



ANNUAL LABOUR LAW & COMPLIANCE SUMMIT

Beyond Compliance: Courts, the Constitution, and the
Future of Labour Law in South Africa

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THE LABOUR COURT

- Recent policy considerations for future importance
- Labour Court remains go-to forum for senior / public service employees to challenge discipline / suspensions
 - Interim relief and section 158(1)(h) reviews
 - Jurisdiction - ***Cibane and Another v Premier of Province of Kwazulu-Natal***
 - Unlawful dismissals / suspensions
 - Nature of dispute & LRA remedies
 - Application of s 77(3) BCEA / contract disputes
- Exclusive jurisdiction iro MHSA - ***TC Smelters***
- No jurisdiction where it comes to damages claims against trade unions - s 68 only applies to unprotected strikes - ***Massmart***



THE LABOUR COURT

- The review test is expanded – material error of law - ***National Bargaining Council for the Road Freight and Logistics Industry v Deyssel NO and Others*** – discreet ground of review based on right or wrong
- Restraints of trade – whole new labour law jurisprudence – only Court with bespoke Rule – Rule 39
- CaseLines – challenges and benefits
- Compliance issues – still too many contempt matters – contempt process also sometimes abused



CONSTITUTION / FUTURE OF LABOUR LAW

- LRA enacted to give effect to s 23 of Constitution – principle of subsidiarity – direct reliance on Constitution in employment disputes not permitted
- But because of s 23 – more of an open door to CC – now again in ***Maleka v Boyce N.O*** revisited constructive dismissal – emphasizes importance to first pursue alternative remedies
- Proposed amendments to LRA does not really simplify employment law – no real changes to dispute resolution processes - in fact may expand workload of Labour Court

