

HANDLING “I QUIT”

CAN AN EMPLOYER DISCIPLINE AN EMPLOYEE AFTER THE EMPLOYEE RESIGNS?

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Employees resign for various reasons. Sometimes, they quit to avoid an impending disciplinary process. In this last episode of the #KoSpaneng Series, we traverse the employer’s right to discipline in the face of a tactical resignation where the employee has become aware of an impending disciplinary process.

Consider the following scenario: you have served an employee with a charge sheet and notice of a disciplinary enquiry. A few days before the hearing, the employee tenders what could only be viewed as a tactical resignation and writes, “I hereby resign with immediate effect.” The notice of resignation is mum as to the issue of either serving notice nor making payment in lieu thereof.

Do you proceed with the disciplinary hearing or not?

This question has yet to be considered in Botswana. The Court of Appeal recently shirked an opportunity to opine on a similar scenario in the July 2023 appeal session. We are thus left to look for persuasive authority from South Africa.

There is a school of thought that provides that an employer may not proceed with a disciplinary hearing without first approaching the court for an order seeking to have the employee serve notice or make payment in lieu thereof.

There is another school of thought based on the Law of Contract that takes the view that if an employee tenders resignation but does not offer to either serve notice or make payment in lieu thereof, this constitutes a unilateral act in terms of which the employee demonstrates the intention to no longer be bound by the contract of employment. This is called, repudiation.

In terms of this school of thought, the employee retains rights and has obligations towards the employer and vice versa, during the notice period.

In a situation in which an employee has received a charge sheet and notice of a disciplinary enquiry, has served a tactical resignation, but has failed to tender to either serve notice or to make payment in lieu thereof, the employer retains the right to proceed with the disciplinary enquiry. In our opinion, our High Court may favour the latter proposition, whereas it is not unlikely that the Industrial Court may favour the former.

We hope we have given you some food for thought.

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.