# Can I dismiss my employee for refusing to sign a new contract?

Labour legislation does not require an employment contract to be in writing. However, Section 29 of the Basic Conditions of Employment Act provides that certain written particulars of employment must be provided for as a minimum. Every employer is legally obliged to provide all employees with these minimum particulars in writing not later than the first day of employment.

A contract of employment formalizes the relations and provides certainty for both the employer and the employees. If there is no contract in a situation, the employer and the employee will find it difficult to prove certain clauses/conditions/work overtime, etc.

Our advice to clients is to ensure as much as possible that there is a written contract that clearly spells out the terms and conditions.

In the case of *Sershan Naidoo v National Lotteries Commission and Others*, the Labour Court in Johannesburg overturned the decision by the CCMA and reinstated the employee with back pay.

Mr Naidoo was in the employ of the National Lottery Commission since 1999 in various positions. Then in 2016, after a restructuring process, he became head of publicity and media with a package of R1,3 million. He was given a five-year non-renewable contract, but the package was just under R1 million. He then refused to sign.

He received a normal increase the following year.

In December 2017, he was given an ultimatum to sign within three days. He still refused to sign. He then received a letter indicating that his conduct was a repudiation of a contract. The employer indicated that he was accepting such repudiation. He was dismissed and escorted out of the building.

Mr Naidoo referred the matter to the CCMA, and the Commissioner found in favour of the employer. He then referred the dispute to the Labour Court for review.

The judge held that the dismissal was both substantively and procedurally unfair. She reinstated Mr Naidoo with backpay.

In the case of *Mr Mahlangu v Footballers for Life (Pty) Ltd,* the employee was dismissed for insubordination after refusing to sign a contract. He failed to meet several deadlines. The employer withheld his pay for two months, but still, Mr Mahlangu refused to sign. He was then dismissed. He referred the dispute to the CCMA, but his dismissal was upheld.

It is thus important for employers to always be vigilant. In addition to that, they must take reasonable steps and follow a fair process in dealing with the employees, taking into account the circumstances of every case.

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