



## Fixed term contracts

### Morgan V Central University of Technology, Free State

By Johnny Goldberg, CEO of Global Business Solutions

A deputy vice-chancellor (Morgan) was employed on a fixed term employment contract. The contract was valid for a five year period, commencing on the 1 January 2010. CUT terminated the contract before it expired. Morgan claimed that CUT had unlawfully breached his employment contract and asked the court to compensate him with damages amounting to R4 million. This equated to 48 months' salary which he would have earned if his employer had not breached the contract.

The contract made provision for a three month notice period.

The Labour Court stated that the measure of damages is not what the employee would have earned had his contract not been terminated. It was measured according to the salary for the notice period.

The LC further stated that the employee had failed to prove damages beyond the notice period.

The Court also concluded that the employee has a duty to lessen or mitigate the damages they will suffer. This would mean that the employee must try to find alternate employment to avoid suffering further damages.

The employer argued that Morgan had not made any effort to find alternate employment.

### An employee must prove the following in order to succeed with a contractual damages claim:

1. An employment contract existed
2. The employer breached the contract
3. The damages he suffered as a result of the breach of contract
4. The link between the breach of contract and the loss suffered
5. The loss is not too far removed from the breach

Normally a fixed term contract does not contain provisions relating to termination by notice. The termination of the contract has already been agreed upon and arranged.

However, this contract was different as it specifically provided that the employer could terminate the contract based on misconduct, medical unfitness, incompetence or the employer's operational requirements.

### **What the Labour Court decided?**

The employer needed to give the employee the three months' notice of termination.

But there was no reason for the employee to be awarded damages for more than the three month notice period. Therefore the employee was not entitled to damages of more than R4 million.

The actual amount of damages was just over R200 000, which was equivalent to his salary for three months.

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