



EMPLOYMENT

Allegations of Ethnic Discrimination Require Evidence: the Sagan Principle

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In 1979 science communicator and physicist Carl Sagan wrote in his book *Broca's Brain* that “Extraordinary claims require extraordinary evidence”, which is also known as the Sagan standard, and is an aphorism popularly used in a number of fields. Although not expressly mentioned in the judgement, the principle seems to have been applied by the CCMA's ruling in *Future of South African Workers Union obo Zulu and Others v ArcelorMittal South Africa* [(2025) 34 CCMA 6.12.1] which offers timely guidance on the evidentiary standard required for proving unfair discrimination under the Employment Equity Act (EEA).

Thirty applicants, predominantly of Zulu ethnicity and employed by labour broker Real Tree, alleged that ArcelorMittal had discriminated against them based on ethnicity, language, conscience, and belief, after they were not appointed to permanent positions despite acting in those roles for over a year. Their claim centred around a supposed promise of permanent employment; refusal to work during a strike due to “conscience”; and alleged tribalistic remarks made by some managers.

The employer, however, submitted uncontested evidence showing that over 200 candidates applied and all were interviewed; selection was based on interview performance, not tribal or political affiliations. Crucially, documentary evidence showed that Zulus (31 in total) were among those hired.

The Commissioner rejected the discrimination claim, finding no credible or documentary proof of a guarantee of appointment. Additionally, there was no evidence that applicants had not been denied a fair opportunity to compete; ethnicity played no role in the outcomes, particularly as some Zulu applicants who had also refused to work during the strike were appointed, and inappropriate remarks allegedly made by individuals were not linked to actual hiring decisions and did not reflect organisational policy.

On the issue of “conscience,” the applicants’ own testimony revealed their refusal to work was due to fear of violence, not belief or religious principle.

As always, the workplace is a balancing ground of competing claims and interests. Fairness is assessed to all parties. Claims of discrimination must be supported by direct evidence that links the alleged ground (ethnicity, conscience, etc.) to the employer’s action. Differentiation in hiring, even where prior acting experience exists, is lawful if conducted in line with transparent and objective processes. Individual misconduct or inappropriate comments by employees do not automatically impute liability to the employer unless condoned or systemic.

Employees should be aware that allegations are easy to make; proving them with corroborating evidence in a legal forum is another matter entirely.



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