



Why constructive communication with employees is so important

Communicating properly and on an ongoing basis with employees is not only required by law under certain circumstances, but is also advised in order to maintain trust and good working relationships within any business. Even in situations where employers are not by law obliged to communicate with employees it is nevertheless best practice to do so. The following case will illustrate this point.

In the matter of *South African Chemical workers Union v Unitrans Supply Chain Solution (Pty) Ltd t/a Unitrans Freight and Logistics and Another [2009] ZALC 32 BP* informed employees during 2005 that its warehouse and distribution business would be transferred to Unitrans as a going concern (in terms of s 197 of the LRA). This of course had the result that the affected employees' contracts of employment would by law transfer automatically to Unitrans. SACWU was subsequently informed that the transfer would take place on 1 May 2006. On 17 May 2006 several employees met on the premises of their now new employer, Unitrans, to discuss their unhappiness with the transfer and the way it was affected. Several of Unitrans' and BP's representatives went to the canteen to talk to the employees. The employees did not recognize Unitrans as their employer and did not want to listen to the Unitrans representatives. The Unitrans managers instructed the employees to return to work and issued them with two ultimatums to return to work. The following morning the employees reported to the workplace but refused to work. After failing to attend disciplinary hearings the employees were subsequently dismissed.

The court held that it was common cause that the employees did not utilize any pre-strike procedures before they embarked on the work stoppage. The work stoppage was an unprotected strike and the conduct of the employees was unlawful and unjustified. However, the court found that dismissal was too harsh given BP and Unitrans' role in the whole process. The court held that the entire transfer was plagued with poor communication amongst all the parties. BP and Unitrans had a mutual duty to inform the employees fully regarding all aspects of the transfer. In the result, the court held that the dismissal of the employees was substantively unfair and Unitrans was ordered to pay compensation to each of the employees equal to four months' remuneration, as well as SACWU's costs.

When it comes to communicating with employees, employers should therefore keep the following in mind:

- Two-way communication is one of the most important requirements of establishing and maintaining trust in the work environment.
- Effective communication with employees will not only create trust, but also strengthen relationships in the business, as employees feel that they are informed of what is happening within the business at all times, even though the news may not also be good.
- Communicating with employees should not (and in some cases may not) only be unilateral communication from only the employer's side. Employees should have the opportunity to give inputs and raise issues, which should always be considered by management.
- Employers should know when there is a legal duty on them to communicate with employees, i.e. when they want to change conditions of employment through negotiations, and consultation in the sphere of restructuring (s189 of the LRA), amongst others.
- Even where there is no legal duty to consult with employees, employers will nevertheless be well advised to do so, as illustrated by the case in point.
- Although the LRA does not force employers to consult with employees where an s 197 transfer is implemented, employers should nevertheless communicate with employees regarding the process, as is evident from the case under discussion. Employers should, for instance, compare the conditions of employment with the old employer to that offered by the new employer, and if there are some differences (not material though), these should be communicated to, and discussed, with employees sooner rather than later. Communication is advised in order to let the process run as smoothly as possible. Where the changes in conditions of employment are material, however, employers are by law obliged to negotiate and agree these changes with effected employees, as they cannot simply unilaterally implement these changes.

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