



EMPLOYMENT

Automatic Termination Clauses Do Not Trump the LRA: The Biyana Case

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and Isabella Keeves – Candidate Attorney

The CCMA's recent decision in *Biyana v National Consumer Commission* (2025) 34 CCMA 7.17.2 offers a critical reminder for employers relying on so-called automatic termination clauses in employment contracts: the lesson to be learnt is that no contractual provision can override the Labour Relations Act's (LRA) requirement of fairness when terminating an employment relationship.

In this case, the National Consumer Commission (NCC) summarily ended Mr Biyana's employment as a Senior Legal Advisor after learning he had been struck off the roll of attorneys — a fact he has also failed to disclose. The NCC relied on a clause in Biyana's employment contract, which provided for automatic termination at the employee's "instance and fault" if a material misrepresentation was discovered.

The employer's position was that the contract had effectively self-terminated, and therefore, no disciplinary process — nor the procedural safeguards prescribed in the LRA — applied. However, the Commissioner found otherwise.

However, the LRA takes precedence over the contract; if not contracting parties could simply agree to contract out of the protections afforded to employees by the LRA. As such, in this case, the key legal issue was whether a termination effected under a contractual "automatic" clause bypasses the statutory definition of dismissal and the procedural obligations contained in the LRA. The Commissioner held that while contractual lawfulness and statutory fairness are separate questions, an employer cannot avoid compliance with section 188 of the LRA, which requires that every dismissal be based on a fair reason, and effected in accordance with a fair procedure.

Even where a contract is terminated on the basis of repudiation or breach, an overt act by the employer to end the employment relationship constitutes a dismissal. The LRA's definition of dismissal (section 186(1)(a)) encompasses terminations "with or without notice," and makes no exception for automatic clauses.

As such, despite the employer's belief that Biyana's omission invalidated his employment contract, the CCMA found that he was dismissed and thus entitled to the protections of the LRA.

The CCMA agreed that Biyana had been dishonest, intentionally omitting the fact of his disbarment and misleading the NCC by excluding his admission certificate in job applications. His conduct went to the heart of the trust relationship, especially given his seniority and legal role. However, the NCC did not follow any disciplinary procedure, nor did it provide Biyana with an opportunity to be heard beyond a written submission. This rendered the dismissal procedurally unfair, despite the justifiable reason.

Given the seriousness of the misconduct, the Commissioner awarded only one week's compensation, recognising the procedural flaw, but limiting the remedy in light of the employee's culpability.

A key takeaway for employers is that no automatic clause in a contract of employment can displace the statutory protections under the LRA. The Code of Good Practice: Dismissal applies regardless of whether the termination is based on breach or misconduct. Employers must treat material non-disclosure or fraud through the lens of disciplinary process, not just contract enforcement, and procedural fairness — even in seemingly clear-cut cases — is not optional.

This case reinforces that form cannot triumph over substance in labour law. While contracts may contain clauses for summary termination, dismissal is ultimately a statutory construct, and employers must always comply with both the form and spirit of the LRA.



Bradley Workman-Davies

Director

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