

## CASE STUDY: CLOTHING UNLIMITED (PTY) LTD

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### 1. Background

Clothing Unlimited (hereafter referred to as the Company) is a large South African clothing manufacturer, with its head office and factory based in the Johannesburg central business district. It employs fifty workers in total, with forty of these working on the factory floor, performing various tasks such as cutting, stitching, knitting, overlocking, ironing, and packing. The Company recognises SANUTW (South African National Union of Textile Workers) as the employees' bargaining representative. The Company provides seasonal fashions on contract to a number of large retail outlets. As a result, it works to a tight schedule and tensions often run high. On the day of the incident (Monday 13 September 2021), the workers had just arrived in anticipation of completing a 'Spring Collection' for one of the Company's larger clients.

Petrus Ndlovu, the shop-floor supervisor, noticed one of the workers, Moses Xhosa, smoking on the floor, and immediately reprimanded him, pointing out the danger of the highly inflammable cotton fibres in the air suddenly igniting. Xhosa ignored Ndlovu and turning his back, called him a 'racist Zulu dog'. Ndlovu, known to be an ardent Inkatha supporter, grabbed Xhosa by the collar with the intention of frog-marching him to the manager's office, whereupon three of Xhosa's friends jumped on Ndlovu, punching and kicking him and abusing him verbally, before stabbing him in the arm. Xhosa and his three friends were suspended on full pay pending a disciplinary enquiry. The remaining disgruntled workers entered the office of the human resources manager and demanded their reinstatement and the dropping of all charges. When their demands were refused, they embarked on an unprotected work stoppage.<sup>1</sup>

### 2. The incident

It is very important to keep a strike diary. It essentially involves jotting down all occurrences, making a special note of the time of the occurrence, who was involved, and what transpired.

#### Strike Diary of Clothing Unlimited (Pty) Ltd for the Ndlovu/Xhosa Incident

##### Monday 13 September 2021

##### TIME: INCIDENT:

07h00 Employees arrive for work as usual. Petrus Ndlovu, the supervisor, spots Moses Xhosa smoking on the floor. He warns him about it. Xhosa allegedly ignores the warning and insults him, calling him a 'racist Zulu dog'. Ndlovu takes offence and grabs Xhosa, intending to march him to the Manager's office, whereupon Xhosa and three of his friends attack Ndlovu.

08h30 Ayanda Ncube, the Company's Human Resources Manager, arrives at the factory to investigate the allegations. Two reliable witnesses are questioned about the matter, namely Piet Groenewald and Thabiso Mabaso. Based on their statements, it is decided to proceed with the issuing of notices of disciplinary enquiries to the four employees. These employees are also suspended from the premises on full pay, pending the outcome of the enquiry.

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<sup>1</sup> For the work stoppage to have been protected in terms of Section 64 of the Labour Relations Act 66 of 1995, the matter would have had to have been referred to the Commission for Conciliation, Mediation and Arbitration for resolution, and, if unresolved after thirty days, and provided forty hours' notice had been given to the employer, the employees could have then embarked on a protected strike.

- 11h45 The four employees, Moses Xhosa, Solomon Maisela, Neil Pietersen, and Lucky Ndebele, are issued with notices of disciplinary enquiries and suspended on full pay. The alleged offences are:
- (a) assault;
  - (b) assault with a deadly weapon;
  - (c) intimidating and insulting a supervisor;
  - (d) using abusive language towards a supervisor; and
  - (e) smoking on the shop floor (applies only to Moses Xhosa) (see Appendix A).
- 13h30 All the remaining workers congregate outside the main offices. Charles Mabuso informs management that all workers should get similar notices of disciplinary enquiries, and all should be suspended since all had taken part in the incident that morning. Ayanda Ncube informs them that should it come to light, after the four enquiries, that others had also been involved, then they would also be issued with notices of enquiry.
- The workers then embark on illegal industrial strike action and refuse to go out and work (see Appendix B).
- 15h00 Ayanda Ncube speaks to the striking workers once again and informs them that they are partaking in an unprotected strike that is not only in breach of the recognition agreement, but also of the Labour Relations Act 66 of 1995, and the Company has a right to discipline its employees. They are informed that the four disciplinary enquiries involving the suspended employees would go ahead as scheduled on Tuesday 14 September.
- 16h30 Ayanda Ncube approaches Stephen Nyeti of SANUTW and informs him that the employees of the Company have embarked on an unprotected strike that is not only in breach of their contracts of employment but, also in breach of the provisions of the recognition agreement and Labour Relations Act.
- Stephen Nyeti speaks to Nelson Mandowu, the shop steward, and Stephen gives management a commitment that at 07h00 on Tuesday 14 September, all workers will resume their normal duties and not participate in any further unprotected industrial action. The parties agree that they will meet no later than 08h30 on 14 September to discuss the industrial action. Management further agrees to postpone the disciplinary hearings from 09h30 to 13h00 on that day. At 17h00 on Monday, employees leave the premises.

## **Tuesday 14 September 2021**

### **TIME: INCIDENT:**

- 07h00 Workers arrive for work and start their normal duties without incident, as agreed.
- 09h30 The meeting between SANUTW, management, and employee representatives starts an hour later than scheduled. The purpose of the meeting is to discuss the unprotected work stoppage and not the disciplinary enquiries of the four suspended employees. A second meeting is proposed to discuss this latter matter, but this is rejected by the union representative, Dan Mabena. Dan urges management not to proceed with the disciplinary enquiries against the employees. Management, however, indicates that it has the right to proceed with disciplinary action, not only against those employees involved in the assault of Petrus Ndlovu, but also against those employees involved in the unprotected strike. This results in the rejection of management's proposals by the union, and they feel that the meeting has been a waste of time. The meeting is adjourned at 10h00.

10h45 Based on feedback the employees receive from their representatives, they resume their unprotected work stoppage.

13h00 The four suspended employees fail to arrive for the scheduled disciplinary enquiries. These are postponed until Wednesday 15 September to give the employees more time to consider their positions.

13h30 Management issues a second ultimatum to the striking employees, which will expire at 15h30 of the same day (see Appendix C). Marcus Mbeki and Mary September, the company's legal representatives from M.C. Mbeki & Partners, enter into discussions with worker representatives. Management is subsequently informed that the workers have several grievances, and management agrees to meet on Wednesday 15 September to discuss these grievances. However, management states that only the employee representatives and Dan Mabena can meet with management and the rest of the employees are to return to work at 07h00 the following morning. The employee's demands are as follows:

- (i) the disciplinary action be withdrawn against the four employees with immediate effect;
- (ii) an enquiry be held into alleged intimidation of ANC supporters by Petrus Ndlovu; and
- (iii) a meeting be set up between employee representatives and Miranda Adonis, the MD.

Management also tables demands for the meetings to proceed. These are:

- (i) that Petrus be considered management's representative as supervisor, and respected as such;
- (ii) that striking workers resume work the following morning;
- (iii) that striking workers should follow the grievance procedure in terms of the 1995 Labour Relations Act in future; and
- (iv) that they should acknowledge the fact that management reserves the right to discipline its workers should they infringe the rules of the Company, or any other legislation pertaining to them.

Workers reject these conditions, and as a result refuse to proceed with the proposed meeting the following day, and also fail to resume work at 15h30.

15h45 Management hands worker representatives written notice of its intention to apply to the Labour Court for an interdict forcing workers to resume work in terms of section 68 of the Labour Relations Act 66 of 1995. Workers leave the premises at 17h00.

### **Wednesday 15 September 2021**

#### **TIME: INCIDENT:**

07h00 Workers are at the gate toyi-toying and waving placards while waiting for their colleagues to arrive. Management exercises its recourse to lockout in terms of Section 64 of the Labour Relations Act 66 of 1995 and denies workers access to the workplace.

08h30 The workers become more aggressive and prevent trucks from entering or exiting the premises. Customers and traders are turned away by an abusive crowd. Financial damage caused by loss of business thus far has cost the company R700 000 as well as the loss of a contract owing to tarnished customer relations.

Management makes contact with a number of temporary employment services to get in replacement labour (in terms of Section 76 of the Labour Relations Act 66 of 1995).

10h00 Management decides to call in the police after replacement labour is assaulted and turned away and bricks are thrown through some of the windows of the property.

Captain Naidoo speaks to worker representatives and asks them to have workers disperse peacefully. After the crowd refuses to withdraw, tear gas is used, and the crowd disperses flee. A few strikers return later that day but are subdued.

13h00 The four suspended employees once again fail to arrive for the disciplinary enquiries. The enquiries are held in their absence, and they are dismissed with immediate effect (see Appendix D). They are informed they can collect their final pay on Thursday 16 September 2021.

15h00 The company is closed for the day.

### **Thursday 16 September 2021**

#### **TIME: INCIDENT:**

07h00 The workers arrive at work as usual and continue to demonstrate outside the gates in a peaceful manner.

09h30 An interdict is obtained from the Labour Court informing workers that they have embarked on unprotected industrial action and restraining them from continuing with the action. Workers are issued with a third ultimatum, in conjunction with the interdict, to resume work at 11h00 or face dismissal (see Appendix E). These notices are subsequently destroyed by the workers and thrown over the gates into the factory yard.

11h00 A further notice is issued to employees for failing to heed the ultimatum to return to work at 11h00, and to inform them that an enquiry will be held with striking workers. Notices of enquiries are issued to the workers. These are scheduled to start at 13h00 for fifteen workers, at 14h00 for another fifteen workers and at 15h00 for the remaining ten workers (see Appendix F).

13h00 All the workers enter the premises. The security guards turn away those workers who are not required to be there. In the confusion, Nelson Mandawu is manhandled. Workers refuse to attend the scheduled hearings because of this unfortunate incident.

13H15 Ayanda Ncube approaches the striking employees and requests their collective statements as to why management should not proceed with their dismissal. The workers continue to express their opinion about the incident concerning the shop steward, about which management has apologised and described as unfortunate. The meeting is adjourned at 13h30 without any further progress.

13h45 Ayanda approaches the workers again without any success.

14h30 Notices are issued to the workers confirming that, owing to their failure to adhere to the ultimatums issued to them over the preceding days and their refusal to attend the hearings, their dismissal from the Company is effective immediately in terms of Section 6 of the Code of Good Conduct (Schedule 8) of the Labour Relations Act 66 of 1995 (see Appendix G). They are also informed that they can collect their final pay from the Company on Friday 17 September and that the company will apply for withdrawal of their benefits from the pension fund.

The workers collect their personal belongings and depart from the workplace peacefully.

It is also noted that the four employees dismissed the previous day have failed to collect their final pay cheques.

### **Friday 17 September 2021**

#### **TIME: INCIDENT:**

08h30 Receive a phone call from Dan Mabena threatening an industry-wide strike.

11h00 A contingent of the striking workers dismissed the day before picket outside the offices,

and hand over a memorandum of demands (see Appendix H). addressed to the Managing Director. They disperse peacefully.

13h00 In a spirit of goodwill and reconciliation, management approaches worker representatives and Dan Mabena of SANUTW to identify some sort of settlement that will benefit both parties.

After six hours of negotiations, it is agreed that:

1. all striking workers will be reinstated;
2. disciplinary enquiries will be held into incidents of violence and intimidation during the strike;
3. of the four workers dismissed for the assault on Petrus Ndlovu, only Moses Xhosa will remain dismissed. The other three workers will be reinstated with final written warnings;
4. an inquiry will be held into alleged incidents of intimidation by Petrus Ndlovu of ANC supporters.

The meeting is adjourned at 20h00 with all parties agreeing that production will resume at 07h00 on Monday 20 September 2021.

### **3. Concluding remarks**

Although the situation outlined in the case study above is purely fictional, as are all the characters portrayed, the applicability of the Act to the various incidents that took place during the strike is of importance. No two strikes are the same, and the situations presented will differ vastly, but, as long as the provisions of the Labour Relations Act 66 of 1995 are adhered to, all parties will receive the protection offered by the law. It is also important to note that strikes are conducive to the bargaining process, especially when they are unprotected, since they are often symptomatic of and in response to some underlying source of conflict within the organisation, which, if remedied, will make for a more productive workforce. Dismissal of striking workers participating in an unprotected strike should only be considered an option if the employment relationship has completely and irretrievably broken down, even though this remedy is sanctioned by the 1995 Act. Not only does dismissal fly in the face of goodwill bargaining and conciliation, but it is also expensive to recruit, select and train a new workforce.

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## **APPENDIX A**

**(These allegations apply to all four employees suspended, except that of smoking in the workplace, which applies to Moses Xhosa only)**

### **CLOTHING UNLIMITED (Pty) Ltd NOTICE OF DISCIPLINARY ENQUIRY**

No: *Moses Xhosa*  
Today's date: *13 September 2021*  
From: *Ayanda Ncube*  
Current time: *13h00*

Hereby notification is given that a disciplinary enquiry will be held with you on *14 September 2021* in my office at *11h30*.

Alleged offences include (give a brief account of incidents surrounding the alleged

misconduct):

- *assault;*
- *assault with a deadly weapon;*
- *intimidating and insulting a supervisor;*
- *using abusive language towards a supervisor; and*
- *smoking on the shop floor.*

Date of alleged offence: 13 September 2021

Please note that you have:

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*the right to a representative from within the Company:*

- *the right to call your own witnesses;*
- *the right to ask questions during the enquiry;*
- *the right to give evidence;*

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*the right to appeal against the penalty decided upon (if any);*

- *the right to plead in mitigation; and*
- *the right to an interpreter.*

If you have any uncertainty regarding your above-mentioned rights or application thereof, please contact me timeously. Non-attendance at this enquiry will be regarded as the refusal to obey an instruction and will also lead to the enquiry being held in your absence.

SIGNED:

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Supervisor/Manager

SIGNED:

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Alleged Offender

WITNESS:

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## APPENDIX B

### NOTICE TO STRIKING WORKERS 13h30 Monday 13 September 2021

We have been advised by the shop stewards and striking workers that they will refuse to continue work until certain conditions have been met by the Company, namely:

1. that the suspension of employees be withdrawn with immediate effect;
2. that the disciplinary action instituted against certain employees be withdrawn with immediate effect;
3. that discussions should commence immediately with management to discuss employee grievances;

4. that Petrus Ndlovu be dismissed as supervisor owing to intimidatory and racist practices towards Xhosas and ANC supporters; and
5. that a meeting be scheduled between employee representatives and Miranda Adonis, the company's Managing Director.

Discussions have been held with the shop stewards and the Company has advised as follows:

1. The Company has no intention of removing Petrus Ndlovu from his supervisory position; there have been no previous incidents to support these allegations, and he seems to perform well as supervisor, with production levels improving since his appointment.
2. The Company realises full well the political tensions prevailing in the country, but resolves to remain impartial at all times, recognising the factory as a place of work and not a political stamping ground.
3. The Company has followed the agreed procedure in the recognition agreement and has initiated disciplinary action against those employees it believes have participated in the assault and intimidation of Petrus Ndlovu. As a consequence thereof, the remainder of the striking employees have refused to resume work until the conditions mentioned above have been complied with by the Company.
4. Such refusal to continue or resume work is a breach of employees' contracts of employment and furthermore a breach of the recognition agreement that exists between the Company and the trade union and the provisions of the Labour Relations Act 66 of 1995.

Should employees remain in breach of their contracts of employment and the recognition agreement, the Company will have no option but to take serious disciplinary action against them, which could result in dismissal.

Employees are requested to resume their normal duties on 14 September 2021 at 07h00 and also to allow the Company to proceed with its disciplinary investigations without them attempting to obstruct the process by continued unprotected industrial action.

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## **APPENDIX C**

### **SECOND NOTICE TO STRIKING EMPLOYEES**

**13h30 Tuesday 14 September 2021**

Union officials and employee representatives indicated to management on 13 September 2021 that employees would resume their normal duties at precisely 07h00 today. Employees started their normal duties as agreed.

A meeting was held between management, Dan Mabena (a SANUTW representative), and employee representatives at 09h30 today to discuss the involvement of certain employees in unprotected industrial action on 13 September 2021.

Management indicated in this meeting that disciplinary enquiries against those employees who were allegedly involved in acts of intimidation on the morning of 13 September would proceed at 13h30 today. Those employees failed to attend these scheduled enquiries, and it was agreed that such enquiries would be rescheduled to Wednesday 15 September, to allow these employees to reconsider their positions.

Should investigations into this matter indicate that more employees were involved in this specific incident, then management will proceed with disciplinary action against these employees.

Management will furthermore institute disciplinary action against all those employees who were involved in the unprotected work stoppage on 13 September 2021. These enquiries will commence on 15 September 2021.

Certain employees have again refused to resume or to return to work until certain conditions have been met by the Company.

These conditions are:

1. that disciplinary action instituted against certain employees be withdrawn with immediate effect;
2. that discussions should commence with management to discuss grievances;
3. that Petrus Ndlovu be dismissed;
4. that a meeting be scheduled between employees and Miranda Adonis, the Managing Director of Clothing Unlimited (Pty) Ltd; and
5. that all employees involved in the unprotected work stoppage on 13 September 2021 be issued with notifications of disciplinary enquiries.

Such refusal to continue or to resume work is a breach of conditions of the recognition agreement which exists between the Company and the trade union and the provisions of the Labour Relations Act 66 of 1995.

Should employees remain in breach of their contracts of employment and the recognition agreement, the Company will have no option but to take serious disciplinary action against them, which may result in their dismissal.

Employees are requested, therefore, to resume their normal duties at 15h30 today and also allow the Company to proceed with its disciplinary investigations without them attempting to obstruct the process by continued unprotected industrial action. Failure to do so will force the Company to apply to the Labour Court for an interdict in terms of Section 68 of the Labour Relations Act 66 of 1995 restraining them from continuing their unprotected work stoppage.

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## APPENDIX D

### NOTICE OF DISMISSAL

To: *Moses Xhosa, Solomon Maisela, Neil Peterson and Lucky Ndebele*  
From: *Clothing Unlimited (Pty) Ltd*  
Date: *15 September 2021*

This notice serves to confirm that, owing to your failure to attend the rescheduled hearings to have been held at 13h00 today, the hearings were held in your absence, and you were found guilty on all counts. Dismissal from the Company is herewith immediately effective.

You will be able to receive your final pay from the Company on *Thursday 16 September* at *13h00*, and the Company will apply for withdrawal of your benefits from the pension fund on your behalf.

SIGNED:

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Supervisor/Manager

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## APPENDIX E

### THIRD NOTICE TO STRIKING EMPLOYEES



**09h30 16 September 2021**

Certain employees have been participating in an unprotected work stoppage since 07h00 this morning, and this after three other incidents of unprotected work stoppages have occurred since Monday 13 September 2021.

Several discussions have been held between management, the union and employee representatives since the start of the industrial action on Monday to discuss the work stoppages and industrial action employee grievances. These discussions have, however, been without success.

A meeting between management and employee representatives was also proposed to discuss employee grievances, but this did not transpire owing to the parties not agreeing that those employees not attending the meeting should return to work.

We are accordingly of the opinion that, while employees have the right to grievances, these should not be expressed through unprotected industrial action, but rather should be done through the channels determined by the recognition agreement and the Labour Relations Act 66 of 1995. As a result, the Company applied to the Labour Court for an interdict restraining employees from any further work stoppages in terms of Section 68 of the Labour Relations Act 66 of 1995. The meeting to discuss employee grievances will only commence with employee representatives once the following conditions have been met:

1. that employees will agree to abide by the grievance's procedures of the recognition agreement; and
2. that striking employees return to and resume their work unconditionally.

Management still reserves its right to institute disciplinary action against all those employees who were involved in the act of intimidation and assault on Petrus Ndlovu on Monday 13 September 2021, and against all those employees who have taken part in the unprotected work stoppage since Monday. Employees should now allow management to proceed with its enquiries and allow management to finalise the matter.

Certain employees have again refused to resume or return to work until such time as certain conditions have been met by the Company. These conditions are:

1. that the disciplinary action instituted against certain employees be withdrawn with immediate effect;
2. that discussions should commence with management to discuss employee grievances;
3. that Petrus Ndlovu be dismissed; and
4. that a meeting be scheduled between employees and Miranda Adonis, the Managing Director of Clothing Unlimited (Pty) Ltd.

Such refusal to continue or to resume work is a breach of conditions of the recognition agreement that exists between the company and the trade union, as well as the provisions of the Labour Relations Act.

Employees are requested to resume their normal duties at 11h00 today, or face dismissal.

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**APPENDIX F**

**CLOTHING UNLIMITED (Pty) Ltd**

**NOTICE OF DISCIPLINARY ENQUIRY**

To: *Strikers*

Today's date: 16 September 2021  
From: Ayanda Ncube  
Present time: 11h00

Hereby notification is given that a disciplinary enquiry will be held with you on 16 September 2021 in the Boardroom commencing at 13h00.

The brief description of the alleged offences is as follows:

- *breach of the procedures of the recognition agreement;*
- *breach of the contract of employment; and*
- *breach of the procedures of the Labour Relations Act 66 of 1995.*

Date of alleged offence: 13 to 16 September 2021.

Please note that you have:

- *the right to a representative from within the company;*
- *the right to ask questions during the inquiry;*
- *the right to give evidence;*
- *the right to appeal against the penalty decided upon (if any);*
- *the right to plead in mitigation; and*
- *the right to an interpreter.*

If you have any uncertainty regarding your above-mentioned rights or the application thereof, please contact me timeously. Non-attendance at this enquiry will be regarded as the refusal to obey an instruction and will also lead to the enquiry being held in your absence.

SIGNED:

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## **APPENDIX G**

### **NOTICE OF DISMISSAL**

To: *All striking employees*  
From: *Clothing Unlimited (Pty) Ltd*  
Date: *16 September 2021*

This notice serves to confirm that, owing to your failure to adhere to the ultimatum issued to you this morning and your refusal to attend the hearings scheduled for this afternoon, your dismissal from the company is herewith immediately effective.

You will be able to receive your final pay from the company on Friday 17 September 2021 at 13h00 and the company will apply for the withdrawal of your benefits from the pension fund on your behalf.

SIGNED:

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**APPENDIX H**

**MEMORANDUM**

To: *Clothing Unlimited (Pty) Ltd*  
From: *Dismissed employees*  
Date: *17 September 2021*  
Subject: *Dismissal of workers*

We hereby demand the following:

1. withdrawal of notices of dismissal;
2. the dropping of all allegations levelled against all employees;
3. removal of Ayanda Ncube in consultation with the union;
4. dismissal of Petrus Ndlovu; and
5. a meeting with Miranda Adonis, the Managing Director of Clothing Unlimited (Pty) Ltd to address all grievances on both sides.