

An employee's obligation to comply with a reasonable instruction

 By [Gavin Stansfield](#)

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The balance was tipped in favour of employers in the recent Labour Appeal Court decision of *Motor Industry Staff Association and another vs Silverton Spraypainters and Panelbeaters (Pty) Ltd and two others* [2012] ZALAC 42 (LAC). Even though prevalent labour laws prohibit an employer from unilaterally changing terms and conditions of employment, this decision confirmed that employees do not have a vested right to preserve their working obligations completely unchanged.

In the Motor Industry matter the employer was in the business of panel beating and spray painting vehicles. During 2008 the employer started experiencing financial difficulties and, in a bid to increase its business and avoid job losses, it initiated a promotional campaign. As part of the campaign the employee was instructed "to physically go to the office of the assessors and fleet companies in order to promote the business of the [company] and to procure work". The employee blatantly refused to comply with this instruction. Although there was no contract of employment in place the employee maintained that the distribution of brochures to assessors and company clients did not form part of his job description. He further argued that the instruction given by the employer amounted to a unilateral amendment of the terms and conditions of his employment.

Appeal lodged

Subsequent to being issued with a final written warning and a disciplinary hearing having been conducted, the employee was dismissed. The employee referred the dispute to the Motor Industry Bargaining Council (MIBCO) where his application was dismissed. The Labour Court upheld the decision of MIBCO and found in favour of the employer. The employee persisted in his claim and lodged an appeal with the Labour Appeal Court.

It was submitted on behalf of the employee that he was entitled to refuse to obey an unlawful and unreasonable instruction given to him by the employer.

The Labour Appeal Court held that: "It is trite that an employee is guilty of insubordination if the employee concerned wilfully refuses to comply with a lawful and reasonable instruction issued by the employer. It is also well settled that where the insubordination was gross, in that it was persistent, deliberate and public, a sanction of dismissal would normally be justified."

The Labour Appeal Court also referred to the case of *Mauchle (Pty) Ltd t/a Precision Tools vs National Union of Metalworkers of South Africa and Others* (1995) 16 ILJ 349 (LAC) where it was held that: "I agree with the view expressed by the learned author ... that employees do not have a vested right to preserve their working obligations completely

unchanged as from the moment when they first begin work. It is only if changes are so dramatic as to amount to a requirement that the employee undertakes an entirely different job that there is a right to refuse to do the job in the required manner."

In the Mauchle case the court distinguished between a change in working conditions and a change in the terms and conditions of employment.

Not a material change

The Labour Appeal Court found that the particular instruction was not a material change to the terms and conditions of the employee's core duties. In this regard the Labour Appeal Court held that: "Put differently, it was simply a variation in his work practice or a change in the manner his job was to be performed - a situation that was occasioned by sound and compelling operational reasons on the part of the company. Indeed it was, in my view, the situation in respect of which (the employee) did not have a vested right to preserve his working obligations completely unchanged as from the moment when he first began to work."

Accordingly, the Labour Appeal Court dismissed the employee's appeal and found that: "... the Company's instruction was a lawful and reasonable one which (the employee) was obliged and obligated to carry out. His blatant, persistent and public refusal to comply with this lawful and reasonable instruction constituted gross insubordination on his part. He seriously and inexcusably undermined the authority of management. In my view he was correctly convicted of the misconduct as charged and his dismissal was, therefore, substantively fair."

The Labour Appeal Court concluded by stating that the employee's conduct resulted in the irretrievable breakdown of the employment relationship between him and the employer and rendered his dismissal justified.

ABOUT GAVIN STANSFIELD

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