



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Reportable

Case No: JS 718/2023

In the matter between:

INAMA CINDY LORREN

Applicant

and

RAYDIAN (Pty) Ltd

Respondent

Heard: 27 May 2025

Delivered: 13 June 2025

Summary: Special Plea - Resignation during notice period. The Applicant terminated her services prior to the date of dismissal. The Applicant clearly resigned. Applicant's claim is dismissed.

JUDGMENT

KRUGER, AJ

Introduction

[1] The Applicant in this matter filed a statement of case on 10 January 2024. In the statement of case, she alleges that her dismissal was unfair in that the Respondent did not comply with Section 189 (1)d of the Labour Relations Act¹ (LRA).

[2] The Applicant asked for the following relief –

2.1. To declare the dismissal of the Applicant to be procedurally and substantively unfair.

2.2. To order the Respondent to reinstate the Applicant retrospectively to her previous position and to pay all the salaries and benefits she would have earned from the date of dismissal until the date of her reinstatement as primary relief in terms of section 193 of the Act; or

2.3. Alternatively, the Respondent be ordered to pay fair and justified maximum compensation in terms of section 194 of the Act.

[3] In the Pre-Trial Minute, the Respondent raised a point *in limine* in that the Applicant resigned with immediate effect during her notice period.

Material Facts

[4] On 30 June 2023, the Respondent issued a letter to the employees in terms of section 189(3) of the LRA.

[5] Three consultation meetings took place, and the third consultation meeting took place on 14 July 2023.

[6] On 14 July 2023, the Respondent wrote the following letter to the Applicant –
'It is with regret that we inform you that you have been retrenched, following consultations held up to and including 14th July 2023.

Commencement of Notice Period: 1 August 2023 for a period of 1 month, and you are required to work your notice period.

Last day of service: Your last day of service is recorded as being 31st August 2023.'

[7] On 18 August 2023, the Applicant sent the following email to the Respondent:

¹ Act 66 of 1995, as amended.

'At this juncture, I am not even certain if this position was advertised and feel that I was compromised. Furthermore, I also feel that this whole S189 process was a smoke screen and not the true reflection of the rationale for termination of my services albeit it is alleged that I was dismissed on the grounds of operational requirement.

Kindly ensure that I receive the salary of the days worked till today, being the day of revocation of my notice period. You are also obligated in terms of section 41 of the BCEA to pay my retrenchment package as elucidated in the retrenchment letter. I am entitled to payment of my accrued annual leave days on pro rata basis as at the date of revoking the notice period.

I will make arrangements to drop the office keys and the company laptop as I am not in the right frame and state of mind to continue service of the notice.'

[8] It is then agreed in the Pre-Trial Minute that the Applicant's last day of service was on 18 August 2023.

Applicable Legal Principles

[9] Section 190(d) of the LRA –

'If an employer terminates an employee's employment on notice, the date of dismissal is the date on which the notice expires, or if it is an earlier date, the date on which the employee is paid all outstanding salary.'

[10] A resignation is established by a subjective intention to terminate the employment relationship and words or conduct by the employee that, objectively viewed, clearly and unambiguously evince that intention.² See also *Sihlali v SA Broadcasting Corporation Ltd*³ where it was held that –

'A resignation is a unilateral termination of a contract of employment by the employee.'

[11] In *Standard Bank of South Africa Ltd v Chiloane*⁴ the court explained that in an instance where the employer and the employee do not explicitly agree on the terms of notice to terminate their relationship, in the employment contract, the parties are

² *Fijen v Council for Scientific & Industrial Research* 1994 (15) ILJ 759 LAC.

³ (2010) 31 ILJ 1477 (LC); [2010] 5 BLLR 542 (LC) at para 11.

⁴ (2021) 42 ILJ 863 LAC; [2021] 4 BLLR 400 (LAC).

still required to give such notice provided for in terms of Section 37 of the Basic Conditions of Employment Act⁵ (BCEA).

Analysis

[12] It is common cause that the Respondent have decided to dismiss the Applicant for operational reasons. In terms of the LRA the date of the dismissal was the day on which the notice expired. In terms of the retrenchment letter the notice period would have expired on 31 August 2023.

[13] The Applicant elected not to work her notice period and left her employment on 18 August 2023.

[14] In order to resign the Applicant must give a subjective intention to terminate the employment relationship. In her email she used the word "*revocation*" meaning to officially cancel her notice period.

[15] One can not interpret the Applicant's conduct on 18 August 2023 in another way as to conclude that she was not going to work during her notice period and by her actions she left on her own accord prior to the date of her dismissal. This means the Applicant did in fact resign on 18 August 2023.

Costs

[16] Costs should be considered against the requirements of the law and fairness.

[17] I am not prepared to award costs to the Respondent under these circumstances.

[18] In the premises, I make the following order:

Order

1. The special plea is upheld.
2. The Applicant's claim is dismissed.

⁵ Act 75 of 1997.

3. No order as to costs.

W. Kruger
Acting Judge of the Labour Court

Appearances:

For the Applicant: MT Ramunemjiwa
Instructed by: Khomola Attorneys

For the Respondent: A Basson
Instructed by: Pretorius Davies Attorneys