

THE SUPREME COURT OF APPEAL  
OF SOUTH AFRICA

**MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL**

From: The Registrar, Supreme Court of Appeal  
Date: 28 May 2014  
Status: Immediate

*Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.*

***Solidarity v The Public Health & Welfare Sectoral Bargaining Council***  
**(442/13) [2014] ZASCA 70 (28 May 2014)**

The Supreme Court of Appeal handed down judgment today in an appeal from the Labour Appeal Court, Johannesburg. The second appellant (Kotze) had been employed by the third appellant, the Department of Health: Free State (the Department) for 17 years when he was suspended pending the finalisation of an investigation into allegations of misconduct levelled against him. Whilst under suspension, and without having first obtained the permission of the Department, Kotze secured alternative employment. The Department then purported to discharge him pursuant to s 17(5)(a)(ii) read with s 30(b) of the Public Service Act 103 of 1994 (the Act). Kotze referred the dispute to conciliation before the Public Health and Welfare Sectoral Bargaining Council (the Council), which conciliation failed, and the matter was referred to arbitration before the second respondent Commissioner Dickens (the commissioner).

The commissioner held that, pursuant to the Act, Kotze's employment had terminated by operation of law and thus there had been no dismissal by the Department, accordingly it lacked jurisdiction to hear the dispute. Kotze, represented by Solidarity, then sought to have this finding reviewed and set aside before the Labour Court.

That Court dismissed the application on the basis that the dismissal had indeed occurred by operation of law and thus did not constitute a dismissal for the purposes of the Council's jurisdiction. On a further appeal to the Labour Appeal Court, Tlaletsi JA reasoned similarly for the majority. The appellants were granted special leave to appeal that finding by this court.

The issue before this court was thus whether s 17(5)(a)(ii) read with s 30(b) of the Act finds application to these facts, and in turn constitutes a deemed dismissal that takes the dispute outside the Council's jurisdiction.

This court held that s 17(5)(a)(ii) of the Act plainly only finds application to an employee who absents himself from his official duties without permission. On the facts of this matter, it is apparent that Kotze was absent from duty but, having been suspended, this was necessarily at the behest of the Department. He could therefore not logically have *absented himself* from his duties. Accordingly, the commissioner's conclusion that the Council lacked jurisdiction to hear the dispute could not be sustained. In the result, the appeal succeeded with costs and the matter was remitted to the Council to determine the merits of Kotze's claim.