and employment law.

The LRA regulates aspects of both collective labour law and individual labour law. In respect of collective labour law, it makes provision for the establishment of collective bargaining institutions at sectoral level, the most important of these being bargaining councils. These bodies also provide dispute resolution mechanisms in the sectors over which they have jurisdiction. The LRA also regulates recourse to strikes and lockouts by employees and employers, respectively. At the level of individual labour law, the LRA provides protection for employees against unfair dismissal, and against a range of defined unfair labour practices that can be committed by employers.

The BCEA provides a floor of minimum terms and conditions of employment, including the regulation of working time and various forms of leave. It does not provide for a minimum wage. This is dealt with in the National Minimum Wage Act.

The EEA prohibits unfair direct and indirect discrimination by employers against employees on a wide range of grounds, the most important being race, sex, gender, sexual orientation, age, pregnancy and marital status. It also requires employers to implement affirmative action measures.

II PROCEDURE

One of the objectives of the LRA is to attempt to ensure that all types of labour disputes will be addressed and, if possible, resolved expeditiously. It prescribes that by far the majority of disputes that fall within its ambit must first be referred to conciliation. The idea is that the conciliator will seek to assist the parties to resolve the dispute. If there is a bargaining council with jurisdiction over the dispute, the conciliation will usually be undertaken by an official of that council. If there is no bargaining council, the conciliation will be undertaken by an official of the Commission for Conciliation, Mediation and Arbitration (CCMA).

1 Ross Alcock is a director and Peter le Roux is an executive consultant at ENSafrica.

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If conciliation fails to resolve the dispute, three possibilities arise. The first is that, for certain types of disputes, employees may acquire the right to strike and employers may acquire the right to lock out employees, provided that certain further requirements are met. If employees comply with these requirements, the strike will be regarded as a protected strike. The result will be that employees may not be dismissed for participation in the strike and that trade unions and their members cannot be held civilly liable for any losses suffered by employers arising from the protected strike. The second is that employees may acquire the right to refer certain types of disputes to arbitration to be conducted by an official of a bargaining council or the CCMA. The third is that employees may acquire the right to refer certain types of disputes to the Labour Court. In some cases, employees may have a choice of routes to follow.

The Labour Court has an original jurisdiction to consider certain types of disputes; for example, those concerning the dismissal of strikers, as well as contractual disputes. It also exercises a supervisory jurisdiction in the sense that it can review and set aside arbitration awards issued by the CCMA or a bargaining council. It can also hear appeals against CCMA awards dealing with discrimination claims.

The ordinary civil courts retain their right to consider contractual disputes between employer and employee.

III TYPES OF EMPLOYMENT DISPUTES

The LRA draws a distinction between disputes that can be the subject of a strike or a lockout and those that may be resolved through arbitration by officials appointed by a bargaining council or the CCMA, or that may be adjudicated by the Labour Court.

For the purposes of this chapter, disputes that can be arbitrated or adjudicated are the most important. By far the majority of disputes that are arbitrated or adjudicated concern an allegation that an employee has been unfairly dismissed or that an employee has been the subject of an unfair labour practice. The grounds on which an employer can justify the fairness of a dismissal are the misconduct of an employee, poor work performance on the part of an employee, an employee's incapacity or the employer's operational requirements. A fair procedure must also be followed prior to the dismissal. In certain cases, dismissals are regarded as being automatically unfair (e.g., if the reason for the dismissal is membership of or participation in the affairs of a trade union, or participation in a protected strike). Unfair labour practice disputes can involve a range of alleged employer actions, including unfair suspensions, the unfair failure to promote an employee and unfair employer conduct relating to training or the provision of benefits.

The jurisdiction to consider disputes relating to benefits is a particularly important one because of the wide interpretation given to the term 'benefit'. In *Apollo Tyres South Africa (Pty) Ltd v. CCMA & Others*,[2] the Labour Appeal Court held that the definition of a benefit, as contemplated in Section 186(2)(a) of the LRA, was not confined to rights arising from the contract of employment but included rights judicially created, and advantages or privileges employees have been offered or granted in terms of a policy or practice, subject to the employer's discretion.

The LRA grants valuable rights to employees of temporary employment services, part-time employees and people employed in terms of fixed-term contracts. A significant

2 [2013] 34 ILJ 1120 (LAC).

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number of disputes involving the enforcement of these rights are being referred to the CCMA. Other types of disputes that may be the subject of arbitration or adjudication are those that deal with the interpretation of collective agreements, those that concern the granting of organisational rights and those that relate to whether or not a strike is protected. The latter type of dispute usually occurs when an employer approaches the Labour Court as a matter of urgency to interdict a strike from taking place.

The resolution of the above-mentioned type of dispute is regulated in terms of the LRA. In addition, arbitrators and the Labour Court are being called upon to deal with an increasing number of disputes dealing with allegations that an employer has unfairly discriminated against an employee or a group of employees. Most of these disputes deal with allegations that the employer breached the equal pay provisions of the EEA. These are dealt with in terms of the provisions of the EEA. Finally, a steady stream of disputes is referred to the Labour Court or the ordinary civil courts in which an employee or an employer seeks to enforce contractual rights.

IV YEAR IN REVIEW

i Liability for employer's obligations

One of the important amendments to the LRA that came into effect on 1 January 2015 was the insertion of Section 200B, which reads as follows:

> *(1) For the purposes of this Act and any other employment law, 'employer' includes one or more persons who carry on associated or related activity or business by or through an employer if the intent or effect of their doing so is or has been to directly or indirectly defeat the purposes of this Act or any other employment law.*
> *(2) If more than one person is held to be the employer of an employee in terms of subsection (1), those persons are jointly and severally liable for any failure to comply with the obligations of an employer in terms of this Act or any other employment law.*

Until recently, this Section has not been subject to judicial interpretation.

The rationale for Section 200B is set out in the memorandum of objects that accompanied the 2014 LRA Amendment Bill. The purpose of the Section is said to be to prevent simulated arrangements or corporate structures that are intended to defeat the purposes of the LRA or any other employment law, and to provide for joint and several liability on the part of persons found to be employers under this Section for any failure to comply with employer obligations in terms of the LRA or any other employment law. This is particularly important in the context of subcontracting and outsourcing arrangements if these arrangements are subterfuges to disguise the identity of the true employer.

In the recent decision of *Masoga and Another v. Pick n Pay Retailers (Pty) Ltd and Others*, the Labour Appeal Court had the opportunity to express its view as to the scope and effect of this Section.

The facts of the case concern a contractual arrangement between a South African retail chain, Pick n Pay Retailers (Pty) Ltd (PNP) and a self-standing bakery business, Assist Bakery 115 CC (AB), a separate legal entity. PNP utilised AB as part of an economic empowerment initiative whereby PNP would empower the business with all the skills required to run a self-standing bakery.

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The appellants in the Labour Appeal Court litigation were two employees of AB. They were employed as bakery assistants on 12-month fixed-term contracts. Their job functions included picking ingredients from PNP stores and delivering them to AB's workplace where AB's other employees would mix the ingredients for the purposes of baking bread for sale in PNP's stores.

Prior to the effluxion of the fixed-term contracts, the appellants referred a dispute to the CCMA in which they claimed that AB was a temporary employment service (labour broker) and that they had been placed by AB to work in a PNP store. They then claimed that they had become permanent employees of PNP because their employment with PNP was not a genuine temporary employment service (as defined in the LRA) and therefore they were deemed, in terms of Section 198(3)(b), to be the employees of PNP.

The CCMA commissioner concluded that the facts established a close association between the businesses of PNP and AB. The commissioner went on to find that Section 200B applied and that PNP and AB were joint or co-employers of the appellants.

On appeal, the Labour Appeal Court noted that it is clear that, when read as a whole, Section 200B cannot be utilised to determine whether a particular person or entity is the true employer of a particular employee. It deals with the question of whether an employer can be held to be jointly liable with another employer.

The Labour Appeal Court found that the effect of Section 200B is merely to fix or extend the liability that would ordinarily be that of the employer to another or others who carry on an associated or related activity or business by or through an employer. They are regarded as employers for the purposes of liability. However, they would only be treated as the employer if they are in an associated or related business with the employer that is intended to defeat, or has the effect of defeating, the purposes of the LRA or any other employment law, either directly or indirectly.

When one or more persons are held to be employers in terms of Section 200B, they are held jointly and severally liable for a failure to comply with the obligations of an employer in terms of the LRA or any other employment law. Importantly, the Labour Appeal Court held that the Section cannot be utilised generally for making persons or entities the employers of others.

On the facts of this case, the Labour Appeal Court concluded that there was no evidence that PNP and AB engaged in a subterfuge by utilising an empowerment scheme for deceitful purposes or, more particularly, that PNP was using the scheme and AB as a sham to avoid its legal obligations toward its employees, or that the scheme had such an effect.

This case highlights the fact that Section 200B cannot be used to determine who is an employer of an employee. However, it can be used to scrutinise the relationship or arrangement between two or more entities and to attribute liability to any person or entity found to be a co-employer for the purposes of liability in terms of the LRA or other employment laws. The far-reaching consequences of Section 200B are particularly important for employers that engage in subcontracting or outsourcing arrangements.

ii Derivative misconduct

For the first time in employment law jurisprudence, the South African Constitutional Court has considered the nature and scope of the duty of good faith within the context of the contract of employment. This occurred in its recent decision in *NUMSA obo Nganezi & Others v. Dunlop Mixing and Technical Services (Pty) Ltd & Others*.

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During August 2012, Dunlop's employees embarked on a protected strike. As is all too common with strikes in South Africa, violence between strikers and non-strikers occurred. Dunlop obtained an urgent interdict from the Labour Court to stop the violence, but the violence continued and escalated.

Dunlop attempted to identify the individuals who took part in the violence, and sought the assistance of the union that called the strike, the National Union of Metalworkers of South Africa (NUMSA). Dunlop experienced difficulty in doing so and decided to dismiss all striking employees, not for participating in the strike but because of their alleged involvement in acts of violence committed during the course of the strike. NUMSA challenged the fairness of the dismissals. In coming to his decision, the CCMA arbitrator distinguished between three categories of employees. The first were employees who had been identified as committing acts of misconduct. The second were employees who had been identified as being present when violence was committed. The third were employees who had not been identified as being present when violence was being committed. He found that the dismissal of employees in the first two categories of employees had been fair, but that the dismissal of those in the third category had been unfair. It appears that the finding that the dismissal of the first two groups of employees had been fair was based on the view that they had either been the perpetrators of the misconduct (often referred to as the 'primary misconduct') or knew who the perpetrators were and failed to disclose this information to the employer (i.e., they were guilty of derivative misconduct).

On review, the Labour Court and the Labour Appeal Court found that the dismissal of all three categories of employees had been fair and set aside the decision of the CCMA. These courts found the dismissal of the second and third categories of employees had been fair on the basis of a finding that they had been guilty of derivative misconduct, which breached the duty of good faith that employees owed to their employer.

NUMSA sought, and was granted, leave to appeal to the Constitutional Court against the finding of the Labour Appeal Court that the dismissal of the third category of employees had been fair. The Constitutional Court held that the duty of good faith is a reciprocal duty that an employer and employee owe to each other. However, in the strike context, the Court considered that the right to strike is underpinned by the power play between employer and employees and that employees only have the power to strike if there is solidarity among the employees. Imposing an obligation to report the misconduct of other employees would undermine that solidarity. In the context of a strike, therefore, an employee would only be under the obligation to report the misconduct of his or her fellow employees if the employer has complied with its duty of good faith by guaranteeing the employee's safety and protection before, at the time of and after the disclosure.

Given this reciprocal duty of good faith, before they can rely on derivative misconduct, employers are required to prove that they guaranteed their employees' safety and protection before, when and after the employees disclosed the identity of the perpetrators of strike violence (or other misconduct). On this basis, the Constitutional Court upheld the decision of the CCMA that the dismissal of the third category of employees had been unfair.

iii Automatically unfair dismissals

Section 187(1)(c) of the LRA, which was amended in 2015, provides that a dismissal will be automatically unfair if the reason for the dismissal is a refusal by an employee to accept a demand in respect of any matter of mutual interest between the employer and employee.

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Prior to the amendment of Section 187(1)(c) of the LRA, an employer who wished to implement changes to terms and conditions of employment could, if its proposed changes were rejected by employees, justify dismissing these employees on the basis of its operational requirements, so that it could employ new employees who were prepared to accept the changed conditions of employment. This was the case, provided that the dismissals were final and irrevocable and the requirements of the LRA dealing with operational requirement dismissals had been met (see the decision in *National Union of Metalworkers of SA & Others v. Fry's Metals (Pty) Ltd*).

Whether an employer was entitled to adopt this course of action after the amendment to Section 187(1)(c) was considered by the Labour Appeal Court in *National Union of Metalworkers of South Africa & others v. Aveng Trident Steel (a division of Aveng Africa Proprietary Ltd) & Another*.

When confronted with a decrease in sales and increased costs, the employer in this matter gave notice of possible retrenchments in terms of Section 189(3) of the LRA. One of the proposals made by the employer as a retrenchment avoidance measure during the consultation process prescribed by Section 189 was that its workforce be restructured. It proposed that the scope of existing jobs be redefined so as to increase the duties associated with these jobs. Extensive negotiations took place on this issue, but the union representing the employees refused to agree to this proposal.

After reaching an impasse, the employer informed the union that it would be implementing the redesigned job descriptions and presented all the affected employees with new contracts of permanent employment, together with redesigned job descriptions, without altering their rate of pay. The employer informed the employees that if the contracts of employment were rejected, the employees would be dismissed. When the contracts were rejected by the employees, the employer gave notice of termination of their contracts of employment.

The union challenged the fairness of these dismissals and argued that the dismissals had been automatically unfair by virtue of the provisions of the amended Section 187(1)(c). The union argued that the dismissals were automatically unfair because the reason for the dismissals was the refusal by the employees to accept the employer's demands in respect of the redesigned job descriptions, which was a matter of mutual interest.

The Labour Appeal Court found that the dismissals were not automatically unfair. Its reasoning was, inter alia, that if employers are not permitted to dismiss employees who refuse to accept a change to terms and conditions of employment, and to employ others who are willing to accept the altered terms and conditions of employment that are operationally required, the only way to satisfy an employer's operational requirements would be 'through collective bargaining and ultimately power play'. The Court found that this would be self-defeating by adding to the economic pressure put on an employer that was already struggling financially.

The fact that a proposed change is refused and followed by a dismissal does not mean that the reason for the dismissal is necessarily the refusal to accept the proposed change. The question of whether Section 187(1)(c) of the LRA is contravened does not depend on whether the dismissal is conditional or final, but rather on the true reason for the dismissal of the employees. The actual or proximate reason for the dismissal needs to be determined and there is no reason for excluding an employer's operational requirements from consideration as a possible reason for dismissal.

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After considering the facts, the Court found that the purpose of Aveng making the proposal was not to gain any advantage in wage bargaining but rather to restructure for operational reasons to ensure the company's long-term survival. The employees' rejection of the proposal necessitated their dismissal because of operational requirements. The dominant or proximate cause for the dismissals therefore was Aveng's operational requirements.

iv Vicarious liability

Section 60 of the EEA provides that an employee who has been sexually harassed by a co-employee can hold the employer liable for this harassment in the circumstances set out in that Section. However, our courts have accepted that an employer may also be held vicariously liable in terms of South African common law principles of delict (tort). This will be the case where there is a 'sufficiently close link' between the wrongful actions of the employee committing the harassment and the purposes and business of the employer.

The application of this principle is illustrated by the recent decision in *LP v. Minister of Correctional Services*. In this case, the harassed employee sought to hold her employer vicariously liable for her harassment by a fellow employee who was not her direct supervisor, but who was in a position to exercise authority over her because they were employed in a small office where they were often in contact with each other. The employer was held vicariously liable. This was on the basis that, irrespective of any official policy, official job descriptions or line management functions, the harasser was in a position of authority over the harassed employee. This was a situation created by the employer and endorsed or, at the very least, condoned by it. The unequal balance of power between the two employees was beyond question. The closeness of the working relationship between the two employees rendered the harassed employee vulnerable to the harassment. The employer created the opportunity for an abuse of power by the harasser even though technically he was not the harassed employee's direct supervisor.

v Disciplinary charges

Although the LRA requires that a dismissal for misconduct must be preceded by a fair procedure in terms of which the employee concerned is given an opportunity to state a case, it does not envisage a lengthy and formal hearing. The LRA contemplates an informal, expeditious disciplinary process requiring, in essence, nothing more than a dialogue and an opportunity for reflection before a decision is taken to dismiss an employee.

The recent decision in *EOH Abantu (Pty) Ltd v. Commission for Conciliation, Mediation and Arbitration* demonstrates that disciplinary processes should not adopt an overly formalistic or legalistic character.

The employee in this matter was employed in a position that gave him access to certain 'licence keys', which enabled him to activate software installed on the employer's computers. He provided one of these keys to his girlfriend so that she could assist her mother with the installation of Microsoft Office on her mother's personal computer.

When the employer discovered that this had occurred, the employee was charged with the disciplinary offences of dishonesty and a breach of confidentiality agreements. The chairperson of the disciplinary enquiry found that the employer had been unable to prove dishonesty but found that the employee had been grossly negligent. He was dismissed on this basis.

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When the employee challenged the fairness of his dismissal, the arbitrator found the dismissal had been unfair because the employee had been found guilty and dismissed for gross negligence – a disciplinary offence he had not been charged with. On review, the Labour Court agreed with the arbitrator.

On appeal, the Labour Appeal Court held that disciplinary charges need not be drafted with the precision of a criminal charge sheet, and added that courts and arbitrators should not adopt an approach that is too formalistic or technical. The inaccurate description of the alleged disciplinary offence would only lead to unfairness if the employee was prejudiced by it. The test for prejudice is whether the employee would have conducted his or her defence differently had he or she known of the possibility of a 'competent verdict' to the charges. In other words, would the employee have conducted his or her defence differently had he or she known that, even if the employer could not prove dishonesty, the employee could still be dismissed for gross negligence?

On the facts, the Labour Appeal Court found that the employee had failed to exercise the required standard of care, and this had the potential to cause reputational harm to the employer. The employee's denial of negligence, his seniority and the potential damage that his conduct could have caused all contributed to a finding that the employer was justified in finding that it had lost trust both in the employee and in the continuation of the employment relationship. The dismissal was accordingly found to be fair.

vi Suspension

Employees who are alleged to have committed serious disciplinary offences are often suspended on full pay as a 'precautionary measure' while the allegations against them are being investigated. The courts have consistently held that, in certain circumstances, a precautionary suspension may constitute an unfair labour practice as defined in the LRA. A suspension will be regarded as unfair if there was no good reason for the suspension, or if it endured for too lengthy a period. The courts have also accepted that a suspension must be procedurally fair in the sense that the employee must be afforded some form of opportunity to be heard (albeit in an attenuated form) prior to the decision to suspend being taken. The employee in *South African Breweries (Pty) Ltd v. Long and Others* had been subjected to a precautionary suspension. He argued that his suspension had been unfair because it had endured for too long and because he had not been provided with an opportunity to make representations before a decision to suspend was taken. The CCMA commissioner accepted that the employer had committed an unfair labour practice by not affording the employee an opportunity to make representations.

The Labour Court reviewed and set aside the CCMA decision and held that there is no requirement for an employee to be provided with the opportunity to make representations before being placed on precautionary suspension. However, a suspension imposed as a disciplinary sanction (usually without pay and as an alternative to dismissal) must be preceded by a fairly conducted disciplinary proceeding.

On appeal, the Constitutional Court held that the finding of the Labour Court regarding the issue of an opportunity to make representations could not be faulted.

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vii Legislative changes

Wage disparity remains a contentious issue in South Africa. Of equal significance is the violence and other unlawful actions that have accompanied strikes in recent years. This problem has been exacerbated when strikes have endured for lengthy periods. These issues were addressed during the course of 2016 and 2017 by representatives of government, business and labour on the National Economic Development and Labour Council.

Agreement was reached on the introduction of a national minimum wage. This has now been implemented though the enactment, in January 2019, of the National Minimum Wage Act. It is envisaged that the national minimum wage will be reassessed annually by the National Minimum Wage Commission, which will make recommendations to the Minister of Employment and Labour in this regard. This review will be conducted for the first time in 2020.

Agreement was also reached on a process to assist with the resolution of disputes that are the subject of lengthy strikes or that are the subject of strikes accompanied by violence and intimidation. This agreement is reflected in the newly enacted Sections 150A to 150D of the LRA. They provide that, in certain defined situations, an advisory arbitration panel can be established to issue an advisory award that would include recommendations on how the dispute that is the subject of the strike can be resolved.

The Labour Laws Amendment Act 10 of 2018 (LLAA), which came into force on 1 January 2020, amends the BCEA to provide for parental, adoption and commissioning parental leave to employees. It provides that an employee who is a parent of a child is entitled to at least 10 consecutive days parental leave. An adoptive parent will be entitled to adoption leave of at least 10 consecutive weeks. If there are two adoptive parents, one will be entitled to parental leave and the other to adoption leave. A commissioning parent in a surrogate motherhood agreement will be entitled to at least 10 weeks commissioning parental leave. If there are two commissioning parents, one will be entitled to commissioning parental leave and the other to parental leave. Parents who take parental, adoption or commissioning leave can claim unemployment insurance benefits from the Unemployment Insurance Fund.

V OUTLOOK AND CONCLUSIONS

One of the important objectives of the LRA is to provide institutions and procedures that will encourage the effective resolution of labour disputes. A major concern in this regard is the backlog of cases to be decided by the Labour Court. The cause of this backlog is a combination of the sheer number of employment disputes that are referred to the Court and a lack of resources to appoint more judges to adjudicate matters. Two recent interventions may have a positive impact on this issue. First, the BCEA has been amended to give the CCMA jurisdiction in relation to certain contractual claims that would ordinarily be adjudicated at the Labour Court. Second, it is expected that new Rules of the Labour Court will be introduced to curtail certain proceedings, particularly review proceedings.

Thus far, the advisory arbitration process envisaged in Sections 150A to 150D of the LRA has not been invoked and the ability of this process to resolve lengthy and violence-prone strikes will probably be critically assessed in the next year.

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Appendix 1

ABOUT THE AUTHORS

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Ross Alcock is a director at ENSafrica in the employment law department, where he specialises in integrated employment solutions and global mobility.

He has acted for private and public sector clients with regard to executive issues in the workplace, including drafting executive agreements (with a focus on, inter alia, restraints of trade (restrictive covenants), share incentives, performance bonus structures, protection of personal information, and intellectual property and copyright protections). He has also handled senior executive exits by way of negotiation or formal disciplinary or performance enquiries.

Ross' experience includes drafting, enforcing and defending restraint of trade agreements in the High Court and Labour Court, providing advice with regard to the employment aspects of mergers and acquisitions, insolvency, and outsourcing and secondary outsourcing. He has extensive experience providing advice in respect of large-scale and small-scale restructuring exercises (retrenchments) and drafting opinions on all facets of employment law, as well as all employment-related litigation and due diligence and employment law compliance audits.

Ross is recognised as a leading or a recommended lawyer by *Chambers Global Practice Guide: Employment 2015–2018*, *The Legal 500: EMEA* for labour and employment (South Africa, 2016–2018), *Who's Who Legal: Labour, Employment & Benefits 2016* (South Africa), and by *Best Lawyers* for employee benefits law (South Africa, 2017–2019) and for labour and employment law (South Africa, 2011–2019).

Ross has also sat as an Acting Judge of the Labour Court of South Africa

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He is the co-author of *Essential Labour Law* and *The Law of Unfair Dismissal* and he co-edits *Contemporary Labour Law*.

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