

Handle Shop Stewards With Care



The trade union movement in South Africa is very powerful. This is not only because of the relatively high number of unionised employees and because of the extremely strong legislation supporting unionisation but also because of the political alliance between the biggest union confederation and the ruling party. In view of the above, trade unionism can mean problems for any employer. However, employers who understand the rights of trade unions, union officials, union office bearers and union members are most likely to be able to deal with trade unions successfully and to build constructive relations with them. This is especially so of employers who also know the limits of union rights because such employers will not be prone to allowing unions and unionised employees to do whatever they wish.

Due to their uncertainty as to where the rights of unions start and end many employers lose out because they unnecessarily give to unions rights that they are not legally required to give them. Just as often employers lose out because they fail to accord to unions rights that have been conferred by law.

The Labour Relations Act (LRA) gives employees the right, under certain circumstances, to elect union representatives (shop stewards) from amongst themselves. Section 14 of the (LRA) gives shop stewards a number of special rights such as the right to:

Assist employees in disciplinary and grievance hearings.

Monitor and report any of the employer's contraventions of the law to the appropriate authorities.

Take reasonable time off with pay during working hours in order to perform these duties.

Where a manager is aware of the risk of losing a contract due to union action he/she may become

nervous and over react towards shop stewards. They may see shop stewards as invaders trying to ruin or

take control of the business. Such managers then tend to see shop stewards as their enemies and plot to get even with or get rid of the shop stewards. Such an approach is clearly counter productive because it is very likely to cause industrial action.

Instead of becoming negative towards shop stewards, managers, supervisors and foremen need to:

Be given a full understanding of what the shop stewards' rights are and where those rights are limited.
Learn to keep their tempers and act rationally in the face of pressure.

Know when and how to take legitimate action against shop stewards who exceed their powers.

Be empowered to keep control of the workforce regardless of the presence of shop stewards.

Managers do have the right to discipline shop stewards but this must be done for fair reasons and in a fair manner. Ignoring the legal procedures is extremely dangerous when disciplining any employee, but to do so in the case of a shop steward can cause irreparable damage.

Item 4(2) of the LRA's Code Of Good Practice: Dismissal Code states that discipline against a shop steward should not be instituted before the employer has first consulted with the trade union.

The question is, how differently must we treat shop stewards? In *Dunn vs Telkom SA* (2003, 11 BALR 261) a shop steward was dismissed for insubordination. The CCMA found this to merit dismissal yet found the dismissal unfair because the employer had not consulted the applicant's union before disciplining the shop steward.

However, in an unreported CCMA case, in which the author was involved, the chief shop steward was dismissed for misconduct related to his duties as a shop steward. Despite this the CCMA found that the dismissal was fair in all respects. This was because the employer was able to convince the CCMA arbitrator that the shop steward's status as a union representative did not exempt him from adhering to the employer's rules. [NUMSA obo Mahlangu vs Heric Ferrochrome (Pty) Ltd case number NW2126-01].

In *AMCU obo Masango / Andru Mining (Pty) Ltd*[2018] 9 BALR 952 (CCMA) a shop steward was dismissed for sending a Whats-App message to the workforce saying that the employer intended dismissing employees. The employee claimed that she had done this in her capacity as a shop steward. The Commissioner noted that the message had been immediately followed by a work stoppage. The message accordingly amounted to incitement, with serious consequences for the industrial relationship and justified the dismissal.

Because the dividing line between acceptable and unacceptable discipline of shop stewards is so thin no employer should implement such discipline without the involvement of a reputable labour law expert.

To book for our 17 September webinar on WINNING AT THE CCMA IN THE COVID

ENVIRONMENT please contact Ronni at ronni@labourlawadvice.co.za or on 0845217492 or (011) 782-3066.