

Extended notice periods: Do you have to honour them?

A recent case has shed light on the intricate balance between employee rights, contractual obligations, and employer expectations in the ever-evolving landscape of labour law. *Bitventure Consulting v Carina Smith* addresses enforcing extended notice periods beyond the Basic Conditions of Employment Act (BCEA) minimum and remedies for employees' insufficient notice.

By [Justin Hattingh](#) 30 Aug 2023



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Facts of the case

Bitventure Consulting provides consulting services to various clients, including government departments and public entities and employed Carina Smit as a senior consultant since May 2023. Her employment contract stipulated that she had to give 60 calendar days' notice if she wanted to resign.

In June 2023, Smit resigned from Bitventure and gave only seven days' notice. She claimed to have found another job opportunity with a one-month urgency. Bitventure rejected her resignation, insisting she serves the 60 calendar days' notice period per her contract. They also alleged that they would suffer damages if Smit left earlier, as they had already allocated her to various projects and clients.

Court judgment

The Labour Court ruled against Bitventure Consulting's application, and while the Labour Court accepted that there was a day notice period applicable to the employee's resignation, it held that the court has a discretion regarding whether to grant an order of specific performance.

On the facts, it found that it would not be appropriate to order specific performance because the relationship between the parties was damaged, and the employee had taken up an offer of alternative employment in the Western Cape (and would be prejudiced by being forced to serve out her notice).

The Labour Court also reiterated its reluctance to force employees to continue providing their services during any notice

period.

The court clarified that contractual notice periods are adaptable through agreement or conduct, aiming to facilitate smooth transitions. Alternative remedies for breach of contract include claiming damages or using a restraint of trade clause if val However, the court insisted on tangible evidence of actual damages caused by the breach, which Bitventure Consulting fa to provide, leading to the dismissal of its claim.



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Navigating the legal terrain

Bringing an application for specific performance in labour law cases can prove costly. Urgent applications require expedit legal procedures, resulting in heightened legal fees. Legal representatives often charge premiums for urgent matters, potentially leading to costs ranging from R50,000 to R100,000 or more. If unsuccessful, the party initiating the application may be liable for the opposing party's costs.

The high costs associated with bringing an urgent application before the courts and possibly being unsuccessful is a testament to using the services of a professional when drafting and implementing clear and reasonable contractual terms between the employer and employee and ensuring that both parties understand and comply with them. Clear communicati between employers and employees is essential to prevent disputes and breaches of notice periods.

Implications of the case

The case of *Bitventure Consulting v Carina Smit* has clarified the legal position on contractual notice periods in South Africa. The case confirms that it is unlikely that a court will order an employee to serve out their contractually agreed upon notice period, but they might, in certain circumstances, where the balance of convenience favours the employer.

It is more likely that the court will order that an employee pay damages to their former employer, however, the employer would need to satisfy all the usual elements in terms of damages to be successful and must prove that they suffered actual losses because of the employee's short notice. The case further highlights the need for employers to plan and manage the human resources effectively, to minimise any disruption or damage caused by employees leaving their employment.

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