

Financial Solutions for
Business Owners



CONTRACTING OUT OF THE LABOUR RELATIONS ACT

Imagine a situation where an employer does not have a job vacancy, but agrees to accommodate a person as a favour. The person is employed with the clear understanding that if things do not work out, the contract may be terminated without the employee having recourse to the remedies afforded by the Labour Relations Act. Can this be done?

Employers should be well aware that it is impermissible to exploit desperate job seekers by employing them on any basis where basic conditions of employment are breached, such as offering them less than the minimum wage or requiring from employees to work hours that exceed the maximum allowed in terms of the relevant legislation. But what about a situation where there is clearly no exploitation, such as where the employer is willing to provide someone with a job opportunity out of the goodness of his heart - will that be viewed differently?

In the case of *Trio Glass t/a The Glass Group v Molapo NO & others (2103) 34 ILJ 2662 (LC)*, the owner of a small business was approached by a person who 'begged for a job'. He did not have any vacancy, but apparently took pity on her and decided to provide her with an opportunity to work for him. However, it was made clear that, if things did not work out, the employment relationship could be ended and that they would part ways amicably. As things turned out, the employer was not happy with her performance and told her to leave on the basis that they had agreed to. The employee decided to refer the matter to the Commission for Conciliation, Mediation and Arbitration (CCMA).

The CCMA had to address two questions: Firstly, had there been a dismissal (considering the agreement between the parties)? Secondly, if there had been a dismissal, was it unfair? The CCMA found that she had indeed been dismissed and that the dismissal had been procedurally and substantively unfair. The employer was ordered to reinstate her retrospectively. Understandably disillusioned by the outcome, the employer sought to take the matter on review to the Labour Court. The Labour Court agreed with the CCMA that there had been an unfair dismissal, but found that the employment relationship had broken down irreparably. Instead of having to reinstate her, the employer was ordered to pay compensation equal to six months' remuneration.

While the outcome will leave the cynics with much to talk about, the lesson is clear: One may not contract out of the Labour Relations Act.

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www.labourwise.co.za is an on-line labour relations service aimed at assisting employers with the implementation of effective labour relations. They can be contacted via the website or info@labourwise.co.za.