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EMPLOYMENT

The pitfalls of resignation

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ISSUE

If an employee resigns, then decides to retract her resignation but her employer refuses to allow her to do so, has the employer, in so doing, dismissed the employee?

COURT'S DECISION

In the case of *Bawsi Agricultural Workers Union of South Africa obo Hansen/Standard Bank of South Africa Ltd (2017) 26 CCMA 7.1.7* the Commission for Conciliation, Mediation and Arbitration ("CCMA") had to consider this issue.

Najwa Hansen (the "employee") was employed as a Customer Care Officer by the Standard Bank of South Africa Ltd ("employer"). The employee's main place of work was the Epping Industria Branch. However, in order to supplement her income, the employee would often work on Sunday at the employer's Promenade Branch. This was acceptable up until January 2016 because both branches belonged in the same cluster.

However, due to a restructuring exercise these two branches no longer formed part of the same cluster. The employee was then instructed not to work on Sunday's at the Promenade Branch. Despite this the employee continued working at the Promenade Branch on Sundays.

When the employer discovered this, it instituted disciplinary proceedings against the employee, at which point the employee elected to resign with immediate effect. Upon tendering her resignation the employer refused to accept her *immediate* resignation noting that she was required to work out her notice period. The employee proceeded to work out her notice period. She also elected to participate in the disciplinary enquiry. The chairperson of the disciplinary enquiry found the employee not guilty of the charges brought against her. The employer then advised the employee that her notice period of thirty days would expire the following day. In response, the employee sought to retract her resignation, which retraction was rejected by the employer.

The employee referred an unfair dismissal dispute to the CCMA, arguing that the employer did not accept her immediate resignation (ie by requiring her to work out the notice period) and that in the circumstances she had been unfairly dismissed. The Commissioner was called upon to decide whether an unfair dismissal had indeed occurred.

FINDINGS

The Commissioner noted that the only factual dispute between the parties was whether the employer had accepted the resignation, but subject to the condition that a 30 day notice period would apply.

The Commissioner relied on the decision of ***African National Congress v Municipal Manager, George Local Municipality and others*** [2010] 3 BLLR 221 (SCA) wherein it was held that "resignation must be effective immediately or from a specified date, and being a unilateral legal act, it does not need to be accepted by the intended recipient to be effected."

When the employee tendered her resignation it did not matter that the employer sought to place a condition on the resignation, or whether it accepted the resignation or not at all. Resignation is a unilateral act. The employee could have resigned immediately, left the employer's premises and faced the consequence of the employer trying to recover an amount equivalent to her notice pay. Rather, the employee

worked out her notice period. This, however, did not mean that her resignation was no longer effective, it simply meant it would come into effect at the end of the notice period.

In so far as the employee's attempt to retract her resignation is concerned, the Commissioner had regard to the case of ***Lottering and others v Stellenbosch Municipality*** (2010) 31 ILJ 2923 (LC) [also reported at [2010] 12 BLLR 1306 (LC) – Ed], wherein it was held that the withdrawal of resignation cannot have any effect unless the employer consents to such withdrawal.

The Commissioner therefore found that no dismissal had taken place and that the Applicant had no claim as a result.

IMPORTANCE

This case is a caution to employees who wish to tender their resignation. Once the resignation has been tendered the employee's employment will terminate. Should the employee wish to retract their resignation the employer will have to consent.



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