

ANALYSING THE ONUS ISSUE IN DISMISSALS EMANATING FROM THE ENFORCEMENT OF UNILATERAL CHANGES TO CONDITIONS OF EMPLOYMENT

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SUMMARY

The main objective of this article is to analyse the issue of onus emanating from the enforcement of unilateral changes to conditions of employment. At the heart of the controversy that has faced the Labour Appeal Court was how to interpret dismissals that appear to be based on operational requirements, and yet at the same time, such dismissals also appear to have the effect of compelling an employee to accept a demand in respect of a matter of mutual interest between the employer and the employee.

The core section in the *Labour Relations Act* 66 of 1995 relating to disputes of this nature is section 187(1)(c) of the Act, and the central enquiry to such disputes is whether they are automatically unfair or operationally justifiable. The fine line that determines whether a dismissal is acceptable or not merits an analysis of the overall onus that faces an employer and employee. This analysis is the focus of the article, which deals predominantly with procedural issues. The issue relating to the promotion of collective bargaining will be assessed against the right to dismiss, based on an analysis of the situation in South Africa, and a brief comparison with the situations in the United Kingdom and Canada. Thereafter, recommendations are made to the South African legislature.

KEYWORDS: Employee; onus; dismissals; unilateral; changes; conditions; employment

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