

# EMPLOYMENT

## HUMAN RESOURCES: THE CUSTODIAN OF EMPLOYMENT POLICIES, PRACTICES AND PROCEDURES

**In the recent Labour Appeal Court (LAC) decision of *National Health Laboratory Service v Yona and Others* (PA 12/13) [2015] ZALCPE 32, the LAC considered whether or not it was reasonable for a commissioner to conclude that a human resources manager's arrogant behaviour and "don't give a damn" attitude could lead to a constructive dismissal.**

Ms Yona (Yona) was employed by the National Health Laboratory Service (NHLS). During 2009, NHLS appointed Yona's subordinate to a position which Yona frequently acted in. Yona felt embarrassed that a subordinate was appointed to a position which she also applied for. According to Yona, her employer humiliated her when it complimented her subordinate's performance during a general staff meeting. The promotion ultimately resulted in Yona being diagnosed with "severe depression and generalised anxiety disorder". Yona fell ill and was continuously absent from work. She submitted medical certificates to cover her entire period of absence from the workplace. She remained absent on sick leave for an uninterrupted period of five months. Despite having been provided with medical certificates confirming Yona's illness, the human resources manager wrote to Yona and alleged that she had failed to communicate the reasons for her absence and that accordingly, her absence would be treated as unpaid leave. When Yona received a salary with a deduction of more than 95% due to leave without pay, she resigned.

Yona referred an unfair dismissal dispute to the Commission for Conciliation, Mediation and Arbitration (CCMA). She alleged that her resignation was inspired by the employer. The CCMA agreed, as did the LAC.

Yona bore the onus to prove her alleged constructive dismissal. In considering the matter, the LAC restated the basic principles of a constructive dismissal. A constructive dismissal occurs when an employee resigns from employment under circumstances where they would not

have resigned but for the unfair conduct on the part of the employer towards the employee, which rendered continued employment intolerable for the employee. The conduct of the employer toward the employee and cumulative impact thereof must be such that, viewed objectively, the employee could not reasonably be expected to cope with the treatment. Resignation must thus have been a reasonable step for the employee to take in the circumstances.

The LAC held that Yona's resignation was a direct sequel to her not receiving the benefits of extended sick leave, which she was entitled to, or at least entitled to apply for. Yona was unfairly denied the opportunity to apply for this benefit by the human resources manager's irresponsible conduct. Furthermore, the LAC held that NHLS, through the human resources manager, failed dismally to accord fair and compassionate treatment to Yona at a time of desperate need because she was suffering from a severe work-related mental illness.

This judgment emphasises the fact that a human resources department is responsible for ensuring that the rights and obligations incumbent upon employers and employees are adhered to. Human resources is responsible for employee wellbeing and should promote sound labour relations at all times. In this instance, the LAC expected the human resources manager to explain the policies to the employee and to do more than would be required of any other employee.

*Anli Bezuidenhout and Mari Bester*



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