



Must an employment contract stipulate an age at which you should retire?

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1 Introduction

One of the most fundamental building blocks of any employer and employee relationship is that of the employment contract. An employment contract should stipulate the rules with regards to office conduct, leave, vacation days and your retirement age. Obviously, each business is different and the employment contracts will differ with respect to their respective undertakings. Confusion and dispute may arise when terms in a contract are unclear with regards to certain rules of conduct. In *Solidarity obo Gerhardus Viljoen Strydom and Others v State Information Technology Agency SOC LTD* such dispute did arise with regards to the retirement age of certain employees. This brings the question, will it be deemed unfair if an employer dismisses you if you carry on working beyond your retirement age? Must a contract stipulate a specific retirement age?

2 SOLIDARITY obo GERHARDUS VILJOEN STRYDOM & 5 OTHERS v STATE INFORMATION TECHNOLOGY AGENCY SOC LTD¹

In the case mentioned hereinabove, the employees were dismissed who worked beyond their normal retirement age in terms of their employment contracts. The Applicants in this matter claimed that their dismissal by the Respondent (SITA) was unfair in terms of the Labour Relations Act² and also claimed contractual damages in terms of the Basic Conditions of Employment Act.³ The Respondents in the matter contended that the employees were not unfairly dismissed, wherefore the Labour Court had to make a finding on the dispute between the parties. The decision was ultimately delivered on 9 May 2022.

The employment contracts of the employees inter alia stipulated that the employees' retirement ages would be regulated by the Alexander Forbes Pension Fund ("Pension Fund") and their specific pension scheme's fund rules. The pension fund rules provided for the following with regards to retirement of an employee who reached the normal retirement age of 60 (sixty), subject to the employer's consent:

"[M]ay remain in service and retire at a date not later than the last day of the month in which the member attains the age of 67."

It is clear from the wording of the rule that members are allowed to remain employed after they have reached the age of 60 (sixty) years, but for not more than attaining the age of 67 (sixty seven) years. It is important to note that from the employment contract and pension fund's wording one can note that the normal age of retirement is 60 years, with a grace period subject to decision of the employer to allow a said employee to work for a longer period when attaining the age of 60 years.

¹ Case no C 148/18; JS 49/18; JS 67/18 JS 68/18; JS 338/18; JS 195/18, The Labour Court of South Africa, Johannesburg.

² 66 of 1995.

³ 75 of 1997.

The employer in this case argued that the employees' retirement will automatically come into effect when they reach the age of 60 as inferred from their contracts of employment. The retirement age of 67 is thus subject to the employer's written consent and should be read conjunctively with each of the terms in the employment contract.

The Labour Court ultimately found that the normal retirement age (being the age of 60 years as per the employment contracts) was not interrupted and therefore remained binding on the employees.

3 Conclusion

Considering the above, it is clear that where the normal retirement age is not interrupted by means of written amendment or agreement to the initial employment contract, an employer may rightfully enforce its businesses retirement age, unless an employee can prove a valid replacement agreement to the contrary. If the employee cannot put to the proof that there is a valid and binding agreement in place at the normal time of retirement, then the employer is entitled to terminate the prolonged employment at that stage or soon thereafter without it being deemed prejudicial or unfair.

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