

Withdrawing an offer of employment constitutes dismissal

By [Jacques van Wyk](#)

28 Dec 2017

Can an offer to employment which is later withdrawn amount to a dismissal?



©Alexander Rathes [123rf.com](#)

Summary

An offer of employment creates a valid contract and a later withdrawal of that offer can amount to dismissal. This is even more so if the reasons for the withdrawal of the offer are unreasonable.

Court decision

In the case of *Young / The Barnes Group* (2017) 26 CCMA 7.1.13 the Commission for Conciliation, Mediation and Arbitration (CCMA) had to consider this issue. Wayne Young applied for a sales position with The Barnes Group. He was then interviewed by the company's chief executive officer (CEO) and the HR manager. During the interview Young claimed he was made an offer by the CEO. Later, the offer was withdrawn because the CEO had changed his mind about Young. Aggrieved by the sudden withdrawal of the offer, Young referred an unfair dismissal dispute to the CCMA. The employer denied that it had ever made an offer of employment to Young.

The CCMA had to determine:

1. whether Young was an employee in terms of section 213 of the Labour Relations Act 66 of 1996 (LRA);
2. if he was found to be an employee, whether he was dismissed; and
3. if so, whether the dismissal was substantively and procedurally fair.

In order to determine whether Young was an employee, the commissioner first had to determine whether a valid contract had been entered into. For an employment contract to be valid, whether verbal or in writing, there must be:

1. an intention to create a legal relationship;
2. an offer and an acceptance; and
3. agreement on the essentials of the contract (including, consensus on the rights and duties of the parties, remuneration, duration and start date).

The commissioner found a valid contract of employment had been entered into between the parties and that the employer's evidence that it had never made an offer of employment did not stand up to scrutiny.

As to whether Young had been unfairly dismissed, section 186(1)(a) of the LRA defines dismissal to mean that an employer has terminated employment with or without notice. The commissioner held that Young had been dismissed and his dismissal was not in accordance with any fair reason or procedure.

Accordingly Young was awarded two month's compensation.

Importance of this case

An offer to employ someone, whether verbal or in writing is valid when accepted and when agreement is reached on all the material terms. That can occur in fairly informal circumstances. Once concluded, a later withdrawal of that offer amounts to dismissal. Such a dismissal will be subject to all the legal requirements any other dismissal will be subject to and must therefore be for a fair reason and in accordance with fair procedure.

Employers must be cautious in extending offers of employment to applicants for employment.

ABOUT THE AUTHOR

Jacques van Wyk is a director at Werksmans Attorneys, Cape Town

For more, visit: <https://www.bizcommunity.com>