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# FINANCE AND BANKING ALERT

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### RETIREMENT AGE: ENSURE THAT IT'S CERTAIN

This matter highlights the difficulty that employers will face in circumstances where there is uncertainty regarding an employee's agreed or normal retirement age.

# RETIREMENT AGE: ENSURE THAT IT'S CERTAIN

*If an employer can establish that the employee had reached either one of those ages that is a defence to a claim of dismissal based on age discrimination.*

*On a balance of probabilities the Court favoured the version that the understanding between the employee and employer was that he would retire at age 65.*

**This matter highlights the difficulty that employers will face in circumstances where there is uncertainty regarding an employee's agreed or normal retirement age.**

In terms of s187(2)(b) of the LRA a dismissal based on age will not be automatically unfair if an employee has reached the 'normal or agreed retirement age for persons employed in that capacity'. If an employer can establish that the employee had reached either one of those ages that is a defence to a claim of dismissal based on age discrimination.

#### **Harris v Ocean Traders International (Pty) Ltd**

In this matter the applicant was forced to retire at age 63. His understanding was that his agreed retirement age was 65. He claimed that his dismissal was automatically unfair in terms of s187(1)(f) of the LRA and claimed compensation and damages under the Employment Equity Act, No 55 of 1998.

The court found that the employer was unable to show that the employee had agreed to a retirement age earlier than 65. In fact, the employee had refused

to agree to an earlier retirement age when requested to do so. On a balance of probabilities the Court favoured the version that the understanding between the employee and employer was that he would retire at age 65.

Therefore the dismissal was found to be automatically unfair, as the applicant had been dismissed because of his age and his dismissal was automatically unfair in terms of s187 (1) (f) of the LRA.

As there was no evidence of mala fides on the part of the employer, 16 months' remuneration was awarded as just and equitable compensation.

In this case the applicant did not participate in an occupational pension plan. Where occupational pension plans are provided for, the provisions of the fund rules relating to retirement age would also be considered.

#### **Zaaheda Mayet**



**Congratulations to Hunter Thyne and Zaaheda Mayet** on their appointment to the National Steering Committee of the Pension Lawyers Association for 2015/16.

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