

NEWSLETTER

ADRIAN LACKAY V SARS AND THE NATURE OF CONSTRUCTIVE DISMISSAL

The matter of Adrian Lackay and the South African Revenue Service (SARS), is currently being heard in the Commission for Conciliation, Mediation and Arbitration (CCMA), and relates to the issue of Constructive dismissal in the work place. It should firstly be explained what Constructive dismissal entails in order to understand the merits of the matter.

Constructive dismissal in terms of **Section 186(1)(e) of the Labour Relations Act no 66 of 1995**, is defined as “*an employee that terminated their contract of employment with or without notice because the employer made continued employment intolerable for the employee*”. The intolerable conduct of the Employer is the direct cause for the Employee resigning from their position.

Now that we have established the nature of Constructive dismissal we should consider the facts of Adrian Lackay v SARS to understand why Adrian Lackay felt that he was Constructively dismissed by SARS.

Adrian Lackay has worked for SARS for 11 Years and stated that his working conditions became unbearable amid allegations that an illegal rogue spy unit had been set up by senior officials and forced him to leave his employment as he felt he could no longer be associated with SARS.

In order for Mr Lackay to succeed with his claim of Constructive dismissal, one has to consider what constitutes intolerable working conditions and whether the Employer SARS was the direct cause of such intolerable working conditions which caused the employee to resign. The following points must be considered when approaching the CCMA regarding Constructive dismissal:

- The circumstances of employment were so unbearable that the Employee could not remain in employment;
- The intolerable circumstances were the direct cause of the employee resigning or terminating their employment;
- The Employee had no other reasonable alternative at their disposal whereby resignation was the only option;
- The unbearable circumstances must have been caused by the Employer;

- And lastly the Employer must have influenced the unbearable/intolerable circumstances.

In ***Chabeli v Commission for Conciliation, Mediation and Arbitration & others (2010) 31 ILJ 1343 (LC)*** the court stated that “*in order to prove constructive dismissal, the employee has to show that the employer had made continued employment relationship intolerable and that, objectively assessed, the conditions at the workplace has become so intolerable that he had no option but to terminate the employment relationship*”

Taking the relevant authority into account and the facts we have knowledge of, Mr Lackay must prove to the Commissioner at the CCMA that SARS made his working conditions so unbearable that he could not continue his employment with SARS and that he had no other alternative options available to him. In the case of ***Smithkline Beecham (Pty) Ltd v CCMA (2000) 21 ILJ 988 (LC) 997B*** it was stated that “*Where a reasonable alternative to resignation exists, there can be no constructive dismissal*” so therefore it must also be proved that Mr Lackay’s only alternative was to terminate his employment with SARS.

At this point one cannot establish with certainty whether Mr Lackay can claim Constructive dismissal as it requires a complete understanding of the surrounding circumstances involving Mr. Lackay’s employment with SARS, how he was treated as an employee and whether he had other alternatives to resignation. Therefore it should be noted that every case of Constructive dismissal should be treated with caution and Employers should do well to take note of how they treat their Employees within the confines of the workplace.

