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EMPLOYMENT

How binding is a CCMA settlement agreement?

24 April 2013 *2 min read*

Written settlement agreement at the CCMA

If an employee enters into a written settlement agreement at the Commission for Conciliation, Mediation and Arbitration ("CCMA") on the advice of her representative, can she subsequently escape the agreement on the basis that she was duped into doing so by her representative? Can she do so if she entered the agreement under duress or as a result of the undue influence of her representative?

Ordinary laws of contract

In Ulster v the Standard Bank of South Africa Ltd (C 647/2012) [2013] ZALCCT 3 (15 February 2013), the Labour Court was faced with this question. It held that the ordinary laws of contract will apply. Therefore a settlement agreement can only be set aside if it is successfully shown that the employee was placed under the type of duress required in common law. In this case, the employee was a bank manager with 30 years' experience, she was educated and well-informed.

It was clear she understood the nature of contracts. She understood the nature of the proceedings and agreed to sign the settlement agreement. In the circumstances, she entered into the agreement with open eyes, fully aware of its consequences, and should be bound by the terms thereof.

Common law position on the effect of concluding an agreement

Whilst this decision confirms the common law position on the effect of concluding an agreement, it does highlight that a settlement agreement might not stand up to scrutiny if the employee can show that he or she did not understand the legal significance of signing such an agreement, was not well informed, educated or experienced in such matters. A way to avoid this result would be to ensure that the terms of a settlement agreement are explained to the employee by the Commissioner before he or she signs the agreement.

It may even be advisable to have the agreement translated for the employee if his or her first language is different to that in which the agreement is drafted.

Read more on the CCMA pronounces on mandatory vaccination policy.

@werksmans