

The cost of ignoring a CCMA judgment

The Johannesburg Labour Court has sent a clear message that defying court orders will not be tolerated. In a recent decision, Magnus Loubser, a director at Spar in Polofields Crossing, Midrand, was fined R1m for contempt of court for refusing to reinstate a worker who was unfairly dismissed.



Image source: Getty Images

"The worker, Kelvin Moyo, had won an arbitration award ordering his reinstatement. However, despite the arbitration award being enforced as if it were an order of the Labour Court in terms of section 143 of the Labour Relations Act, Spar failed to rehire him. This blatant disregard for the law prompted Moyo's union, ECCAWUSA, to file a contempt application against Spar and Loubser," explains Tertius Wessels, legal director at Strata g Labour Solutions.

In a scathing judgment, the Labour Court found Loubser personally liable for the contempt, stating that "employers generally treat arbitration awards with disdain and utter contempt". The court further criticised Spar's legal team for attempting to "advance technical arguments in court" to avoid complying with the order.

The court laid out the four elements necessary for a contempt order:

1. **Existence of the order:** The arbitration award ordering Moyo's reinstatement was clear and valid.
2. **Service of the order:** Spar acknowledged receiving the order, and Loubser's email address was included in the communication.
3. **Non-compliance with the order:** Despite the order, Moyo was not reinstated.
4. **Wilful and mala fide non-compliance:** The court found Loubser's actions to be deliberate and in bad faith.

When is reinstatement not permissible?

Bradley Workman-Davies and Michiel Heyns 20 Jul 2023





While Loubser's lawyer argued that the application failed to address how the order was served, the court dismissed this as a "technical and flimsy" defence. Evidence confirmed that Loubser, as the responsible director, was aware of the order through an email sent to Spar.

Furthermore, the court found that Loubser's refusal to reinstate Moyo was driven by "harassment" and "fatigued and flimsy reasons". This behaviour, coupled with attempts to delay compliance through technicalities, was deemed unacceptable and merited a significant penalty.

The R1m fine imposed on Loubser is a significant consequence and serves as a strong deterrent against future contempt cases. The court also ordered Loubser to immediately reinstate Moyo within 30 days, further emphasising the importance of upholding court orders.

"This case has important implications for both employers and employees. It sends a clear message to employers that ignoring court orders will not be tolerated and could result in severe financial penalties. For employees, it reinforces the principle that they have recourse to legal mechanisms to address unfair treatment.

Beyond the legal implications, the case also highlights the human cost of unfair dismissal. Moyo was deprived of his job and livelihood, and it took significant legal effort to secure his reinstatement. This underscores the importance of fair labour practices and the need for employers to treat their employees with dignity and respect," Wessels says.

He concludes by saying the judgment further serves as a reminder that the law protects employees' rights and that employers must comply with court orders or use the services of professional to ensure they are not in violation of the law.

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