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EMPLOYMENT

Resignation terminates contract of employment and cannot be withdrawn, unless employer consents thereto

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Withdrawal of an employee's resignation

Whether the employer consented to the withdrawal of an employee's resignation or not.

Summary

Once an employee has resigned the employee cannot withdraw the resignation unless the employer consents thereto. This consent must be given prior to the expiry of the employee's notice period when the resignation becomes effective, failing which a fresh agreement of employment will have to be concluded.

Facts

This was the issue considered by the Labour Court ("**LC**") in the case of *Monareng v DR J S Moroka Municipality* [2022] 43 IJL 1855 (LC). This matter related to the resignation of an employee, which resignation the employee subsequently endeavoured to withdraw.

Initially, the employer did not consent to the withdrawal of the resignation. Just over a month later (and after the expiry of the employee's notice period) the employer consented to the withdrawal of the resignation. The Court determined that consent could not be granted after the termination of the employee's notice period.

The employee was employed as a deputy financial officer of the Municipality. The Municipality was placed under administration in terms of section 139 of the **Constitution of the Republic of South Africa, 1996**, which lead to the appointment of one Mr M as an administrator, bestowing on him the powers of the municipal manager.

The employee resigned with immediate effect due to ill health on 1 April 2021 in a letter addressed to Mr M. Thereafter, on 15 April 2021, the employee withdrew his resignation. Mr M responded on 15 April 2021 and advised the employee that his withdrawal was not accepted.

On 11 May 2021 the municipality resolved to ratify the appointment of another municipal manager for the period 6 – 11 May 2021 (Mr B) and to appoint Mr M as acting municipal manager from 12 May 2021. On 10 May 2021 Mr B advised the employee that he accepted the withdrawal of the employee's resignation.

The employee then argued that Mr M was not the person to which his withdrawal of the resignation should have been communicated because he was not the municipal manager (representing the employer) at the time.

Labour Court Findings – resignation is a voluntary and unilateral act

The LC held that Mr M had the requisite *locus standi* as the municipal manager and was therefore empowered to reject the employee's attempt to withdraw his resignation.

The LC further held that resignation is a voluntary and unilateral act that ends the employment relationship.

The LC also held that anyone who is superior to an employee is a representative of an employer and can receive a resignation. Furthermore, the Court held that resignation takes effect once communicated to an employer and it is incapable of being withdrawn unless the employer consents thereto.

The LC found that, in this case, the consent for the withdrawal of the employee's resignation was granted after the expiry of his notice period. He was therefore no longer employed. As such, he should have sought to be re-hired or re-employed. The LC found that a withdrawal of a resignation must be made during the notice period in order for it to be consented to.

The LC found that the employee had resigned effectively, and the resignation was incapable of being withdrawn. There is no legal requirement that resignation must be accepted. A contract of employment can only be brought back into life the same way it was created, which is through offer and acceptance.

Importance of Judgment

This case reaffirms the principle that resignation takes effect once communicated to the employer and is incapable of being withdrawn unless the employer consents thereto. Such a withdrawal of a resignation must be made during the notice period in order to be consented to.



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