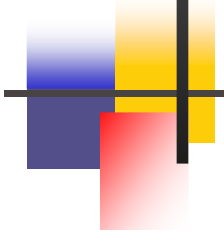




Employees are required to understand contract law, in particular the acts of offer and acceptance and the consequences thereof



Dr Odendaal worked for the Department of Health in the Eastern Cape for 18 years. The Department decided to alter the manner in which Dr Odendaal was paid. A new contract was issued to Dr Odendaal after extensive consultation. He refused to sign it. The department stopped paying Dr Odendaal's salary 2 years later. Dr Odendaal referred a constructive dismissal dispute.



The court found that Dr Odendaal had repudiated the old contract of employment. The Department was legally entitled to accept the breach and cancel the contract by not paying his salary. In terms of the new contract of employment it remained unsigned and therefore Dr Odendaal was not deemed to be employed in terms of the new contract. Since there was no employment relationship, Dr Odendaal could not seek out a remedy in terms of the Labour Relations Act. Further, because he was not deemed an employee he was unable to run his constructive dismissal dispute. In any event, the Labour Court held that one is not deemed to be constructively dismissed as lawful actions by an employer does not renege the employment relationship intolerable.

Had Dr Odendaal acted swiftly when his dispute arose he could have referred the matter as a unilateral change to the terms and conditions of his contract of employment. Had he been dismissed under this guise he would have had a better opportunity by referring the matter as an automatically unfair dispute, had he been successful he would have received maximum compensation of 2 years.