



EMPLOYMENT

Resign First, Complain Later? The LAC Draws the Line on Constructive Dismissal

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Constructive dismissal is not an escape route for employees who are dissatisfied with their working environment, nor does every workplace grievance entitle an employee to resign and demand compensation. The Labour Appeal Court's recent judgment in *Royale Energy (Pty) Ltd v Commission for Conciliation, Mediation & Arbitration & others* (2026) 47 ILJ 2419 (LAC) provides a welcome reminder that intolerability is a high threshold, and that employers must be afforded a reasonable opportunity to address workplace complaints before employees resort to resignation.

The employee, a senior manager at Royale Energy, had experienced a difficult relationship with the company's group chief executive officer over several years. Following an incident in August 2020, during which the CEO allegedly behaved aggressively and threateningly towards her, she lodged a formal grievance and requested the board's intervention. The employer responded by appointing an external investigator and proposing alternative reporting arrangements while the investigation continued. The employee, however, rejected the

proposed arrangements, sought a mutual separation package exceeding R4 million and, when this was declined, demanded the investigation report.

Less than a month after lodging her grievance, and before the investigation had been completed, she resigned and referred a constructive dismissal dispute to the CCMA. The commissioner found in her favour, a decision subsequently upheld by the Labour Court, which awarded compensation of approximately R1.15 million.

The Labour Appeal Court took a very different view and held that intolerability is not simply unhappiness. Section 186(1)(e) of the Labour Relations Act provides that constructive dismissal occurs where an employee terminates employment because the employer has made continued employment intolerable. The Court reaffirmed that this requires an objective assessment. It is insufficient for an employee merely to believe that the workplace has become unbearable. The employer's conduct must objectively render continued employment intolerable.

Importantly, the Court distinguished between an unpleasant or difficult working relationship and circumstances genuinely leaving an employee with no reasonable alternative but to resign. The employee had continued working despite several earlier incidents involving the CEO, none of which had been formally escalated to the board. When she eventually complained, the employer took steps to address her concerns. These facts were inconsistent with her contention that continued employment had become objectively intolerable.

Perhaps the most significant aspect of the judgment is the Court's treatment of the employer's response to the grievance. The employee had expressly requested intervention and indicated her willingness to participate in a process aimed at resolving the dispute. Yet, when the employer initiated precisely such a process, she resigned before allowing it to run its course. The Court was particularly critical of the employee's attempt to use the ongoing remedial process itself as evidence of intolerability. An employer cannot reasonably be expected to investigate allegations spanning several years, consider the competing versions and implement appropriate corrective measures within an arbitrarily short period. Nor can an employee invoke a grievance procedure, refuse to allow it to reach its conclusion, and then rely on the absence of an immediate resolution as justification for resignation.

The Court also rejected the employee's reliance on anticipated future misconduct. Constructive dismissal cannot be founded on speculation that working conditions might become intolerable at some future point – the employer must be given a fair opportunity to resolve the complaint. Employers are entitled to investigate complaints, implement interim protective measures and explore workable solutions without automatically exposing themselves to constructive dismissal claims. This does not excuse genuine workplace bullying or permit employers to ignore legitimate grievances. It does, however, recognise that a properly constituted remedial process requires time and cooperation. The Labour Appeal Court found that no constructive dismissal had occurred.

For employers, the message is clear. A prompt, documented and reasonable response to workplace grievances can provide a powerful defence against constructive dismissal claims. For employees, the lesson is equally important: a resignation does not become a dismissal merely because the employee is unhappy with the employer's response. The law protects employees against genuinely intolerable working conditions. It does not guarantee an immediate or preferred outcome to every workplace complaint.



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