

Short Notes on:

## **WITHDRAWING A RESIGNATION**

### ***Introduction***

Notably, employees are still not clear about resignations and the subsequent issues that may arise. Employees resign for different reasons. Now, the issues often arise when the employee resigns and later withdraws the resignation, and the employer rejects the withdrawal of the resignation. As a result, the employee refers an unfair dismissal dispute to the CCMA or Bargaining Council, alleging that he/she was unfairly dismissed.

I recently assisted a client who needed assistance with withdrawing her resignation. She alleged that due to the intolerable working environment, she contacted her employer and verbally informed him of her resignation. However, the employer did not send her any communication or acknowledgement or acceptance of the resignation.

### ***Does a resignation have to be in writing?***

Contrary to popular belief, resignation does not always have to be in writing. A resignation may be given verbally, or in writing, or perhaps by the employee abandoning the employment. However, an intention to resign does not constitute a resignation. For a resignation to be binding, it has to be clear, unambiguous and unconditional. The fact that the employer refused or failed to acknowledge receipt of the resignation or to communicate with the employee that the employer accepts the resignation does not mean that the resignation is not binding.

*"The test for determining whether an employee resigned or not is that an employee has to, either by word or conduct, show a clear and unambiguous intention not to go on with his contract of employment in that he has to act in such a way as to lead a reasonable person to the conclusion that he did not intend to fulfil his part of the contract."<sup>1</sup>*

---

<sup>1</sup> *Quinn / Singlehurst Hydraulics (SA) Ltd* [2005] 6 BALR 673 (CCMA).

## ***Inconvenience to the Employer***

Once the employer receives such a resignation, the downside is that they tend to immediately start to look for a suitable replacement for the position, only for the employee to renege on their resignation by informing the employer about the withdrawal of the resignation.

In the meantime, the employer had entered an employment contract with a suitable replacement with a commencement date after the resignation. If the employer must accept the withdrawal, he will have to terminate the existing, yet not commenced, contract with the replacement. The employer, by terminating the new agreement, would be in hot water.

That would put the employer in a precarious position. If the employer accepts the withdrawal of the resignation, they will possibly face an unfair dismissal dispute by the new employee. If the employer rejects the withdrawal of the resignation, they will possibly be faced with an unfair dismissal dispute by the resigned employee.

## ***Conclusion***

There is a presumption that resignation is accepted as soon as it reaches the employer unless the employer rejects such a resignation. Employees should be careful about hastily resigning, and employers should be cautious about hurriedly accepting a resignation, especially when it was not formally given. It is therefore critical to seek advice early on in either case. Contact us for assistance on any of your employment or labour matter today.

Petrus Khumalo, SchoemanLaw Inc.