Employment Law

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EMPLOYMENT LAW ALERT

Retirement age and fixed-term contracts

Fixed-term contracts are commonplace in both the private and public sectors. The case of *SABC v Valla* (JA100/24) [2025] ZALAC 47 (22 September 2025) is interesting because of the clash between a fixed-term contract, the existing retirement age and a board resolution to convert general managers to permanent employees.

Applicable law

- Unfair dismissals are governed by the Labour Relations Act 66 of 1995 (LRA).
- Unfair discrimination claims are governed by the Employment Equity Act 55 of 1998 (EEA).
- Contractual claims in an employment context are generally governed by the Basic Conditions of Employment Act 75 of 1997.

Facts

On 2 April 2013, the South African Broadcasting Corporation (SABC) employed Valla as its Deputy Company Secretary on a fixed-term contract from 1 May 2013 to 30 April 2018.

At the time, the SABC's retirement policy and pension fund rules set the retirement age for senior managerial employees on fixed-term contracts (like Valla) as the expiry date of their contract.

For those employees not on fixed-term contracts, the retirement age was 60. For all other employees, it was 63.

In April 2018, Valla was 59 years old, turning 60 on 22 May 2018.

In 2015, the SABC's board resolved to convert general managers to permanent employment where the job was permanent in nature, but the resolution did not explicitly change the retirement age.

Valla was told by her superior that she was now a permanent employee and Valla believed that this meant her retirement age was extended to 63.

In 2016, Valla noticed her pension fund statement did not reflect a change in retirement age. She lodged a grievance in 2017, which was dismissed.

In March 2018, the SABC informed Valla that her fixed-term contract would not be renewed and would come to an end on 30 April 2018.

Retirement age and fixed-term contracts

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Valla instituted four main claims in the Labour Court:

1. Her contract was unlawfully terminated and should have been permanent with a retirement age of 63. She claimed that the board resolution had extended her retirement age from 60 to 63.
2. The failure to renew her contract was an automatically unfair dismissal.
3. The SABC's policies and rules discriminated against her on the basis of her age.
4. The SABC failed to exercise a discretion to extend her retirement age to 63, constituting an unfair labour practice.

The Labour Court had found in Valla's favour, holding that:

- her employment was unlawfully terminated by the SABC;
- her dismissal was automatically unfair as it was based on a prohibited reason (her age); and
- she was unfairly discriminated against by the SABC.

The SABC appealed against the Labour Court's decision. The key issues before the Labour Appeal Court (LAC) were whether:

- the board resolution had the effect of converting Valla's fixed-term contract to permanent employment and also extended her retirement age from 60 to 63; and
- the termination of Valla's employment on the expiry of her fixed-term contract constituted a dismissal, and if so, whether the dismissal was automatically unfair or discriminatory on the grounds of her age.

Retirement age and fixed-term contracts

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Application of the law

The LAC found that the board resolution, properly interpreted, did not in and of itself vary the terms of Valla's employment contract. Instead, the board resolution was a policy decision by the SABC requiring further implementation and the mutual agreement on an individual employee basis to effect any change to individual employment contracts. Not even the word of Valla's supervisors could come to her aid. The LAC found that Valla had not presented any evidence of a mutually agreed variation to her employment contract in terms of which it was converted from fixed term to permanent, nor was there any mutual agreement on the extension of her retirement age. The LAC further held that in the absence of such variation, Valla's employment contract expired by effluxion of time on 30 April 2018, a date that preceded her 60th birthday by a month, which was her agreed retirement age. Consequently, the LAC found that the expiry of Valla's fixed-term employment contract on its agreed date did not constitute a dismissal in terms of the LRA.

In relation to Valla's unfair discrimination claim, the LAC held that the SABC's different retirement ages were based on occupational categories and not age. Therefore, this differentiation did not amount to unfair discrimination for purposes of the EEA.

Key takeaways

- A board resolution or policy decision does not, without more, vary the existing terms of an employment contract – mutual agreement by the parties to the contract is required to effect such changes.
- Properly prepared written employment contracts with appropriate non-variation clauses must be in place.
- Differentiations in retirement age based on occupational categories, rather than age, do not per se constitute unfair discrimination under the EEA.
- This case does not deal with any of the principles dealt with by the Constitutional Court in its December 2024 decision in *Motor Industry Staff Association and Another v Great South Autobody CC t/a Great South Panelbeaters; Solidarity obo Strydom and Others v State Information Technology Agency SOC Limited* [2025] 4 BLLR 337 (CC).

Imraan Mahomed and Lee Masuku

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The submission of sick notes during an internal disciplinary hearing in Namibia

The Supreme Court of Namibia delivered a judgment on whether the submission of a sick note by an employee during an internal disciplinary hearing will result in the postponement of the matter.

The appellant, Ms Hilya Taetutila Nghiwete, was appointed as the CEO of the Namibia Students Financial Assistance Fund (NSFAF). She was suspended in 2018 pending disciplinary proceedings. The suspension was based on alleged misconduct and maladministration.

The Board initiated disciplinary proceedings, but the process was delayed due to the appellant's failure to attend hearings, which she attributed to illness. On 7 February 2020, the NSFAF board resolved to terminate her employment, citing an irretrievable breakdown in the employment relationship. The appellant challenged the dismissal before the Labour Commissioner, who found it substantively and procedurally unfair and ordered reinstatement. The Labour Court partially upheld the arbitrator's award but set aside the reinstatement, awarding remuneration up to July 2021. The appellant then appealed to the Supreme Court of Namibia, while the NSFAF cross-appealed.

Issue

The central issues before the Supreme Court were: whether the NSFAF Board's decision to dismiss the appellant was null and void on the grounds that the Board was improperly constituted; and whether a medical report was required in addition to a sick note in order to determine the appellant's ability to attend the disciplinary hearing.

The submission of sick notes during an internal disciplinary hearing in Namibia

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Finding

The court referred to section 6(2) of the NSFAF Act 26 of 2000, which governs the composition and functioning of the Board. It found that even if a non-voting member, Ms Munyika, had participated, the decision remained valid as a proper quorum and majority existed. The court also found that the NSFAS acted reasonably and within its policies by demanding to be provided with a medical report or for the appellant to be subjected to an examination by a psychiatrist of its choice, since it was important to establish whether the appellant was genuinely incapacitated.

Application

The Supreme Court found that the appellant's conduct caused a significant delay in the disciplinary proceedings. Despite several opportunities, she refused to provide a medical report as requested by the employer and failed to co-operate in facilitating the continuation of the hearing. The Board's demand for a medical report was reasonable and aligned with procedural fairness.

The court held that the employment relationship between the appellant and the NSFAF board had irretrievably broken down due to mutual mistrust and loss of confidence. As such, reinstatement was neither practical nor equitable. The court therefore upheld the principle that dismissal may be substantively fair even if a disciplinary hearing is not completed when the employee's conduct renders further proceedings impossible.

The submission of sick notes during an internal disciplinary hearing in Namibia

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Why does it matter?

The judgment confirms the principle that a dismissal may be fair in circumstances where a disciplinary hearing is not completed and that an employer is entitled to request a medical report or proof of an employee's inability to attend a disciplinary hearing. The mere submission of a sick note without any supporting evidence will be insufficient to justify the postponement of a disciplinary hearing. This is aligned with the position in South Africa as well.

Frieda Kishi and Thato Maruapula

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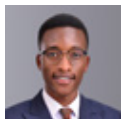

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