

HOT SOUP FOR EMPLOYERS! COMPENSATION FOR WRONGFUL DISMISSAL

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Remember last week's episode on substantive and procedural fairness? If you missed it – [click here.](#)

Today's article is about what happens when termination of a contract of employment on notice is found to be substantively and procedurally unfair.

Enter a new buzzword for your vocabulary: compensation.

First, it is important to note that an order for compensation may be handed down, but so too can the Industrial Court order the reinstatement of the employee in certain circumstances. Reinstatement can be with or without compensation. However, the court can also make an order for compensation, instead of reinstatement.

The Employment Act provides that the party who unlawfully terminated the contract of employment, shall be liable to pay to the other party a sum equal to the amount he would have received on appropriate termination.

So how is compensation ordinarily reckoned?

The answer lies in the Court of Appeal's decision in **Phuthego & Another v. Barclays Bank of Botswana**, in which contracts of employment were examined in 4 different categories being – a:

- fixed-term contract which contains no notice provision (**Category 1**);
- fixed-term contract with a notice provision (**Category 2**);
- contract for an unspecified period with no notice provision (**Category 3**); and
- contract for an unspecified period with a notice provision (**Category 4**).

In the context of our inquiry (i.e. termination of contracts of employment on notice), the measure of compensation for category 2 and category 4, is limited to the amount due for notice period.

If you should like for us to walk you through the compensation dynamics around Category 1 and Category 3, please let us know. For now, we shall move on as they are not the primary focus of our enquiry.

Thank you for reading this far. We hope it helps you think about how best to approach your HR issues as you go forward. If you have any questions, please contact [Olebile Muzila](mailto:olebile@bookbinderlaw.co.bw) at olebile@bookbinderlaw.co.bw an expert in employment law in Botswana. She has experience acting for a number of local and international clients on employment matters before the courts. She also assisted in private engagements to manage employment risk both locally and internationally.

Our firm is your one-stop shop for all matters corporate and commercial and if you wish to schedule an appointment on any of our offerings you can reach us on (+267) 391 2397.