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EMPLOYMENT

RESIGNATION WITH IMMEDIATE EFFECT – A TALE OF CONFUSION

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It is trite law that certain prescribed periods of notice become applicable upon termination of any employment relationship between an employer and an employee. These periods are governed by statute and the individual employment contract. However, notwithstanding this, there is uncertainty in our labour law about the position, where an employee resigns with immediate effect in the face of a pending disciplinary enquiry. Particularly, whether the employer retains the right to continue with the disciplinary enquiry post the resignation with immediate effect. This is a matter of debate in our labour jurisprudence, which is occasioned by conflicting judgments by the Labour Court. We deal with these judgments herein below.

In *Mtati v KPMG Services (Pty) Ltd* [2017] 3 BLLR 315 (LC), the Court held that where an employee resigns with immediate effect, the employment relationship ceases and the contract of employment terminates. The employer loses its right to proceed with a disciplinary enquiry against that employee. The Court further held that the employer lacked jurisdiction to institute a disciplinary inquiry over the employee when she tendered the resignation with immediate effect and the continuation with the disciplinary inquiry would be null and void. The Court went on to find that, where an employee resigns with a notice period, the employment relationship still subsists therefore the employer is still entitled to discipline such an employee.

In *Coetzee v Zeitz MOCCA Foundation Trust and Others* (2018) 39 ILJ 2529 LC, the Court held that, on the facts before it, the employer did not accept the employee's resignation with immediate effect, thus the employment relationship did not terminate. The Court found resignation takes full effect at the end of the notice period. Resigning with immediate effect constituted a breach of the employment contract. The Court went on to find that an employer is not bound to accept a resignation with immediate effect. The employer has two avenues when it is in receipt of a resignation by an employee – it may hold the employee bound by the contractual notice, alternatively, it may accept the resignation, cancel the contract and thereafter claim damages.

In the latest case of *Tristyn Naidoo and Sedayshum Naidu v Standard Bank SA Ltd and SBG Securitites (Pty) Ltd* (Case No: J1177/190), the employees were subjected to a disciplinary inquiry after certain allegations of misconduct were levelled against them. However, before the disciplinary inquiry could be commenced with, the employees tendered their resignation with immediate effect. The employer refused to accept their resignations and sought to hold the employees bound by the notice periods in their employment contracts, in light of the *Coetzee* judgment. The employer intended to continue the disciplinary inquiry against the employees. The employees thereafter approached the Labour Court on an urgent basis seeking an order preventing the employer from subjecting them to a disciplinary inquiry.

The Court held that resignation with immediate effect terminates the employment relationship, thus an employee need not serve a notice period and the employer cannot pursue any disciplinary inquiry in these circumstances. The Court also found that an employer may approach a Court for an order for specific performance if it wishes to hold an employee bound to the notice period. It is noteworthy to mention that the Court, in coming to its decision, distinguished between the conflicting authority of *Mtati* and *Coetzee* and favoured the reasoning of the former judgment.

It goes without saying that the above judgments from the same Court bring about uncertainty and fluidity regarding the effect of resignation with immediate effect on a pending disciplinary enquiry. Until the Labour Appeal Court pronounces on this issue, it will remain a contentious debate at our Labour Court.



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