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For Business Owners



DISMISSAL FOR REFUSING TO SIGN A CONTRACT

Employers are often at a loss when an employee refuses to sign a contract of employment. Can the employee be disciplined or dismissed? What other measures are available to the employer?

One of the most common mistakes made by employers is to appoint a person without having agreed on all the terms and conditions of employment. When the employee is subsequently required to sign a contract of employment, the employee refuses or fails to sign the contract. This may be due to some misunderstanding or unhappiness with regard to particular provisions in the contract.

In the case of *Johannes Kgotso Mocheke vs Powa Props (Pty) Ltd*, the employee, Mr Mocheke, was presented with a contract of employment after 7 years' employment as a cleaner. He refused to sign it for reasons that were not entirely clear. After having ignored two subsequent written warnings to sign the contract of employment, he was dismissed. In the dismissal letter, the employer expressed the view that Mr Mocheke had been employed illegally. The Commission for Conciliation, Mediation and Arbitration (CCMA) pointed out that, firstly, the absence of a written agreement did not nullify the verbal agreement of employment and, secondly, the relationship existing between them was not illegal. As the dismissal had been for an invalid reason, it was substantively unfair. Mr Mocheke was awarded twelve months' remuneration as compensation.

The more recent CCMA case of *Mahlangu vs. Footballers for Life (Pty) Ltd* had a different outcome. After concerns expressed by a sponsor for funding a private company, it was decided to convert the organisation to a Non-Government Organization (NGO). New contracts between the NGO and all coaches were drafted. Mahlangu refused to sign despite various requests and failed to respond and an invitation to raise any concerns. He was given notice of a disciplinary hearing for raising to carry out an instruction and for insubordination, but failed to arrive without giving reasons. Mahlangu was found guilty and dismissed in his absence. In this case the Commissioner had no hesitation in finding that the dismissal had been procedurally and substantively fair.

What should an employer do when an employee refuses to sign a contract of employment? Misunderstanding and poor communication are often the reasons for an employee's reluctance to sign a contract. It is therefore important to explain to the employee that it is to the benefit of both parties to have a written contract of employment. The provisions of the contract should be explained to the employee and the parties must establish whether there are any areas of disagreement. If there are no areas of disagreement and the employee still refuses to sign the contract, it serves little purpose to attempt to compel the employee to sign unless there is a good operational reason why there should be signed contract of employment.

The Basic Conditions of Employment Act does not require the parties to enter into a written contract of employment. It simply requires the employer to supply the employee with written particulars of employment and it provides that certain items must be included in such particulars. The employer would comply with the provisions of the Act if it provides the employee with a copy of the draft contract with a note that the employee has refused to sign it.

A signed written contract does however have definite advantages. It brings certainty and reduces the likelihood of disputes. There might also be provisions that are important to the employer, e.g. confidentiality or a restraint of trade undertaking. The enforcement of such provisions would be difficult in the absence of a signed contract. If the employee refuses to agree in writing with contractual provisions that are reasonable

and important from an operational point of view, the employer may take more stringent measures to have the contract signed. Professional advice and assistance are advised in these circumstances.

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