



LEGAL UPDATE

Steyn V Business Connexion Group Ltd: Case Summary

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The recent judgement of *Steyn v Business Connexion Group Ltd* ("**Steyn**") has provided fresh insight into the interpretation and practical consequences of a business transfer carried out in terms of section 197 of the Labour Relations Act 66 of 1995 ("**LRA**").^[1]

The *Steyn* dispute centred around an employee who was transferred from her employer’s company, UCS, to her employer’s holding company, BCX, in terms of section 197 of the LRA.

UCS was one of three subsidiary companies who transferred their employees to BCX. The facts are that one subsidiary company had a retirement age set at 65 years, however UCS and BCX had both stipulated retirement to occur at 60 years. In light of the varying terms, BCX had conveyed that it was contemplating making the terms of all of the employment contracts uniform.

At the time that the employee was transferred, her employment contract with UCS stated that her retirement age would be 60 years. When the employee joined BCX, she was offered a new employment contract, but refused to enter into it, taking issue with some of the terms.

A short while after the employee reached the age of 60, she sent an email to an employee of BCX to submit that she was of the understanding that BCX’s retirement age was 65 years. The response to this email was confirmation that only employees who had agreed to be employed under new terms were subject to retirement at 65 years.

The employee was thereafter offered a fixed-term contract, which she also refused. She responded to the offer with an assertion that she is permanently employed, and expects to remain that way, and will not assent to terms which would vary that position.

The employee was dismissed just shy of three months after she turned 60, whereupon she referred a dispute to the CCMA which could not be resolved.

The matter was referred to the Labour Court, where the employee relied on section 187(1)(f) of the LRA and argued that her dismissal had been based on her age and, as a result, was automatically unfair. BCX in turn relied on section 187(2), citing that their dismissal based on her age was justifiable for the reason that the employee had reached the designated age of retirement.

The court considered the respective parties’ arguments and found in accordance with the below:

Section 197 of the LRA exists to provide for the protection of employees where there is a transfer of a business to another entity. The section provides that the entity acquiring the business, also acquires the employees who worked at said business, and automatically steps into the shoes of the previous employer. It also provides that the ‘new’ employer cannot employ the transferring employees on terms that are less favourable than the terms they were employed on.

This serves to ensure that no disruption is experienced in the employment of the affected employees, and that employees are protected from being mistreated by a new employer.

However, what is important to note is that when an employee transfers in terms of section 197, in the absence of entering into a new employment contract which revises their terms of employment, the employee will continue to be employed on the terms they were employed on under the previous employer. This finding is in accordance with precedent set and relied upon in *Experian South Africa (Pty) Ltd v Haynes and Another*, which specifically found that a section 197 transfer is only relevant to the employee by virtue of their identity, and not the substance of their employment.^[2]

The implication of the above is that if the employee does not sign a new employment contract after their transfer they cannot be employed on less favourable terms, but they also cannot be employed on *more* favourable terms either. Nothing occurred which warranted the variation of their employment terms, and in the absence of such an occurrence, the employee’s terms and conditions of employment remain the same as they were prior to their transfer.

The employee in *Steyn* attempted to argue that she ought to have had her retirement age automatically harmonised with that of the other employees as a matter of fairness and policy. However, BCX had not yet formalised the implementation of the unification of their employment terms; as such, and this in combination with the fact that the employee had refused to enter into a new agreement, meant that there was no reason to vary the employee’s terms of employment.

Furthermore, if BCX had varied her terms to be in line with that of other employees, it would have amounted to a unilateral variation of her employment terms an act which is prohibited and would likely fall within the scope of application of section 64(4) of the LRA, even though the terms would be to her benefit.

The court ultimately found the employee’s claim to have no weight in law, and it was dismissed, with the court even adding a cost order against the employee for accusing her employer of discrimination an act which the court strongly frowned upon.

An important take-away from the *Steyn* judgement is that employers need to be aware of the terms that were agreed upon and entered into between the previous employers and the employees being acquired by virtue of a section 197 transfer. It must be kept in mind that these terms may come with their own unique consequences and do not necessarily automatically assimilate with the terms that the new employer already has in place with their existing employees. All terms of employment that existed before transfer will subsist after transfer, and any desire to change those previously established terms and conditions must be reduced to writing and assented to by both employer and employee as active participants.

[1] [2025] 5 BLLR 534 (LC).

[2] [2012] JOL 29271 (GSJ) – Ed.



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