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Uthingo Management (Pty) Ltd v Shear NO & others[2009] 6 BLLR 590 (LC)

Commission for Conciliation, Mediation and Arbitration – Arbitration award – Review – Commissioner finding that employees were dismissed because employer terminated contracts before date stipulated by employees – Award exceeding commissioner’s power as termination not constituting dismissal.

Dismissal – Proof of – Employees tendering notice effective from stipulated date but employer terminating contract a calendar month after resignations tendered – Termination of notice before date stipulated by employees not constituting dismissal.

Resignation – When effective – Resignation **effective and binding once clear notice has been accepted** – Termination before effective date stipulated by employees not constituting dismissal.

Summary

The respondent employees both resigned from the applicant company’s employ shortly before its licence to operate the national lottery expired. At the time, the company had concluded contracts with its staff which stipulated various notice periods according to their length of service. Both respondent employees were required to give four weeks’ notice. They tendered their resignation on, respectively, 19 and 26 February 2007, effective from 31 March 2007. The company terminated their contracts a month after each employee gave notice – ie on 19 and 26 March 2007. The employees referred a dispute to the CCMA, contending that they had been unfairly dismissed.

The company argued that, even if the resignations took effect on 31 March 2007, the employees had failed to prove that they had been dismissed. The commissioner found that the only purpose of the notices was to advise the company of their intention to leave its employ, and that the termination of the contracts before the stipulated dates was premature and constituted a dismissal.

The **Court noted** that employment contracts may be terminated by either employer or employee by giving written notice. The commissioner had failed to grasp that once employees tender their resignations, their employers may either allow them to render service for the remainder of the notice period, or pay them off in lieu of notice. **The test for a resignation is whether the employee has either by words or conduct evinced a clear intention not to continue with the contract.** Similarly, the acceptance of the notice must be clear and unambiguous.

The Court found that both employees’ resignation letters and the company’s acceptance thereof were clear and unambiguous. That the company may have misinterpreted the contract by regarding the notice period as a calendar month did not release the employee’s from the effect of the acceptance of their resignations by their employer. Since neither employee had been dismissed, the commissioner exceeded his powers by assuming jurisdiction.

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