



NUMSA will challenge the unfortunate Labour Court decision dismissing the urgent application to secure basic fairness for workers at BMW
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Press statement

The National Union of Metalworkers of South Africa (NUMSA) has with immense disappointment and extreme concern, taken note of the judgment of Acting Judge Snyman in the Labour Court. At least 500 workers are facing dismissal in a disciplinary process embarked upon by BMW in relation to allegations of medical aid fraud at the company, in terms of which it outrageously refused to clarify what the actual charges were to which workers had to answer and who the so-called independent chairpersons would be. It proceeded with the hearings, despite the fact that NUMSA was **not** in possession of all charge sheets, thereby making it impossible for NUMSA to make submissions on behalf of the affected workers. NUMSA was accordingly compelled to approach the Labour Court on an urgent basis on Thursday, (11 October 2024) in an attempt to ensure that there is compliance with basic fairness, in an otherwise utterly tainted disciplinary process.

Despite BMW's unreasonable and persistent refusal to provide NUMSA with the most basic information for purposes of enabling NUMSA to make representations on behalf of the affected workers, it did provide all the required information in its Court papers opposing NUMSA's urgent application. Thereby BMW effectively conceded not only that its conduct was grossly unfair, but also that NUMSA was entirely justified in having approached the Labour Court for urgent relief. The Labour Court seemingly missed this reality and proceeded, rather inconceivably, to dismiss NUMSA's application with costs.

This judgment is yet another in a series of judgments which were initially in direct conflict with Labour Appeal Court authorities by way of incorrectly stating that the Labour Court does not have jurisdiction over disciplinary matter. It has undermined those same authorities through the backdoor, by way of blocking deserving cases from being adjudicated on the premise that there are no "exceptional circumstances" warranting the Court's intervention. At least 500 workers may be dismissed because of an unfair disciplinary process. It is deeply concerning when a Labour court judge does not regard such circumstances as 'exceptional' warranting the urgent intervention of the courts. Justice cannot be sacrificed in an endeavour to reduce the Labour Court's workload.

The real tragedy is that the Labour Court's approach comes against the background of an unprotected strike at BMW and NUMSA had to convince workers that approaching the Labour Court is the correct and appropriate way to deal with BMW's grossly unfair conduct, only to then receive this outcome from the Court. These types of judgments can unfortunately only serve to undermine the faith workers have in the Courts and the legal system.

Whilst the Labour Court had no difficulty with the fact that BMW in haste rushed to implement numerous dismissals the day before the matter was heard in Court (despite the fact that NUMSA could not, in the absence of receiving the vital further information sought by way of the Court application, defend those workers), we will pursue justice for these workers by way of referring unfair dismissal cases to the CCMA for arbitration.

The absurdity of BMW's actions and its unfairness will soon be exposed. NUMSA will fight for workers to be reinstated despite BMW's attempt to secure mass dismissals under the guise of acting against fraud. The absurdity of BMW's actions is aptly illustrated by the fact that in certain instances it has charged employees with fraud committed on their profiles in 2022 and which the affected employees had in fact duly reported to the medical aid administrator at the time, as constituting fraud.

NUMSA rejects the suggestion that defending its members and demanding fairness and due process, are the same as condoning fraudulent or criminal behaviour. Everyone is presumed innocent until proven guilty and this is a basic principle in law which is applicable in all circumstances, including in cases of alleged misconduct in the workplace. It is the work of trade unions to defend workers and ensure that their rights are not violated, and we will do so, fearlessly, and unapologetically.

NUMSA's Court application had a positive result in that BMW was compelled to provide essential information which allows it to defend its affected members in the ongoing disciplinary proceeding. The Labour Court's judgment cannot go unchallenged in that it contains fundamental errors and it is setting a most unfortunate precedent giving employers a free hand to act in the most procedurally unfair manner imaginable. As such NUMSA has instructed its legal representatives to proceed with the necessary application for leave to appeal.

NUMSA will continue to fight the unjust treatment of workers by BMW and will not be deterred by the unfortunate Labour Court judgment.

ENDS

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