

Financial Solutions for
Business Owners



Early termination of fixed-term contract

When employers want to terminate a fixed-term contract before the expiry date, it would seem to make sense that this could be done, as long as they pay the employee for the full term. However, a recent Labour Court case has highlighted the fact that premature termination of employment may amount to an unfair dismissal. This means that employers may be held liable to pay compensation in addition to the amount paid out in terms of the contract.

The premature termination of a fixed-term contract amounts to a breach of contract, unless the contract specifically makes provision for earlier termination. In terms of our common law the damages that an employee is able to claim for breach of contract, is limited to the amount still due for the remainder of the period of the contract. On the face of it, an employee would not be able to claim anything more if an employer terminated employment before the fixed term has expired. However, this illusion has been shattered by the more recent Labour Court case of ***PSA obo Mbiza v Office of the Presidency and others (2014) 3 BLLR 275 (LC)***.

The ***Mbiza case*** dealt with the premature termination of the fixed-term contract of Mr Mbiza, who was employed as a housekeeping manager in the residence of the Deputy President, Ms Phumzile Mlambo-Ngcuka. The contract of employment was supposed to come to an end two months after the end of Ms Mlambo-Ngcuka's term of office. However, when Mlambo-Ngcuka resigned on 24 September 2008, Mbiza had already been advised that his contract would be extended until 31 July 2009. Mbiza's contract was nevertheless terminated early and he left in January 2009. He was informed that his salary would be paid until 31 July 2009. Mbiza disputed this termination on the basis of an alleged unfair dismissal.

At the arbitration hearing the reason for the early termination was the alleged incompatibility between the new Deputy President, Ms Baleka Mbete, and Mr Mbiza. The arbitrator found that the dismissal was for a fair reason, but that it was procedurally unfair. He ordered the employer to pay the employee compensation equivalent to three months' remuneration for the procedural unfairness. Mr Mbiza was not happy with the outcome and approached the Labour Court. The judge in the Labour Court pointed out that there was no evidence of incompatibility and found that, in addition to a being procedurally unfair, the dismissal had not been for a fair reason.

In considering what compensation the employee should be entitled to, the judge referred to Section 195 of the Labour Relations Act and noted that *"compensation was in addition to, and not a substitute for, any other amount to which the employee is entitled in terms of any law, collective agreement or contract of employment"*. In addition to the fact that Mbiza had received several months' pay without having to work, as well as an amount equal to three months' compensation for procedural unfairness, the judge decided to award a further three months' remuneration as compensation for the dismissal having not been for a fair reason (substantive unfairness). In coming to this amount the judge

took into account that Mbiza's dignity and the freedom to engage in productive work had been impaired by the unfairness of his dismissal.

The lesson to learn from this is that there are no short cuts in terminating fixed-term employment contracts. In addition to any damages that may be payable for breach of contract, the CCMA or Labour Court may award additional compensation on the basis that the termination was procedurally and substantively unfair.

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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.