

Balancing Duties - Right to Participate in Trade Union Duties vs Neglecting Managerial Duties

Association of Mineworkers and Construction Union on behalf of Ntuli v Ferroglobe Silicon Smelters (Pty) Ltd (2025) 46 ILJ 1160 (LC)

INTRODUCTION

An important balance must be maintained between an employee's obligation to perform their work duties and their right to exercise trade union responsibilities. This tension often raises complex legal questions, particularly where union activities intersect with allegations of poor performance or misconduct.

On 6 December 2024, the Labour Court ("**the Court**") provided important clarity on this issue in its judgment in *Association of Mineworkers and Construction Workers Union on behalf of Ntuli v Ferroglobe Silicon Smelters (Pty) Ltd (2025) 46 ILJ 1160 (LC)*.

This article unpacks the key facts, legal arguments, and implications of the decision.

BACKGROUND FACTS OF THE CASE

Elliot Ntuli ("**Mr Ntuli**") was employed as an engineering superintendent by Ferroglobe Silicon Smelters (Pty) Ltd ("**Respondent**"). Mr Ntuli also served as shop steward and branch chairperson for the Association of Mineworkers and Construction Workers Union ("**AMCU/ the Applicant**").

Mr Ntuli was dismissed on 11 April 2018 for poor performance and misconduct, following a disciplinary hearing. The Respondent submitted that despite counselling, Mr Ntuli failed to meet the expected standard of work required of him. Mr Ntuli neglected his managerial duties for union related duties as shop steward in a manner that was direct conflict with his duties as a manager by leading other employees on an unprotected strike.

The Applicant contended that Mr Ntuli's dismissal was

automatically unfair in terms of section 187(d) and (f) of the Labour Relations Act 66 of 1995 ("**LRA**") because the Applicant believed that Mr Ntuli was discriminated against due to his position as a shop steward and branch chairperson alternatively, that the dismissal was substantively unfair.

THE COURT'S FINDINGS

The Court found that the Respondent had proved on a balance of probabilities that the real and dominant reason for termination was persistent poor performance, dereliction of managerial duties and his involvement in disorderly conduct and not union participation.

The court considered multiple occasions Mr Ntuli repeatedly underperformed despite training sessions, skipping mandatory management meetings and prioritising union tasks over his contractual obligations. Such conduct was unbecoming and unexpected for a senior employee. Mr Ntuli's dismissal was found to be substantively fair, and dismissal was an appropriate sanction for his misconduct and failure to fulfil managerial duties.

PRECEDENTIAL VALUE "TAKEAWAY" OF THE CASE

This judgement serves as a valuable reminder that if union duties begin to interfere with critical work obligations, employers can legitimately take disciplinary action, including dismissal. Holding a position in a union is not a "free pass" for misconduct and poor work performance.

CONCLUSION

While the Court acknowledged the protection afforded to shop stewards, enough emphasis was placed that such protection does not confer immunity from possible dismissals when managerial responsibilities are neglected. Dismissal was found to be substantively fair and the claim for automatic unfair dismissal failed.

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