

Can an Employee Request Compensation if an Employer Offers Reinstatement?

Kemp t/a Centralmed v Rawlins (JA 11/06) [2009] ZALAC 8; [2009] 11 BLLR 1027 (LAC); (2009) 30 ILJ 2677 (LAC) (26 March 2009)

BACKGROUND

Dr. Kemp (“the Employer”), employed Ms. Rawlins (“the Employee”), as a medical doctor in a satellite practice he purchased in early 1997, on 1 February 1997. The Employee managed the practice independently. In late 1997, the Employee informed the Employer of her pregnancy, and the Parties agreed she would take two months of maternity leave starting February 1, 1998, with two weeks as paid leave and the rest as unpaid leave. Thereafter, the Employer claimed the satellite practice was operating at a loss and decided to replace the Employee with a doctor willing to work for a lower salary. On 31 January 1998, the Employer informed the Employee to seek alternative employment during her leave and on the request of the Employee’s husband, issued her a letter of termination.

The Employee believed her dismissal was due to her pregnancy and filed a claim for automatically unfair dismissal under section 187(1)(e) of the Labour Relations Act 66 of 1995. The Employer argued the dismissal was for operational reasons, not related to her pregnancy.

THE COMMISSION FOR CONCILIATION, MEDIATION & ARBITRATION (“THE CCMA”)

After the Employee referred her dismissal to the CCMA for conciliation, the Employer wrote to the Employee offering reinstatement, alternatively, to provide payment to settle the claim. The Employee ignored the offer. A few days later, the Employer once again offered reinstatement, however, the Employee refused and demanded 12 month’s salary as compensation.

The Employee thereafter instituted proceedings in the Labour Court and the Employer, yet again, offered reinstatement to the Employee, emphasising that there would be little to no contact between them and that the Employee would work independently from the Employer.

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At the time that these offers were made, the Employee was unemployed.

THE LABOUR COURT (“THE COURT”)

During the trial the Employee testified that in referring the matter to the CCMA the relief sought was compensation and not reinstatement. She indicated that she could not continue to work for the Employer because of the manner in which she had been treated by the Employer on the day that her services were terminated. The Court found the dismissal to be both substantively and procedurally unfair and granted the Employee 12-months compensation. The Labour Court did not extensively explain the basis for making its decision on compensation.

THE LABOUR APPEAL COURT (“THE LAC”)

The Employer appealed to the LAC, where the LAC was tasked to determine whether compensation should have been awarded and if the amount was just and equitable. The LAC held that the Court should not have awarded compensation because the Employer had made a genuine and reasonable offer of reinstatement, which the Employee unreasonably refused. The LAC emphasized the importance of resolving disputes through conciliation and noted that the Employee’s refusal undermined this process. The Appeal succeeded and the relief for compensation was set aside, notwithstanding that the dismissal was still found to be substantively and procedurally unfair.

CONCLUSION

This case emphasises the importance of resolving disputes through conciliation and the need for both parties to engage in good faith efforts to settle disputes amicably. Employers are encouraged to make genuine efforts to rectify wrongful dismissals, while employees should consider reasonable offers of reinstatement to avoid unnecessary litigation.

This case serves as a reminder that fairness and equity are paramount in employment relations, and both parties must act reasonably to achieve just outcomes.

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VALUE

This case highlights the significance of genuine offers of reinstatement and the role of conciliation in resolving disputes. The value of the matter lies in its clarification of the discretionary power of courts in awarding compensation and the factors influencing such decisions.



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