CHEP South Africa (Pty) Ltd v Shardlow N.O and others
[2019] JOL 40990 (LC)

Reported in:	Judgments Online, a LexisNexis Electronic Law Report Series
Case No:	JR 136 / 16
Judgment Date(s):	17 / 01 / 2019
Hearing Date(s):	13 / 07 / 2018
Marked as:	Not Reportable
Country:	South Africa
Jurisdiction:	Labour Court
Division:	Johannesburg
Judge:	Van der Merwe AJ
Bench:	G van der Merwe AJ
Parties:	CHEP South Africa (Pty) Ltd (At); Commissioner J Shardlow N.O (1R), Commission for Conciliation, Mediation and Arbitration (2R), Contracta-Force Corporate Solutions (Pty) Ltd (3R), David Victor and 200 Others (4-Further R)
Appearance:	Adv I Erasmus, Kirchmans Inc (At); Adv T Mosikili, Bhavma Ramji Attorney (R)
Categories:	Application - Civil - Substantive - Private
Function:	Confirms Legal Principle
Relevant Legislation:	Labour Relations Act 66 of 1995, Sections 1, 145, 198, 198A, 200B, 213

Key words

Labour and Employment - Temporary employment service - Definition of

Mini Summary

The fourth and further respondents were employed by the third respondent to perform certain work for the applicant. In 2015, they referred a dispute to the CCMA seeking to have effect given to rights contained in section 198A(3)(b) and (5) of the Labour Relations Act 66 of 1995. Those rights are aimed at protecting more vulnerable, lower paid workers, who are generally employed through a temporary employment service.

Held that section 198A(3)(b)(i) states that an employee engaged by a temporary employment service for the purpose of rendering service to a client (excluding a temporary employment service) is deemed to be an employee of that client.

The issues were whether the third respondent was a temporary employment service as defined in the Act, and whether it provided the services of the temporary employment service to the applicant for reward. At arbitration, those questions were answered in the affirmative, leading to the present application for review.

The test in the present review application was that the arbitration award could be challenged for its correctness or for being unreasonable.

Section 198A(1) of the Act defined a temporary employment service. The critical elements of the definition are the provision of other persons, to provide work for the client, while being remunerated by the temporary employment service, and the persons are provided by the temporary employment service for reward. Applying that to the facts of the present case, the court found that the third respondent was not acting as a temporary employment service. The award was thus reviewed and set aside.

VAN DER MERWE AJ:

Introduction

[1] This matter relates to 201 workers, employed by the third respondent, Contracta-Force Corporate Solutions (Pty) Limited ("C-Force"), to repair wooden pallets for the benefit of the applicant, CHEP South Africa (Pty) Limited ("CHEP"). The pallets are then returned or supplied in their refurbished condition to clients of CHEP. This matter arises out of a dispute concerning the interpretation of section 198A of the Labour Relations Act,1 as amended ("the LRA").

[2] During 2015, the workers referred a dispute to the Commission for Conciliation, Mediation and Arbitration ("the CCMA") in which they sought to give effect to rights contained in section 198A(3)(b) and (5) of the LRA. These rights, contained in the 2014 amendments to the LRA, are aimed at protecting more vulnerable, lower paid workers, who are generally not directly employed, but rather are employed through a Temporary Employment Service ("TES").

[3] The amendments to section 198 of the LRA became effective on 1 January 2015. One of the most impactful of these amendments is the deeming provision in terms of section 198A(3)(b)(i), which holds that an employee engaged by a TES (otherwise known as a labour broker), for the purpose of rendering services to

a client (excluding a temporary service), is deemed to be an employee of that client, and the client is deemed to be the employer of such employee.

Pre-arbitration meeting

[4] The parties participated in a pre-arbitration meeting and a minute of this meeting was signed on 14 October 2015. The legal issues in dispute are crisply identified, namely, whether C-Force is a TES as defined in the LRA and whether C-Force for reward, provided to CHEP, the services of the 201 employees, whom are the fourth and further respondents, to perform work for the applicant. The fourth and further respondents' contention is that C-Force is a TES, as contemplated by section 198 of the LRA.

[5] CHEP on the other hand argues that C-Force provides a service to it as an independent contractor. In October 2014 a Service Level Agreement for the Conditioning of Pallets was concluded between CHEP and C-Force. CHEP thus denies that C-Force is a TES and contends that C-Force is in fact a service provider to CHEP.

[6] The pre-arbitration minute records that it is common cause between the parties that the 201 employees are employees of C-Force.

Factual background

[7] As I understand it, the gist of CHEP's argument is that C-Force provides it with repaired pallets and not with persons to perform work, as contemplated by the Act. These services are collectively referred to as "reconditioning services". The argument goes that CHEP has outsourced the reconditioning services to C-Force and eventually pays for the refurbished product on a per item basis, as opposed to a worker-related basis. Be that as it may, the crux of the argument remains, namely, that on a proper interpretation of section 198(1) read with section 198A(3)(b), the parties to the Service Level Agreement ("the SLA") are not struck by its effect.

[8] The relationship between CHEP and C-Force is regulated by a written contract - the SLA - included in the record consisting of two agreements. The first was concluded during 2009, whereas the second, which replaced the first SLA and is relevant for purposes hereof, was concluded in 2014.

[9] The 2014 SLA provides as follows:

9.1 CHEP appoints C-Force as a service provider, to render pallet conditioning services at the CHEP plant in Jet Park, in exchange for an agreed fee per pallet;

9.2 The relationship between CHEP and C-Force is one of client and independent contractor. C-Force warrants that it is not a labour broker, employee or personal service provider, and accordingly that CHEP is not obliged to deduct any tax from payments made to C-Force;

9.3 C-Force must attend to the staffing and management of the plant, so as to ensure that CHEP's requirements are met;

9.4 C-Force must ensure that its staff are adequately trained and inducted so as to perform their duties to CHEP's required standards, and must ensure that its staff comply with CHEP's Health and Safety policies, as well as its "conditioning behaviours" and "best practice compliances";

9.5 C-Force agrees to meet the service levels, and specifications set by CHEP, relating to the manner in which the work is performed, the minimum number of pallets to recondition per hour, and the average number of materials used in the reconditioning process;

9.6 CHEP determines the production volumes that C-Force is required to meet, and the manner in which productivity will be measured;

9.7 C-Force must ensure that daily production targets (set by CHEP) are met;

9.8 CHEP will conduct a daily quality audit to measure C-Force's performance against agreed targets and deviation levels, and may impose penalties if targets are not met;

9.9 CHEP has the right to perform quality control in respect of C-Force's performance at any time;

9.10 C-Force must supply and maintain all small tools, such as hammers;

9.11 C-Force must comply with CHEP's requirements regarding safety, pallet stacking, yard management and related activities, and must comply with instructions from CHEP management regarding yard efficiencies;

9.12 C-Force must render the services during CHEP's shift times;

9.13 CHEP must provide all necessary plant, equipment and consumables required by C-Force to enable it to carry out the services, and must attend to maintenance and repairs of plant and equipment supplied by it;

9.14 CHEP must provide all raw materials for use in pallet reconditioning;

9.15 CHEP may request that a particular C-Force employee be removed from site, if they do not comply with the applicable terms of this agreement, and C-Force must ensure that these persons cease providing services to CHEP immediately;

9.16 C-Force is the employer of the persons engaged by it to render services to CHEP, and CHEP has no legal or contractual relationship with these persons;

9.17 C-Force must ensure that it puts in place proper supervision and management of its staff;

9.18 C-Force indemnifies CHEP from any joint liability that might arise from the agreement;

9.19 C-Force must ensure that its employees do not participate in any industrial action organised by CHEP employees;

9.20 C-Force must maintain good industrial relations so as to prevent strike action by its employees, and shall be liable to CHEP for any consequential losses suffered as a result of industrial action by C-Force employees;

9.21 C-Force must ensure that its employees refrain from any interactions with CHEP's clients;

9.22 C-Force may not subcontract any of its obligations without CHEP's written consent;

9.23 Annexures to the agreement (at 49) contain details of the agreed price payable per pallet repair, the average consumables to be used per pallet,

and C-Force's obligations towards CHEP in terms of health and safety legislation.

[10] Both oral and documentary evidence were placed before the Commissioner.

The issue before the Commissioner

[11] The question that the Commissioner had to determine was whether C-Force rendered a temporary employment service to CHEP, as contemplated by sections 198A(1) and (2) of the LRA. The fourth and further respondents' case was and remains that C-Force is a TES, as defined in section 198(1) as it provides labour to the client (CHEP), who "perform work for the client".

[12] The Commissioner came to the conclusion that the relationship between CHEP Equipment Pooling Systems and C-Force is determined by the factual relationship between these two parties and that the 201 employees are employed by C-Force acting as a TES as described in sections 198(1)(a) and (b).

The test on review

[13] CHEP argues that C-Force is not a TES, but rather an independent contractor, and that the workers therefore cannot access the permanency and equalising provisions of section 198A of the LRA. It argues that, in finding that C-Force is a TES, the Commissioner committed a material error of law, reviewable on the basis of its correctness. CHEP's founding affidavit also challenges the Commissioner's ruling on the basis that it is unreasonable.

[14] As to the test that is to be applied in this application, the fourth and further respondents in their supplementary heads of argument seem to concede to the view that the applicable test is the correctness test, at least to a degree in so far as it can be recognised as a distinct test.

[15] I agree that the Commissioner's correct interpretation of a legal question is at stake and consequently that such an award can either be attacked on the basis of its correctness or for being unreasonable.

[16] In *Macdonald's Transport Upington (Pty) Limited v Association of Mineworkers and Construction Union (AMCU) and others*[2] the Labour Appeal Court ("the LAC") found that:

> "[30] In my view, there is much to be said for the proposition that an Arbitrator in the CCMA or in a Bargaining Council Forum who wrongly interprets an instrument commits a reviewable irregularity as envisaged by Section 145 of the LRA; i.e, a reasonable arbitrator does not get a legal point wrong. If so, the reasonableness test is appropriate to both value judgments and legal interpretations. If not, 'correctness' as a distinct test is necessary to address such matters."

[17] In *National Union of Metalworkers of South Africa v Assign Services (Casual Workers Advice Office ("CWAO") and another as amici curiae)*[3] the LAC confirmed the above and had the following to say:

> "[32] An incorrect interpretation of the law by a commissioner is, logically, a material error of law which will result in both an incorrect and unreasonable award. Such an award can either be attacked on the basis of its correctness or for being unreasonable."

The meaning of temporary employment service

[18] This Court is required to interpret the definition of a TES as it appears in the LRA in order to determine whether C-Force falls within the contemplation of section 198.

[19] It is by now trite that legislation is to be interpreted by applying the founding principles of statutory interpretation, being a proper analysis of the language,

Page 8 of [2019] JOL 40990 (LC)

an analysis of the context in which the language appears and by having regard to the purpose of the relevant provisions.[4]

[20] The Supreme Court of Appeal ("the SCA") in *Natal Joint Municipal Pension Fund v Endumeni Municipality*[5] formulated the approach on interpretation as follows:

> "The present state of the law can be expressed as follows. Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or businesslike for the words actually used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation. In a contractual context it is to make a contract for the parties other than the one they in fact made. The 'inevitable point of departure is the language of the provision itself', read in context and having regard to the purpose of the provision and the background to the preparation and production of the document."

[21] The Commissioner in this matter was concerned with whether C-Force, which according to his enquiry engaged the workers to work at CHEP, was in fact a TES and it is the correctness of the Commissioner's finding in this regard that is the subject of this review application.

Page 9 of [2019] JOL 40990 (LC)

Interpretation

The language

[22] The inevitable point of departure is to be found in the relevant LRA provision, namely, section 198(1) and (2) which reads as follows:

> "*198. Temporary Employment Services*
>
> (1) In this section, '*temporary employment services*' means any person who, for reward, procures for or provides to a client; other persons-
>
> (a) who perform work for the client; and
>
> (b) who are remunerated by the temporary employment service.
>
> (2) For the purposes of this Act, a person whose services have been procured for or provided to a client by a temporary employment service is the employee of that temporary employment service, and the temporary employment service is that person's employer."

[23] This is followed by subsection (3), which is the subsection on which the applicant relies which reads as follows:

> "(3) Despite subsections (1) and (2), a person who is an *independent contractor* is not an employee of a temporary employment service, nor is the temporary employment service the employer of that person" (own emphasis).

[24] Despite CHEP's reliance on subsection (3), it essentially argues that, guided by the definition referred to above, the Commissioner was required to decide whether:

24.1 C-Force provided CHEP with "*other persons*";

24.2 these persons "*performed work for*" CHEP; and

24.3 these persons were remunerated by C-Force.

[25] The parties jointly submitted that the three aforementioned questions were the questions that the Commissioner was indeed required to address. However, section 198(1) also provides for an additional requirement that is not captured in the

aforementioned submission. The "other persons" must also be provided by the TES "for reward".6

[26] The Constitutional Court ("the CC") in *Assign Services* (*Pty*) *Limited v National Union of Metalworkers of South Africa and others*7 recently described the nature of this relationship, by referring to "the reward" as "a fee". The Constitutional Court in addition referred to the provision of other persons as placing workers and consequently concluded that the test applicable to a TES is less onerous compared to the test applicable to conventional employment. In this regard, the Constitutional Court found that:

> "In *Lad Brokers*, the Labour Appeal Court held that the common law does not necessarily regard the TES as the employer of the placed workers. In truth, a TES can operate without concluding contracts of employment with the workers it places. All that is required for the TES to constitute a statutory employer in terms of section 198 of the LRA *is that it places workers with clients for a fee* and remunerates those workers. Of course, this is less onerous than the test for establishing conventional employment either at common law or in terms of the relevant definitions. It is therefore incorrect to contend that a TES is usually in an employment relationship with workers it places with clients."8

[27] In my view, the above means that, when the requirements contained in section 198(1) are met, the TES becomes a statutory employer in terms of section 198(2), not because of the application of the concept of employment under common law, but simply because the person (natural or legal person) is procuring or providing other persons, for reward, to a client who perform work for the client whilst being remunerated by the TES.

[28] The issue of whether or not a placed worker of a TES is an employee for the purposes of section 198, is a different matter altogether as it is determined by reference to the relationship between the worker and the client and not by referring to the requirements of section 198(1).

[29] On perusal of the Commissioner's ruling it becomes clear that he did not consider and apply the requirements laid down in section 198(1).

Purpose and context - LRA

[30] Furthermore, the requirement of providing persons to "perform work for" a client,9 means that these persons become part of the client's organisation to pursue the client's purposes or business. The TES employees, who are placed by it with a client, are not involved or associated in a common purpose with the TES in the conduct of its own business activities. This element must be present in order for the person providing or procuring the employees to fall within the definition of a temporary employment service.10

[31] As described by the Constitutional Court in *Assign Services* (*supra*), the TES is, in a sense, merely the third party that delivers the employees to the client. The employees do not contribute to the business of the TES, except as a commodity.11

[32] The concept of a TES is similar to the concept of a "labour broker" as it was known in the Labour Relations Act 3 of 1983 that amended the Labour Relations Act 28 of 1956 ("the 1956 LRA"). The definition of "labour broker" was inserted and it was defined as a person who for reward, procures and provides persons to work, or provides services for a client with that person/labour broker remunerating those persons. If these three elements were present, section 1(3)(a) expressly deemed labour brokers to be the employers of the placed workers.

[33] In interpreting the definition of a TES, it is also helpful to refer to the common-law understanding of the employment relationship which is, in part, codified in section 213 of the LRA. Section 213 provides that "employee" means:

> "(a) any person, excluding an independent contractor, who works for another person or for the State and who receives, or is entitled to receive, any remuneration; and
>
> (b) any other person who in any manner assists in carrying on or conducting the business of an employer."

[34] The usual TES employment relationship is however not covered by section 213. If it were, there would be no need for the employment relationship to be deemed to exist per section 198(2).12

[35] It is against this background, provided for by section 213, that the deeming provision of section 198(2) must be interpreted. Even though, in my view, little value can be extracted from section 198(2) to understand or interpret the definition of a TES as provided for in section 198(1), it still assists to understand the full context of the phenomenon of a TES as contemplated in the LRA.

[36] As referred to above, section 198(2) determines "that a person whose services have been procured for or provided to a client by a temporary employment service *is* the employee of that temporary employment service, and the temporary employment service *is* that person's employer". This section creates a legal fiction in that, when the employees provide a service to the TES's client, they automatically become the TES's employees. I will refer to this as the *first fiction* created by section 198. These employees do not even have to enter into an employment contract

as a statutory employer-employee relationship is created once they are placed.13

[37] Under both the 1956 LRA and the 1995 LRA (before the 2014 amendments), the TES was expressly identified as the employer for purposes of the LRA and this first fictional employer-employee relationship thus has a recognised historic context in South African employment law.

[38] Given the aforementioned considerations, I am inclined to favour a textual approach to the interpretation of a TES as it, in a sense, has the effect of

providing for an inroad upon the common law and codified understanding of the employment relationship.14

[39] In light of the above, C-Force cannot be regarded as a TES if it did not "provide or procure" the individual employees (fourth and further respondents) for reward to the client, who is in this instance CHEP. The finding of the Commissioner to the contrary constitutes a material error of law that cannot be correct.

[40] A consideration of the triangular nature of the relationship between a TES, client and placed employees also supports the above approach. The TES normally remunerates the employees and provides human resources functions, whereas the client conducts the day-to-day management of the employees and determines their working conditions. The TES is merely a third party that delivers the employees to the client. Moreover, and as stated by the Constitutional Court, the employees do not contribute to the business of the TES, except as a commodity.15 These factors do not appear to apply *in casu* and seem to support a conclusion that C-Force is not acting as a TES in its engagement with CHEP.

[41] As an *obiter* remark it can be stated that section 198A(3)(b) of the LRA similarly creates a further legal fiction. Section 198A(3)(b) is said to be the "gateway" to section 198A(5), which provides for "deemed employees" to be treated no less favourably than the deemed employer's directly engaged or permanent employees. In order to access both their section 198A(3)(b) right to be deemed permanent, and their section 198A(5) right to be treated no less favourably than other employees, a worker must be working for a TES. This fiction is referred to in this judgment as the *second fiction* created by section 198.

[42] Both the first and the second legal fictions created in section 198 create a framework where the purpose and context of the provisions must be carefully balanced with the purpose and context of the LRA as a whole and, as alluded to above, one will also in this regard lean towards a more textual interpretation, given that

one is dealing with the deeming provisions provided for in section 198.16 A consideration of the deeming provisions, however, provides little value to the interpretation of the definition of a TES as contained in section 198(1) and I am guided accordingly.

Analysis

[43] The SLA specifically provides for the delivery of a specified product, namely, repaired wooden pallets and it can thus not be said that C-Force is providing CHEP with "other employees" or that it places the workers with CHEP. C-Force provides a product and not individual labour to CHEP.

[44] The further evidence to be gleaned from the SLA none of which is disputed by the respondents, indicates that the relationship between the parties fell outside the scope of section 198(1). C-Force is not receiving a reward or a fee for providing employees to CHEP. C-Force as a service provider, is receiving an agreed price for a specified product, which is markedly different from a TES or labour broker, receiving a fee or reward for every employee that it places with its client. The arrangement of receiving an agreed price for a specified product falls outside the statutory definition of a TES.

[45] The C-Force employees in the matter at hand also were not made available to CHEP in pursuing CHEP's own business purposes. Being remunerated at an agreed price for a specified product, reflects an arrangement whereby C-Force is pursuing its own business purposes, being the delivery of repaired wooden pallets, that meet the minimum standard set by CHEP and, in this sense, the C-Force employees are not provided to CHEP to perform work for CHEP.17

[46] I have also not been presented with any allegation or factual support that could indicate that the relationship between CHEP and C-Force is not a genuine

arrangement, or that it is a subterfuge entered into for the purpose of avoiding any aspect of labour legislation and accordingly this Court does not have to pronounce on the same.

The approach applied by the Commissioner

[47] The Commissioner recited the definition of a TES in paragraph 61 of his ruling, but then, instead of correctly interpreting the definition and applying it to the facts at hand, seemingly blurred the definition by replacing it with extra-statutory criteria, described in the ruling as follows:

"62. There are three critical issues to be addressed (i) the nature of the Service Level Agreement (SLA); (ii) the degree of control exercised over the Second Respondent by the First Respondent; and (iii) the degree that the Second Respondent is integrated into the First Respondent's workplace."

[48] These so-called "critical" issues are materially misaligned with the requirements identified by section 198(1). Section 198(1) is silent regarding an enquiry into the degree of control by the client over the TES and certainly does not suggest that an evaluation should be performed to determine the level of integration into the client's business. The Commissioner's ruling was therefore based on an incorrect interpretation of the law and as such constituted a material error of law. The review application should therefore succeed on the basis of correctness.

[49] It is strictly speaking unnecessary for me to evaluate the reasonableness of the Commissioner's ruling, but it does assist to refer to the approach that was adopted by the Commissioner which led to his final ruling. The Commissioner, by applying his mind to the above issues, addressed incorrect questions and thereby failed to consider the correct question, namely, whether the requirements as set out in section 198(1) had been met or not. The effect hereof was that the Commissioner committed a gross irregularity by misconstruing the true

nature of the dispute and as such the ruling is also reviewable on the basis of unreasonableness.

The applicability of section 200B of the LRA

[50] Finally, as far as the consequence of CHEP's arrangement with C-Force in relation to section 200B of the LRA is concerned, the relevant section reads:

"Liability for employer's obligations.-

(1) For the purposes of this Act and any other employment law, 'employer' includes one or more persons who carry on associated or related activity or business by or through an employer if the intent or effect of their doing so is or has been to directly or indirectly defeat the purposes of this Act or any other employment law.

(2) If more than one person is held to be the employer of an employee in terms of subsection (1), those persons are jointly and severally liable for any failure to comply with the obligations of an employer in terms of this Act or any other employment law."

[51] The LAC in *Association of Mineworkers and Construction Union* ("*AMCU*") *and others v Buffalo Coal Dundee* (*Pty*) *Limited and another*,[18] considered this section of the LRA thus:

"[28] The party who wants to invoke Section 200B must not only show that the persons are carrying on or conducting an associated or related business but also that the intent or effect of doing so is or was to directly or indirectly defeat the purpose of the Act or any employment law. In this matter, the appellants succeeded in showing that the respondents carried on associated or related business. They failed to prove that there was an intention to directly or indirectly defeat the purpose of the Act or any other employment law neither did they prove that the effect of the business arrangement was to indirectly or directly undermine the purpose of the Act or any other employment law. It therefore matters not, for the purposes of this judgment, whether Section 200B has a

retrospective effect or not. We therefore do not have to decide that point."

[52] The Commissioner did not find that the relevant contracts between CHEP and C-Force are a sham or that they were designed to defeat the purposes of section 198. Also, no evidence was provided at the CCMA or before this Court that the parties to the SLA intended to, or effectively succeeded in defeating or undermining the purpose of the LRA. Accordingly it is not necessary for me to consider this argument.

Conclusion

[53] For all these reasons I conclude that, on a proper interpretation of sections 198(1), (2) and (3) of the LRA, C-Force is not a TES as defined. This finding places the relationship outside the scope of the deeming provision contemplated in section 198A(3)(b).

[54] The Commissioner committed a reviewable error of law by determining that C-Force is a Temporary Employment Service as described in sections 198(1)(a) and (b).

Costs

[55] With regard to costs, I am of the view that the requirements of law and fairness dictate that no order should be made as to costs. In my view, such an order will strike the appropriate balance between, on the one hand the continued relationship between the respective parties and not discouraging employees from approaching legal forums to have their disputes dealt with and on the other hand, discouraging the prosecution of frivolous cases.[19]

[56] In the circumstances I make the following order:

Order

1. The award issued under Case No. GAEK3837-15 is reviewed and set aside and substituted with an order that:

   1.1 C-Force is not a Temporary Employment Service (TES) as defined in section 198(1) of the LRA; and

   1.2 The deeming provision contained in section 198A(3)(b)(i) of the LRA does not apply to C-Force's workforce that are engaged at CHEP.

2. There is no order as to costs.

Footnotes

1 Act 66 of 1995, as amended.
2 [2017] 2 BLLR 105 (LAC) [also reported at [2016] JOL 36184 (LAC) - Ed] at para [30].
3 [2017] 10 BLLR 1008 (LAC) [also reported at [2017] JOL 38201 (LAC) - Ed] at para [32].
4 *Assign Services* (*Pty*) *Ltd v NUMSA et al* (2018) 39 *ILJ* 1911 (CC) [also reported at [2018] JOL 40113 (CC) - Ed] at para [41].
5 2012 (4) SA 593 (SCA) [also reported at [2012] JOL 28621 (SCA) - Ed] at para [18].
6 See at paras 41-4 of the founding affidavit, record at 13.
7 [2018] 9 BLLR 837 (CC) [also reported at [2018] JOL 40113 (CC) - Ed].
8 *Ibid* fn 7 at para [74] (own emphasis).
9 S 198(1) of the LRA and item 54 of the Code of Good Practice: Who is an Employee *Government Gazette* 29445 of 1 December 2006.
10 *South African Municipal Workers Union v Syntell* (*Pty*) *Ltd and others* (2013) 34 *ILJ* 1263 (LC) [also reported at [2012] JOL 29683 (LC) - Ed] at para [20].
11 *Ibid* fn 3 at para [73].
12 *Assign Services* (*Pty*) *Ltd v NUMSA et al* (2018) 39 *ILJ* 1911 (CC) [also reported at [2018] JOL 40113 (CC) - Ed] at para [55].
13 *Assign Services ibid* fn 3 at paras [32] and [44].
14 *City Deep Ltd v Silicosis Board* 1950 (1) SA 696 (A) at 702 [also reported at [1950] 2 All SA 40 (A) - Ed].
15 *Ibid* fn 7 at para [73].
16 See *Bonfiglioli South Africa* (*Pty*) *Limited v Panaino* [2014] JOL 32441 (LAC) at para [37].
17 See Annexure 1 to the SLA, which provides: "The service provider agree (*sic*) to condition (repair) 1248 B1210B (Code1) pallets per hour during the business hours reflected in 4.1.7 of this SLA for which CHEP will pay the Service Provider for every pallet that pass (*sic*) the CHEP's qualify standard inspection and volume calculations R__ ('The Base Price') exclusive of vat."
18 [2018] 9 BLLR 837 (CC) [also reported at [2016] JOL 35923 (LAC) - Ed] (own emphasis).
19 *Zungu v Premier of the Province of KwaZulu-Natal and others* [2018] 4 BLLR 323 (CC) [also reported at 2018 (6) BCLR 686 (CC) - Ed].