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EMPLOYMENT

Can you terminate an employee's fixed-term contract by relying on the termination provision of a contract of employment?

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ISSUE

Can an employer rely on the termination provision of an employment contract to terminate an employee's fixed-term contract without reason and without a hearing?

SUMMARY

The termination of a fixed-term contract before its expiry constitutes a repudiation, which amounts to a dismissal. The dismissal must thus be effected in a procedurally and substantively fair manner.

COURT'S DECISION

In the case of *Keith-Bandath v Rhodes University* [2018] 4 BALR 377 (CCMA), the Commission for Conciliation, Mediation and Arbitration ("CCMA") had to determine whether the employee, Rasheed Keith-Bandath, was dismissed by the employer, Rhodes University. The employee was employed by Rhodes University on a fixed-term contract. The employer terminated the employee's contract, based on a clause of the employment contract that provides that the temporary appointment shall be terminable by two calendar weeks' written notice. The employee argued that there was no procedure followed before his termination and no reason was given for the termination. The employee submitted that the right not to be unfairly dismissed cannot be negated by a fixed-term contract. The employee sought payment of the remainder of his contract period as relief.

The employer relied on the case of *Lottering and others v Stellenbosch Municipality* [2010] 12 BLLR 1306 (LC) to submit that the employer was entitled to terminate the contract on the basis of the contract itself. The Commissioner noted that the *Lottering* case was distinct, as it concerned the resignation of employees who were employed under a fixed-term contract by the municipality.

The employee relied on the case of *Buthelezi v Municipal Demarcation Board* (2004) 25 ILJ 2317 (LAC), wherein the Labour Appeal Court held that it was unfair for the employer to cancel a fixed term contract unilaterally during its currency in the absence of a material breach of the contract. The Labour Appeal Court concluded that the termination of the contract in these circumstances was unfair and constituted an unfair dismissal. The Commissioner held that the authority in *Buthelezi* was applicable to the current case. The Commissioner concluded that the employee was dismissed and that his dismissal was procedurally and substantively unfair. The Commissioner ordered the employer to pay the employee the salary for the remainder of his contract period.

IMPORTANCE OF THIS CASE

An employer may not rely on a termination clause in a fixed-term employment contract to justify the termination of an employee, as the termination will constitute an unfair dismissal. The dismissal must be procedurally and substantively fair.



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