To be or not to be: In writing

By Aadil Patel

7 May 2019

In the recent case of *Numsa obo Nomanyane and another v Grupo Antolin (Pty) Ltd*, heard before the Metal Engineering Industry Bargaining Council (MEIBC), the Commissioner was tasked with determining whether a fixed-term contract of employment must be in writing or not.

Grupo Antolin (the employer) had employed two employees on a fixed-term contract to temporarily replace two of its permanent employees who were on maternity leave. The employer subsequently informed the two employees that their contract of employment had come to an end. At the time, the employees had been employed for a period of four months.

The fixed-term contract between the employer and the employees was a verbal contract, and the verbal contract did not provide for the period of employment. When the employer informed the employees that the contract had come to an end, the employees referred an unfair dismissal dispute to the MEIBC.

The employees alleged that they had been dismissed, while the employer alleged that there was no dismissal, but that the fixed-term contract had come to an end. The employees' period of employment was not recorded anywhere. The commissioner, in making his ruling, relied mainly on the provisions in s198B of the Labour Relations Act, No 66 of 1995 (the Act), as amended. Specifically sections 198B(5) and (6), which state as follows:

> *"(5) Employment in terms of a fixed-term contract concluded or renewed in contravention of subsection (3) is deemed to be of indefinite duration. (6) An offer to employ an employee on a fixed-term contract or to renewor extend a fixed-term contract, must a) be in writing; and b) state the reasons contemplated in subsection (3)(a) or (b).*"

The Commissioner held that the Act provides that a fixed-term contract must be in writing. The Commissioner reasoned that the objectives of the Act are to ensure, amongst others, that vulnerable employees are protected and that a purposive interpretation must be applied when dealing with the Act.

A purposive interpretation entails that the Act ought to be interpreted in a manner that promotes the spirit, purport and object of the Bill of Rights. The Commissioner then, with reference to s198B(5) of the Act, held that because the fixed-term contract entered into between the employer and the employees was in contravention of s198B(3) of the Act, the consequence thereof was that the contract was for an indefinite period.

The termination of the contract was found to have constituted an unfair dismissal in terms of the Act and the employees' were awarded reinstatement with backpay.

ABOUT AADIL PATEL

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