

Short notes on:

## **DEMOTION IN THE WORKPLACE: WHAT YOU NEED TO KNOW**

### ***Introduction***

Often times Employers set targets for Employees in order to monitor their performance. When an Employee continuously does not meet his/her target, the Employer has to intervene and assess why the Employee is not meeting the target and how that could be improved.

It is the duty of the Employer to provide the Employee with the necessary training and assistance throughout his/her employment period to make sure he/she meets the set target. A reasonable period should be set in the performance contract or Human Resource Manuals whereafter the Employer will intervene and if the Employee continuously fails to meet target, the Employer may opt to demote the Employee as an alternative to dismissal or retrenchment.

### ***What is Demotion and how does it arise?***

In terms of *Ngxowa v Sebenza Manufacturing System* [2009] 11 BALR 1122 (MEIBC), a Demotion occurs when the Employer diminishes the status of the work or responsibilities of an Employee even when their remuneration remains the same.<sup>1</sup> Section 186(2)(a) of the Labour Relations Act (LRA), Act 66 of 1995 provides that any act or omission involving the unfair conduct of the Employer in relation to Demotion constitutes an unfair labour practice.

### **Three contexts in which Demotion arises:**

1. "As a Disciplinary measure;
2. As an alternative to dismissal for incapacity; and
3. As an alternative to retrenchment."<sup>2</sup>

### ***Piki vs Development Action Group*<sup>3</sup>**

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<sup>1</sup> [2009] 11 BALR 1122 (MEIBC).

<sup>2</sup> Halton Cheadle "Regulated Flexibility and Small Business: Revisiting the LRA and the BCEA" (2006) *DPRU WP 06/109* 23.

<sup>3</sup> Inc (2002) 23 ILJ 609 (CCMA).

In this case, the Commission for Conciliation, Mediation and Arbitration held that an Employer is not allowed to unilaterally change the employment conditions of the contract of employment without the Employee's consent. Since a Demotion without consent is a repudiation of the employment contract, it therefore entitles the Employee to sue for breach of contract.

Therefore, for a Demotion decision to not be subjected to review, a disciplinary hearing has to be conducted in which the Employer furnishes the Employee with reasons why the Employee is being demoted. The disciplinary hearing has to be in accordance with fair practices which allows the Employee to also give reasons why the Demotion is unwarranted.

However, the disciplinary hearing has to be preceded by attempts by the Employer indicating that consultation and counselling took place with the aim of improving the Employee's performance before Demotion was considered. Failure to do so constitutes an unfair labour practice.

### ***Conclusion***

The Employee who refers the case has to prove that the Demotion was unfair and unjust. Should Employee succeed in this, the Demotion may constitute an unfair labour practice and accordingly be subject to review and more significantly, it would expose the Employer to possible damages.

Demotion must be imposed for a valid reason and in accordance with fair practices. The Employer has to follow a fair disciplinary procedure and provide the Employee with the option of Demotion as an alternative to dismissal, or retrenchment.

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