

South-African Worker Who Quit Before Being Disciplined

The Labour Appeal Court (LAC) has had to once again deal with the issue of a resignation with immediate effect and disciplinary action, says law firm Webber Wentzel.

A recent case centred around an employee who was charged with having cashed a cheque without following company procedures.

It later transpired that the cashed cheque was fraudulent which caused the employer to be about R30,000 out of pocket.

“On 4 June 2018, the employee was given notice to attend a disciplinary hearing. On the same day, the employee handed a letter of resignation to her supervisor, effective with immediately,” Webber Wentzel said.

“The supervisor accepted the letter and informed the employee that she would speak to the Human Resources (HR) department as she was uncertain as to what should be done about the letter.”

After consulting with the HR department, the supervisor informed the employee that they were required to serve a four-week notice period – as per the employment contract. The disciplinary hearing was scheduled for 11 June 2018 which was during the employee’s notice period.

“The employee took the view that her resignation with immediate effect ended the employment relationship and that the employer was not entitled to proceed with the disciplinary hearing. The employer elected to continue with the disciplinary hearing.

“On 11 June 2018, the employee (and her attorney) arrived at the disciplinary hearing and submitted that the employer was not entitled to continue with the hearing since the employment relationship had ended when the employee resigned. The chairperson rejected the argument and decided to proceed with the hearing.

“At that point, the employee and attorney left the hearing which then proceeded in the employee’s absence.”

At the conclusion of the hearing, the chairperson found the employee guilty of the misconduct and imposed a sanction of dismissal, Webber Wentzel said.

Labour Court Proceedings

The employee launched an urgent application challenging the validity of her dismissal in the Labour Court.

The Labour Court held that the employee’s resignation with immediate effect meant that the employment relationship came to an immediate end and that the employer has no right to insist that an employee serves the notice period.

The Labour Court declared the employee’s dismissal “null and void”.

On appeal, the LAC stated as a starting point that employment relationships are governed by contract or statute, Webber Wentzel said.

If the employer and employee do not agree for either of them to give notice to terminate the employment relationship, the Basic Conditions of Employment Act 75 of 1997 (BCEA) will apply.

“In this matter, the parties expressly agreed that one would give the other four weeks’ notice of termination of the employment relationship.

“The employer (as the party receiving the notice) therefore had a right to forgo the term of the agreement. The employer, in this case, did not exercise the right to forgo the notice period,” the law firm said.

The LAC held that the argument that an employee cannot be compelled by the employer to continue working if they resign with immediate effect during the notice period is misconceived.

“The notice term of the employment contract remains valid and binding and where no such term is agreed, the parties are still required to give notice as required under the BCEA.

“Resignation that is not in compliance with the contractual notice requirements does not validly terminate the employment contract.”

The LAC therefore held that the employee’s **resignation with immediate effect was “of no consequence”** as it did not comply with the employment contract. The LAC set aside the order of the Labour Court.

“This is an important judgment for employers, as it confirms that resignation by an employee after disciplinary action has been instituted has no legal effect,” Webber Wentzel said.