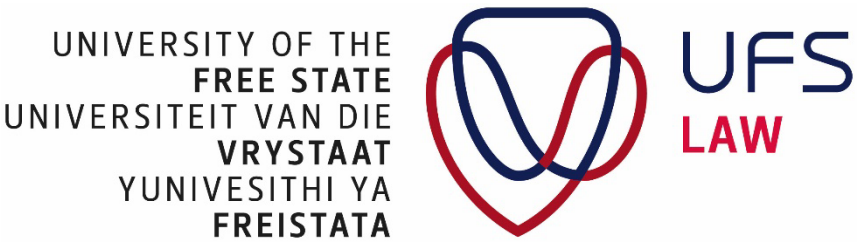

THE LAST STRAW: WORKPLACE BULLYING AND CONSTRUCTIVE DISMISSAL. A SOUTH AFRICAN LABOUR STUDY

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Research Report

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Chapter One

Introduction and Background

1.1 Introduction

"One's dignity may be assaulted, vandalised and cruelly mocked, but it can never be taken away unless it is surrendered." – Michael J. Fox

Bullying – in any environment it thrives in – wreaks havoc and takes more from victims than just their mental wellness. It also takes away their dignity, tenacity for work, and hope for a better future and environment. Some people do not speak up about it because they are fearful of what could happen to them at the hands of their perpetrator, others take out their frustrations by writing a book on their experiences. Lastly, others resort to constructive dismissal claims but this too tends to be a "thief of hope" when the employees face difficulties proving the bullying occurrences. There must be a drastic reform in our laws to efficiently deal with both workplace bullying and constructive dismissal.

1.2 Research Problem

According to findings from a South African study, 30.5 per cent of employees have experienced bullying at work, making it unavoidable.[1] Despite the numerous legislations, including the EEA,[2] and the internal policies that have been developed and updated to deal with such issues,[3] it appears to be a persistent issue. The two special needs teachers in *Centre for Autism Research and Education CC v CCMA*,[4] were required to file a grievance to address the intolerable conditions they were subjected to, but they unintentionally failed to do so because they felt intimidated by their employer. Due to unusual circumstances, fortunately, their case was still heard. This is a recent case that has become vital in our South African Labour Law because constructive dismissal and workplace bullying were intertwined. Workplace bullying is now recognised as a type of harassment, which is an unfair form of discrimination,[5] as

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1 Cunniff & Mostert 2012:8.

2 *Employment Equity Act* 55/1998.

3 Sec.5 of the EEA states that employers must take steps to promote equal opportunity in the workplace by eliminating unfair discrimination in any employment policy or practice.

4 2020 11 *BLR* 1123 (LC).

5 Sec.6(1) of the EEA explicitly carries out the objective of the Act to protect employees from unfair discrimination on the listed grounds such as, inter alia, gender, race, sex, marital status, ethnic or social religion, or other arbitrary grounds. In addition, sec.6(2) states that no employee may be

a result of the new Harassment Code. Depression, post-traumatic stress disorder,[6] hiring the wrong individuals, poor work performance,[7] and turnover are a few negative outcomes of workplace bullying.

The International Labour Organisation ("ILO") considers bullying at work to be a form of violence,[8] and the related Recommendation no.206 outlines steps employers ought to execute to prevent it.[9] Since the idea of workplace bullying is new and it is obvious that it results in constructive dismissal, questions about what these concepts exactly entail, the ILO's position on them, and which legal frameworks are best suited to regulate this type of harassment and dismissal in South Africa arise. These are crucial inquiries to answer in order to ascertain whether the existing legal tools are sufficient or whether a shift in workplace culture, training, or knowledge of workplace bullying is required to manage and avoid this problem that plagues our workplaces. The victims who resign as a result of such unpleasant treatment are not aware of their rights or the available legal options. Only a select few employees who have been bullied manage to overcome the obstacles and prevail before the CCMA or the Labour Courts because they met the strict requirements for constructive dismissal claims.[10] If they are successful in proving the dismissal, however, they are limited to granting remedies in accordance with specific criteria or provisions. The aggrieved party must again prove this factor before the arbitrators or presiding officers can decide whether the employee's requested relief of compensation is necessary.[11]

1.2 The motivation of the study

It will be difficult for the impacted employees to convince the courts and CCMA that their employability was truly intolerable without concrete proof. However, their burden of proof to show that the constructive dismissal had a negative impact on their financial circumstances must still be met before the courts and the CCMA to proceed with

harassed and if they are a victim of such, then it constitutes to unfair discrimination. Bullying is considered to be unfair discrimination because it is officially a form of harassment as described in the new Harassment Code.

6 Einarsen 1999:17.

7 Rycroft 2009:1432.

8 Convention no.190/2019.

9 ILO Recommendation no.206/2019.

10 *Copeland and New Dawn Prophesy Business Solutions (Pty) Ltd* 2010 31 *ILJ* 204 (CCMA):paras 57-58.

11 *Labour Relations Act* 66/1995:sec.194. See also *Ferodo (Pty) Ltd v De Ruiter* 1993 14 *ILJ* 974 (LAC) at 981C-G, where Combrinck J mentioned the factors to be followed by judges before granting compensation to a constructive dismissal complaint.

issuing a compensation order.[12] For instance, the LRA stipulates in section 194 that commissioners may award compensation up to the amount of one year's salary in cases where an employee triumphs an unfair dismissal dispute. The provision also outlines the maximum amounts of compensation that may be awarded, as well as different amounts and conditions for awarding compensation based on the decision-maker's conclusions. Due to the high burden of proof that South African labour laws have imposed on them, it is not motivating for the employees to pursue a claim for constructive dismissal.[13] Because the recourse for the claim of constructive dismissal does not ensure a successful outcome and the entire period of the proceedings will most likely negatively impact the aggrieved party, preventative measures must be taken to reduce bullying in South African workplaces.

The purpose of this study is to explore the correlation between workplace bullying and constructive dismissal. This will be done to determine whether constructive dismissal—which can be challenging for employees to succeed with—is the best course of action or whether other alternatives should be looked into in conjunction with the new South African Code of Good Practice. It also aims to specify how these choices ought to be used so that workers are not forced to pursue constructive dismissal and face a heavy burden of proof. Therefore, the study will add to the growing corpus of studies in South African labour law that support the notion that the existent legal framework is not developed enough to alleviate workplace bullying and efficiently assist vulnerable employees with constructive dismissal claims.

1.2 Research Questions

This dissertation seeks to answer the following question: How can workplace bullying in South African workplaces be alleviated without having to resort to a claim for constructive dismissal?

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12 *Labour Relations Act* 66/1995:sec.194(1).

13 *Ferodo (Pty) Ltd v De Ruiter* 1993 14 *ILJ* 974 (LAC) 981 C-G: "(a) There must be evidence of actual financial loss suffered by the person claiming compensation; (b) There must be proof that the loss was caused by the unfair labour practice; (c) The loss must be foreseeable, i.e., not too remote or speculative; (d) The award must endeavour to place the applicant in monetary terms in that position in which he would have been had the unfair labour practice not been committed; (e) In making the award the court must be guided by what is reasonable and fair in the circumstances; (f) There is a duty on the employee (if he is seeking compensation) to mitigate his damages by taking all reasonable steps to acquire alternative employment. Even though the Labour Appeal Court was dealing with the issue of compensation for an unfair dismissal under the 1956 Labour Relations Act, these guidelines have been considered apposite even under the current labour regime."

The following issues are looked at in an effort to address this research question:

- What is workplace bullying and constructive dismissal with the focus on the link between both these concepts?
- What is the stance of the ILO on workplace bullying and constructive dismissal?
- Which South African legal instruments govern workplace bullying and constructive dismissal?

1.4 Literature overview

By defining what each notion entails, Chapter 2 will show how workplace bullying and constructive dismissal can be linked or integrated by referring to the *Centre for Autism Case*. Chapter 3 will examine the recently passed ILO Convention No. 190/2019 and its related ILO Recommendation No. 206/2019 in an effort to give a general overview of the International Labour Organization's goal with regard to eliminating harassment at work. There will be further analysis of additional international treaties that were approved before the sources just cited. These include the Termination of Employment Convention No.158/1982, and the Discrimination (Employment and Occupation) Convention no.111/1958. Chapter 4 will investigate the South African legal framework to determine whether the provisions in relation to workplace bullying and constructive dismissal are sufficient enough to protect the affected employees by evaluation of the Labour Relations Act and the Employment Equity Act. Chapter 5 will consist of the recommendations from ILO Recommendation no.260 and academic papers, as well as the closing remarks.

1.5 Structure

The thesis will consist of 5 chapters. The first one is an introductory chapter which covers the research questions. Secondly, we have the second chapter which aims to link constructive dismissal and workplace bullying. Thirdly, we have chapter three which uncovers the aim of the ILO in combatting workplace harassment and the conventions related to it. Thereafter, it is chapter 4 and its evaluation of the South African legal framework on workplace bullying and constructive dismissal. Lastly, we have chapter 5 which will cover the recommendations and conclusion.

1.6 Research Methodology

A field study will not be undertaken, instead desktop research will be used to conduct the research for this topic. A doctrinal research design will be applied during this study, which entails a critical evaluation of chosen material drawn from both primary and secondary legal sources.[14] The sources listed above, including case law and books on workplace harassment and constructive dismissal, national legal instruments, published statistics, international conventions and recommendations, as well as case law and books on workplace harassment and constructive dismissal, will be recognized and researched to the extent that they are pertinent to this study. A wider range of legal scholars (including authors from other countries) will be consulted for the academic publications, journals, and articles.

[14] Jangam 2021:1798.

Chapter Two

The link between workplace bullying and constructive dismissal

2.1 Introduction

By defining what each notion entails, this chapter will show how workplace bullying and constructive dismissal can be linked or integrated. I will in addition, refer to the notion of workplace bullying and constructive dismissal to place the link in perspective.

2.2 Explaining workplace bullying

At work, bullying is defined as the abuse of coercive power by a person or group of people in the workplace.[15] Safodien stated that it typically takes the form of harassing, offending, socially isolating, or negatively impacting someone's ability to do their duties.[16] The victim of bullying becomes the object of negative, repetitive actions, such as relentless criticism of their work or removal of their responsibilities, delegation of minor duties, shouting, humiliation in public or private, obstruction of promotion, overloading their schedules with work, setting unjust deadlines, and making them feel incompetent in order that they will be dismissed or resign.[17]

Bullying can take form in various ways, such as the following:[18]

(a) In *Le Monde Luggage CC t/a Pakwells Petje v Dunn NO & Others*,[19] bullying took the form of assault.
(b) In *Lang v Daliff Precision Engineering (Pty) Ltd*,[20] it was in the form of verbal abuse.
(c) In *Marsland v New Way Motor & Diesel Engineering*,[21] it took the form of intolerance of psychological, personal and medical problems.

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15 The Code of Good Practice on the Prevention and Elimination of harassment at work: Item 4.7.7.
16 Safodien 2022(a):18.
17 Safodien 2022(b):18.
18 Rycroft 2009:1431.
19 (2007) 28 *ILJ* 2238 (LAC).
20 (1993) 14 *ILJ* 1359 (IC):1360-1361.
21 (2009) 30 *ILJ* 169 (LC).

(d) In *Pretoria Society for the Care of the Retarded v Loots*,[22] the employer conducted themselves in a demeaning and humiliating manner by throwing a book at the employee.

The judge in *Centre for Autism Research and Education CC v CCMA,*[23] defined bullying as any negative or offensive behaviour on the part of an individual or individuals that has the effect of fostering a hostile work environment. According to these definitions, bullying refers to a wide range of insulting, degrading, or intimidating behaviours that reduce an employee's sense of worth or confidence. In their testimony, the teachers detailed a long list of bullying tactics used by their employer, including unlawful pay deductions, irrational demands, the use of cruel and vulgar language when addressing them, sexual hints, sexual harassment, discrimination based on their sexual orientation, making derogatory remarks to them, demeaning behaviour, and infringement with their constitutional rights.[24] They provided a month's notice of resignation, but they afterwards asked the CCMA for confirmation that their dismissal had been unfair.

2.3 Explaining constructive dismissal?

Constructive dismissal is deemed to be a dismissal but one which requires the employee to have terminated the contract with or without notice on the grounds of an intolerable relationship created by the employer's consistent inappropriate conduct.[25]

The prerequisites for constructive dismissal are important. The following conditions must be met:[26]

(a) The employee must have ended the employment relationship;

(b) The termination must have been brought about by the employee's inability to work (this must be demonstrated objectively; the burden of proof lies with the employee) and;

(c) The employer must have contributed to the employee's inability to work.

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22 (1997) 18 *ILJ* 981 (LAC).

23 2020 11 BLR 1123 (LC).

24 para 37.

25 *Labour Relations Act* 66/1995:sec.186(1)(e).

26 para 34. See also: *Solid Doors (Pty) Ltd v Commissioner Theron & Others*: para 28.

The evidence presented by the employees in *Centre for Autism Research v CCMA supra* helped the Labour Court evaluate the CCMA's finding that there had been constructive dismissals. The Court has held that an employee must ordinarily exhaust every available internal remedy before resigning and asserting constructive dismissal. It is not normally against the law for an employee to claim constructive dismissal, but only in situations where the person's recourse to the established grievance channels would be fruitless given the facts.[27] The court found that although the two teachers in this case did not follow the grievance procedures outlined in their employment contracts, they were not barred from using them because the "immediate manager/director" to whom they were supposed to address their complaints was the same individual who they had grievances about.[28]

In the case of *Olivier and Imperial Bank Ltd*,[29] the Commissioner reaffirmed that it is uncommon to declare that constructive dismissal took place if the aggrieved employee did not peruse the grievance procedure. After filing a complaint against a superior but before the grievance process was completed, Ms Olivier announced her resignation. Her resignation was deemed to be premature by the Commissioner. She could not argue that the working conditions had gotten to the point of being unsalvageable and intolerable because the company had not had a chance to respond to her complaint. The general rule for employees is that in order to maintain your claim of constructive dismissal, you must go through whatever internal grievance procedures in existence at your place of employment.

The teachers' willingness to negotiate their notice periods, according to the employer, was "incompatible with any notion of intolerability of future employment."[30] Fortunately, the court ruled that the teachers were acting "out of their sense of duty towards the learners in their care, and the need for a smooth transition so as to minimise any harm that might be caused to them."[31] Therefore, employees should have vigilance in this circumstance, though, as their willingness to negotiate a notice period could be seen

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27 para 35.

28 para 48.

29 (2006) 27 *ILJ* 1049 (CCMA).

30 para 50.

31 para 50.

as a concession that their working conditions are not as severe as they claim to be in the absence of such exceptional circumstances.

In *Murray v Minister of Defence*,[32] the Cape Provincial Division made its decision regarding an alleged constructive dismissal for the first time. Cameron JA stated:

"The term used in English law 'constructive dismissal' (where 'constructive' signifies something the law deems to exist for reasons of fairness and justice, such as notice, knowledge, trust, desertion), has become well established in our law. In employment law, constructive dismissal represents a victory for substance over form. Its essence is that although the employee resigns, the causal responsibility for the termination of service is recognised as the employer's unacceptable conduct, and the latter therefore remains responsible for the consequences."

A senior officer in the South African Navy, claimed that after being subjected to disciplinary action, having his position downgraded, and eventually being offered an alternate position he was unable to accept, his superiors had forced him to resign. In addition to claiming damages for contract breach, he also claimed that his right to a fair administrative action had been violated. The court acknowledged that such a claim might be made under the Constitution without considering how, under common law, an employee who resigned may assert that the employer has violated his contract. The applicant failed to demonstrate that any of the alleged instances led to his resignation, the court declared, after restating the guidelines for constructive dismissal established by the Labour Court. Instead, it seemed that his major goal was to recoup a substantial sum of money from his previous company. According to the court, a claim of constructive dismissal cannot be supported by such a reason.

An example of a constructive dismissal can be found in the case of *Copeland and New Dawn Prophesy Business Solutions (Pty) Ltd*,[33] the applicant had in good faith continued working despite finding his job to be intolerable because he thought the chief executive officer of the respondent would keep his word about a pay increase to make up for the medical insurance and provident fund contributions that the employer had earlier withheld. The applicant had met his burden of proof to show that he was constructively dismissed and given compensation.

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32 (2006) 27 *ILJ* 1607 (C), [2006] 8 *BLLR* 790:paras 52-59.

33 (2010) 31 *ILJ* 204 (CCMA):paras 70-72.

2.4 The difference between constructive dismissal and other forms of dismissal

Constructive dismissals can be regarded as unfair dismissals but they are not naturally unfair, because only when a constructive dismissal is established the burden of proof then falls to the employer to demonstrate that it acted fairly.[34] Thus, a two-stage strategy is envisioned.[35] The essential point is whether the employer's actions, which led to the employee's resignation, were unfair.[36] The circumstances will be taken into account by the court in order to determine whether the employer's actions were appropriate.[37] Since procedural fairness has little to no bearing on the majority of constructive dismissal cases, the emphasis will be on whether the dismissal was substantively fair.

In the case of *Mkhize and Dube Transport*,[38] a complaint which was intended to be about victimisation was instead brought to the CCMA as unfair dismissal. The employee's HR manager tormented and harassed her both inside and outside of the workplace and used her medical disability as justification to terminate her employment. These incidents took place after she filed a grievance about the bullying. The HR manager is deemed to be the employer's representative and his behaviour was identifiable as bullying.[39] The employer did not take anticipatory steps when the employee filed the grievance, therefore he is vicariously liable for the harassment as well.[40] Furthermore, Calitz stated that bullied employees may be successful in pursuing a common law claim for delictual damages against their employers based on negligence or vicarious liability.[41]

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34 *Bakker v CCMA & Others*:para 10.

35 *Jordaan v CCMA & Others* (2010) 31 *ILJ* 2331 (LAC):2335.

36 *Jonker v Amalgamated Beverages Industries* (1993) 14 *ILJ* 199 (IC):211.

37 *Jooste v Transnet Ltd t/a South African Airways* (1995) 16 *ILJ* 629 (LAC).

38 (2019) 40 *ILJ* 929 (CCMA).

39 According to sections 60 (1) through (4) of the EEA, employers must be notified right away if an employee is suspected of violating laws against harassment or discrimination in general. The same holds true when an employee engages in behaviour on behalf of the employer that would be in violation of the EEA, just as the HR manager in this case. In these situations, the employer must (a) confer with all pertinent parties, (b) take the required actions to stop the alleged behaviour, and (c) adhere to EEA regulations. When an employee is found to have violated a harassment clause and the employer fails to execute the necessary action; the employer will also be held accountable.

40 *Shoprite Checkers (Pty) Ltd v Samka & others* (2018) 39 *ILJ* 2347 (LC)): The Labour Court ruled that an employer can only be held liable in terms of sec.60 of the EEA for the discriminatory actions of its employees.

41 Calitz 2018:18.

The commissioner found, based on the facts, that the dispute was an automatically unfair dismissal on the ground of unfair discrimination (bullying), and only the Labour Court has exclusive jurisdiction to preside over it.

Sections 187(1)(d)-(f) of the Labour Relations Act provide a definition of automatically dismissals based on unfair discrimination as follows:

"(1) A dismissal is automatically unfair if the employer, in dismissing the employee, act contrary to section 5 or, if the reasons for the dismissal is-

d) that the employee took action, or indicated an intention to take action against the employer by

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exercising any right conferred by this Act**;** or

participate in any proceedings in terms of this Act;

f) that the employer unfairly discriminates against an employee, directly or indirectly, on any arbitrary ground, including, but not limited to race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, political opinion, culture, language, marital status or family responsibility..."

If the applicant thus resigned, after filing the grievance and not acquiring assistance thereof, then it could constitute constructive dismissal as a result of bullying. However, this particular case is important because it shows the importance of the employee providing solid facts and laying out all the incidents the best way possible in order for the CCMA or the Labour Courts to be well aware of the nature of the case brought before them. It will also determine which legal body (CCMA or Labour Court) is more suitable to lodge a referral to.[42] In essence, constructive dismissal places the burden of proof on the employee to prove that they resigned because the working conditions were unbearable as a result of the employer's abusive conduct, whereas unfair dismissal focuses on the employer terminating the employee's contract without fair justification and/or following proper procedure.

2.5 Concluding Remarks

From the above evaluation of the concepts of workplace bullying and constructive dismissals, we can deduce that the South African laws allow employees to pursue a claim of constructive dismissal as a protective mechanism against bullying. However, the shortcomings of statutes in defining both concepts appropriately give way to many employees' demise when they are faced with such circumstances since they do not

[42] See *Gold One Limited v Madalani & Others* (2020) 41 *ILJ* 2832 (LC); [2021] 2 BLLR 198 (LC).

explicitly know how to prove workplace bullying and constructive dismissal beyond a balance of probabilities, and make the correct referrals or applications thereof.

Chapter Three

The ILO on workplace bullying and constructive dismissal

3.1 Introduction

The following chapter will examine the recently passed ILO Convention No. 190/2019 and its related ILO Recommendation No. 206/2019, in an effort to give a general overview of the International Labour Organization's goal with regard to eliminating harassment at work. There will be an overview of additional international treaties that were approved before the abovementioned sources. These include the Recommendation No.166/1982 and the Termination of Employment Convention No.158/1982, as well as the Discrimination (Employment and Occupation) Convention No.111/1958.

3.2 What is the ILO?

Section 39(1) of Chapter 2 of the Constitution mandates that all courts, tribunals, or forums must take into account international and foreign law when attempting to interpret the Bill of Rights in order to advance values that favour an open and democratic society based on human dignity, equality, and freedom.[43] A court must also prefer a reasonable analysing of the law that complies with international law above other interpretations that do not, according to Section 233 of the Constitution.

With the belief that labour peace is crucial to prosperity, the International Labour Organisation ("ILO") is committed to advancing social justice and widely acknowledged human and labour rights.[44] It advances the development of acceptable employment opportunities as well as the working and financial conditions that allow business owners and employees a stake in long-term stability, prosperity, and advancement.[45] ILO was established in 1919 as part of the Treaty of Versailles, which

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43 *Constitution of the Republic of South Africa*, 1996.

44 International Labour Organisation "The Need for Social Justice", https://www.ilo.org/global/standards/introduction-to-international-labour-standards/need-for-social-justice/lang--en/index.htm (accessed on 30 July 2023).

45 International Labour Organisation "How the ILO works: Tripartism and Social Dialogue", https://www.ilo.org/global/about-the-ilo/how-the-ilo-works/lang--en/index.htm (accessed on 30 July 2023).

put an end to World War I, to represent the conviction that social fairness must be the foundation of any durable, universal peace.[46] The ILO was elevated to the status of a specialised arm of the UN in 1946.[47] A forum to foster equitable employment for all men and women is provided by its distinctive tripartite structure, which offers workers, businesses, and governments an equal voice.[48] There are 4 major objectives of the ILO:

(a) improve the reach as well as the efficacy of social security for everyone;
(b) promote and realise standards, fundamental values, and rights at work;
(c) increase possibilities both women and men to have decent jobs and income and;
(d) enhance tripartite collaboration.

South Africa is a member of the ILO and signed the ILO Convention no.190 on 29 November 2021,[49] thus it is obligated to implement the necessary legal and policy frameworks to prevent and remedy workplace violence and harassment.

3.3 The stance of ILO on workplace bullying

The ILO Convention no. 190 ("C190") was adopted in 2019 to address the prevalence of harassment and violence in workplaces. C190 refers to violence and harassment at work as:[50]

"a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment…"

It was assumed that bullying only happened in schools and not at work, but it is time to take the term literally and understand that bullying is a type of abuse that exists in

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46 International Labour Organisation "History of the ILO", https://www.ilo.org/global/about-the-ilo/history/lang--en/index.htm (accessed on 30 July 2023).

47 International Labour Organisation "History of the ILO", https://www.ilo.org/global/about-the-ilo/history/lang--en/index.htm (accessed on 30 July 2023).

48 International Labour Organisation "How the ILO works: Tripartism and Social Dialogue", https://www.ilo.org/global/about-the-ilo/how-the-ilo-works/lang--en/index.htm (accessed on 30 July 2023).

49 International Labour Organisation "South Africa ratifies the Violence and Harassment Convention", https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/equality-of-opportunity-and-treatment/WCMS_832079/lang— en /index.htm#:~:text=On%2029%20November%202021%2C%20South%20Africa%20deposited%20with November%202022%2C%20one%20year%20after%20its%20ratification (accessed on 30 July).

50 Article 1(b).

any environment. Bullying can occur in workplaces that are public, private, or domestic,[51] just like other types of abuse. Fortunately, C190 can be applied in all sectors including rural areas.[52] This Convention covers workplace violence and harassment that occurs during, is connected to, or results from work in the following situations:[53]

(a) the workplace, including both private and public working areas;

(b) places where the employee is paid, takes a break or has a meal, or uses lavatory, laundry or changing facilities;

c) when on business-related travels, business travel, social activities, events, training;
d) during business-related interactions, including those made possible by the use of communication and information technologies;

e) while staying in accommodations supplied by the employer; and

f) while travelling to and from work.

Some employees might be more vulnerable to violence and harassment. In accordance with Recommendation no.206,[54] references to vulnerable groups and groups in precarious situations should be read considering valid international labour regulations and international human rights treaties. Although this idea is still developing, these groups would include migrant workers, indigenous peoples, people with disabilities, lesbian, homosexual, bisexual, and transgender individuals, as well as those who have experienced discrimination because of their race, colour, descent, nationality, or ethnic origin.[55] Member states are explicitly encouraged to implement legislation or other measures to safeguard migrant workers, especially women migrant

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51 Article 5 of the Domestic Workers Convention no.189/2011 states: "Each member shall take measures to ensure that domestic workers enjoy effective protection against all forms of abuse, harassment and violence." South Africa ratified this convention, therefore domestic workers in the country can also claim constructive dismissal if they were bullied in their place of work.

52 Article 2(2).

53 Article 3.

54 ILO Recommendation no.206/2019.

55 International Labour Organisation "The Need for Social Justice", https://www.ilo.org/global/standards/introduction-to-international-labour-standards/need-for-social-justice/lang--en/index.htm (accessed on 30 July 2023).

workers, against harassment and abuse at work in the countries of origin, transit, and destination, where appropriate.[56]

C190 under Article 6 acknowledges that workplace violence and harassment particularly harms women workers, employees who encounter inequality and discrimination, and workers who belong to several vulnerable populations or groups in conditions of vulnerability.[57] Therefore, in order to prevent and end violence and harassment at work, governments must create laws, rules, and policies that guarantee the right to equal treatment and freedom from discrimination in workplace and occupation.[58]

South Africa ratified C190, and in light of it, proceeded to implement the Harassment Code to make a step towards combatting workplace harassment (which includes bullying in the workplace) so that the International Labour Standards of the ILO could be aligned with in the country. Therefore, it must have the convention's core principles enshrined not only in this new Code but also in accordance with the national/local statutes, working closely with employers' and employees' representative organisations and unions in order to establish a gender-responsive and integrated approach for the elimination and prevention of violence and harassment in the world of work that addresses the root causes and risk factors, such as gender stereotypes, numerous and overlapping types of discrimination, and uneven gender-based positions of power.[59]

In addition, an integrated strategy requires establishing or enhancing enforcement and oversight procedures, and making sure victims have access to redress and support. It includes establishing sanctions, creating resources for education and training in accessible formats, and guaranteeing investigation and examination of cases of violence and harassment.[60] According to the Convention, governments must pass legislation obliging employers to take the following actions:[61]

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56 International Labour Organisation "Subjects covered by International Labour Standards", https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/lang--en/index.htm (accessed on 30 July 2023).

57 Article 6.

58 Article 6.

59 Article 4.

60 Article 4.

61 Article 9.

(a) adopting and implementing a workplace policy on violence and harassment in consultation with employees and their representatives,

(b) considering violence and harassment and related psychological risks in the management of occupational safety and health; and

(c) determining potential risks and assessing the hazards of violence and harassment with the participation of workers.

3.4 ILO Convention111/1958, dealing with discrimination in the workplace

Discrimination (Employment and Occupation) Convention no.111/1958 ("C111") is an International Labour Organization Convention on anti-discrimination in the workplace, and South Africa ratified it on 5 March 1997.[62] The Convention is one of eight essential conventions of the ILO. C111 requires member states to incorporate legislation prohibiting discrimination and exclusion on grounds of race, colour, sex, religion, political opinion, national or social origin in employment and to repeal legislation which is not based on equal opportunities. It defines discrimination as follows:[63]

"(a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;

(b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies."

Additionally, the Convention allows for the potential expansion of the list of prohibited grounds of discrimination following consultation with pertinent bodies and representative organisations of employers and workers.[64] This means that workplace

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62 International Labour Organisation "Ratifications for South Africa", https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102888 (accessed on 30 July 2023).

63 Article 1 of C111.

64 International Labour Organisation "International Labour Standards on Equality of opportunity and Treatment", https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/equality-of-opportunity-and-treatment/lang--en/index.htm (accessed on 30 July 2023).

bullying could potentially be included as a listed ground and this would certainly make the cause of action for bullied employees be more lenient, and the burden of proof for constructive dismissal claims would become less stringent for them.

3.5 The stance of the ILO on dismissals

The termination of employment at the employer's initiative is governed by the Termination of Employment Convention No. 158/1982 ("C158"). This means that neither the termination of an employment relationship by an employee nor the termination resulting from a freely negotiated agreement reached by both parties would be regarded as falling within the authority of the Convention. Article 4 of the C158 elucidates:

"the employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service".

The South African legislature adopted Articles 4 and 5 in sections 187(1)(f) and 188(1)(a)(i)(ii) of the LRA respectively. These sections explicitly include the identified factors stated in the abovementioned articles for what constitutes unfair dismissals. However, the C158 is not applicable in situations when an employee voluntarily resigns due to being subjected to harassment, or to be specific, it does not apply where the employee is the one who terminates the contract of employment as a result of the bullying they had endured in the hands of their employer.

3.6 Concluding Remarks

In essence, the relevant ILO conventions discussed, binds South Africa and the pertinent conventions have been ratified accordingly. However, the country's legislature still has to amend the labour statutes to sufficiently align with the ILO Convention no.190, which encapsulates workplace bullying under harassment and violence, and its corresponding Recommendation no.206 to support vulnerable groups and provide adequate support and protection for affected employees. The ILO acknowledged the demise caused by workplace bullying and took an initiative to combat its prevalence in all workplaces of member states by establishing the conventions covered in this chapter. The next discussion will be on the position of the South African legal framework on workplace bullying and constructive dismissal.

Chapter Four

The legal instruments governing workplace bullying and constructive dismissal in South Africa

4.1 Introduction

This chapter will investigate the South African legal framework to determine whether the provisions in relation to workplace bullying and constructive dismissal are sufficient enough to protect the affected employees, and whether there are more protective avenues to assist the aggrieved if they are failed by the existing internal measures in the workplace.

4.2 The South African Code dealing with harassment in the workplace

The Code of Good Practice on the Prevention and Elimination of harassment at work ("Harassment Code") came into effect on 18 March 2022. It succeeded the Code of Good Practice on the Handling of Sexual Harassment Cases in the Workplace ("Sexual Harassment Code").[65] The primary goal of the code, which was released under the Employment Equity Act ("EEA"),[66] was to end sexual harassment in the workplace. A definition of sexual harassment, examples of its many forms, a test for detecting it, and adequate policies and procedures to implement in the workplace to effectively address sexual harassment are all enclosed by the code's guidelines.

The new Harassment Code's main goal is to "eliminate all forms of harassment in the workplace."[67] The Harassment Code sets guidance to employers and employees on the preventative measures, eradication, and management of all forms of harassment in the workplace as a form of unfair discrimination as well as on "human resources policies, procedures, and practices in relation to harassment and appropriate procedures to deal with harassment and prevent its recurrence."[68] If someone deliberately acted in a way that made them fear violence or harm, a person with normal sensitivity would feel frightened.

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65 GN 27865 of 4 August 2005.

66 *Act* 55/1998.

67 Item 1.1 of the Harassment Code.

68 Item 1.2.2 of the Harassment Code.

Harassment on any one or a combination of the grounds stated in the EEA are prohibited for harassment, which is a form of unfair discrimination.[69] Bullying specifically can escalate into harassment during the course of employment, placing the complainant in a position of inferiority and making them the subject of repeated unacceptable conduct.[70] The Harassment Code provides that it is not essential to prove the perpetrator's intent or frame of mind in order to establish harassment. When deciding on a remedy for the complaint, it may be an aggravating factor to consider if the conduct was deliberate or intended to offend the complainant(s). In disciplinary processes, a harasser's or perpetrator's intent could also be important.[71]

To establish whether workplace bullying took place, the following factors may be important:[72]

(a) The circumstances of the bullied employee and the effect the conduct has had on them,

(b) The circumstances when the bullying took place,

(c) The positions held by the bully or perpetrator and the bullied employee.

The Harassment Code has succeeded with the inclusion of a definition of workplace bullying. However, it does so by encompassing the term under unfair discrimination as per the EEA.

4.3 Employment Equity Act 55 of 1998 ("EEA")

To guarantee fair treatment and equal opportunity for every employee in the workplace, the EEA was established. Additionally, it strives to shield workers against unfair discrimination as well as any direct or indirect violations of their rights by their employer. All employers and employees must abide by Chapter II, which covers Sections 5 through 11.

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69 sec.6(2) of the *Employment Equity Act*: "No person may unfairly discriminate, directly or indirectly, against an employee, in any employment policy or practice, on one or more grounds, including race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language, birth or any other arbitrary ground."

70 Item 4.5.2.

71 Item 4.5.3 of the Harassment Code.

72 Item 4.5.4 of the Harassment Code.

According to Section 5, employers are required to take action to foster equal treatment in their work environments by removing unfair discrimination from all employment-related policies and practices. They have an obligation under s 60 of the EEA to take anticipatory steps in order to prevent harassment by being proactive. However, this section is limited because it is only applicable to harassment that takes place in the scope of work.

Additionally, section 6(1) of the EEA expressly carries out the Act's goal to safeguard employees from unjustified discrimination on the grounds stated, including, among others, gender, race, sex, marital status, ethnicity or social religion, or other arbitrary reasons. Furthermore, according to section 6(3), harassing an employee constitutes unfair discrimination if they are the victim of it. It reads as follows: “Harassment of an employee is a form of unfair discrimination and is prohibited on any one or a combination of grounds of unfair discrimination listed in subsection (1).” Bullying is thus regarded as a form of harassment, as per the Code and should be dealt within terms of unfair discrimination laws in South Africa. The issue, however, is still whether the legal instruments are sufficient to protect employees against workplace bullying. It is clear that there is legislation as well as a Code in place, but whether it is effective to protect employees having to resort to a claim for constructive dismissals based upon bullying, given the heavy burden of proof, still stands to be decided on.

Unfortunately, employees would only be successful with such a claim under this section if they can prove that the type of bullying they experienced falls under the "listed" or "arbitrary grounds". The courts had to decide on the most suitable interpretation of the term "arbitrary ground" and they leaned more towards the narrow interpretation which entails that employees can only claim unfair discrimination if the bullying they were subjected to had comparably impaired their constitutional right of human dignity.[73]

4.4 Labour Relations Act 66 of 1995 (“LRA”)

[73] See *Naidoo & Others v Parliament of the Republic of South Africa* 2019 (3) BLLR 291 (LC):864.

The LRA was put into effect to establish the rights and obligations of employers and employees for the purpose of advancing social justice.[74] Employees are additionally protected by the law by being encouraged to file matters to the Commission for Conciliation, Mediation, and Arbitration ("CCMA") for resolution and the Labour Courts for review or appeal if they were not pleased with the results at CCMA, and the same applies to unsatisfied employers.[75] Constructive dismissal is defined in Section 186(1)(e) of the LRA as follows: “an employee terminated a contract of employment with or without notice because the employer made continued employment intolerable for the employee” which highlights that the employer had to make further employment "intolerable". Additionally, it is the employee's responsibility to present proof to the arbitrator or judge that the employer engaged in substantial acts of misconduct that damaged employee confidence in the employer-employee relationship.[76]

The term “intolerable” is not expressly defined in the LRA and the courts had to develop an interpretation for what could constitute an intolerable employment condition.[77] In *Murray v Minister of Defence*,[78] the Supreme Court of Appeal determined that regardless of whether the employer created the hostile or intolerable conditions, this would not be enough to support a claim of constructive dismissal. There needs to be more. The court stated the following:[79]

“There are many things an employer may fairly and reasonably do that may make an employee’s position intolerable. More is needed: the employer must be culpably responsible in some way for the intolerable conditions. The conduct must (in the formulation the courts have adopted) have lacked reasonable and proper cause. Culpability does not mean that the employer must have wanted to or intended to get rid of the employee though in many instances of constructive dismissal that is the case.”

The *Anglo American Farms t/a Boschendal Restaurant v Komjwayo case,*[80] served as the most significant case for the concept of intolerability. It was alleged that the issue at hand was whether or whether not the respondent's actions had the potential to

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74 The National Debt Review Center “The Labour Relations Act Explained: 5 Things You Should Know”, https://ndrc.org.za/wp-content/uploads/2022/10/Labour-Relations-Act-1.pdf (accessed on 24 June 2023).

75 Tshoose 2017:125.

76 *Pretoria Society for the Care of the Retarded v Loots* [1997] 6 BLLR 721 (LAC):985A.

77 *Pretoria Society for the Care of the Retarded v Loots* [1997] 6 BLLR 721 (LAC):985A-C.

78 [2008] 6 BLLR 513 (SCA).

79 para 13.

80 (1992) 13 *ILJ* 573 (LAC).

irreparably harm or perhaps destroy the relationship between an employer and a worker, making its continued existence intolerable.[81]

The LRA further continues to endeavour on the complexity of the employees' "discharge of the onus" by stipulating in section 194 that commissioners or presiding officers may award compensation up to the amount of one year's salary in cases where employees' triumph unfair dismissal disputes. The provision also outlines the maximum amounts of compensation that may be awarded, as well as different amounts and conditions for awarding compensation based on the decision-maker's conclusions. It will be difficult for the impacted employees to convince the courts and CCMA that their employability was truly intolerable without concrete proof. However, their burden of proof to show that the constructive dismissal had a negative impact on their financial circumstances must still be met before the courts and the CCMA could proceed with issuing a compensation order.[82] In *Ferodo (Pty) Ltd v De Ruiter,*[83] the court held the following:[84]

"(a) There must be evidence of actual financial loss suffered by the person claiming compensation; (b) There must be proof that the loss was caused by the unfair labour practice; (c) The loss must be foreseeable, i.e., not too remote speculative; (d) The award must endeavour to place the applicant in monetary terms in that position in which he would have been had the unfair labour practice not been committed; (e) In making the award the court must be guided by what is reasonable and fair in the circumstances; (f) There is a duty on the employee (if he is seeking compensation) to mitigate his damages by taking all reasonable steps to acquire alternative employment. Even though the Labour Appeal Court was dealing with the issue of compensation for an unfair dismissal under the 1956 Labour Relations Act, these guidelines have been considered apposite even under the current labour regime."

Due to the high burden of proof that South African labour laws have imposed on employees, it is not motivating for them to pursue a claim for constructive dismissal because of bullying. The mere possibility that they might succeed with a claim for constructive dismissal after having been bullied at their workplace, is offset by the heavy burden of proof when it comes to proving workplace bullying in the modern world of work and that it was the cause of terminating the employment contract,

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81 paras 589G-H.

82 *Labour Relations Act* 66/1995:sec.194(1).

83 1993 14 *ILJ* 974 (LAC).

84 paras 981C-G.

because of the actions or omissions of the employer. In the case of *National Health Laboratory Service v Yona & Others*,[85]

4.5 Additional pertinent legal instruments with anti-harassment clauses

(a) *Protected Disclosures Act* 26 of 2000 ("PDA")

The act of harassing or bullying a worker for making a protected disclosure (whistle-blowing) is forbidden. In accordance with section 3 of this Act, it will happen if an employee experiences an occupational detriment.

(b) *Protection from Harassment Act* 17 of 2011 ("PHA")

The Act makes it possible for those who are the target of workplace bullying to get a protection order. Included in this is a temporary restraining order against the bully as per section 9(4) of the PHA.

(c) *Occupational Health and Safety Act* 85 of 1993 (“OHSA”)

Section 5(1) of OHSA elucidates that “to the extent that it is reasonably practicable, every employer must provide and maintain a working environment that is safe and without risk to the health of employees”.[86] Bullying in the workplace has a negative impact on the employees' safety and health. Therefore, it can be deemed as an occupational risk and should be regulated by the OHSA along with the core labour laws such as the EEA.[87]

4.6 Concluding Remarks

This chapter confirmed that the existing sections contained under the EEA, the Harassment Code and LRA are not solid or sufficient enough to safeguard vulnerable employees from workplace bullying, as a form of harassment, which is regarded as a form of unfair discrimination. The claims for constructive dismissals are challenging for the employees because of the ambiguous or poorly defined concepts of "arbitrary grounds" and "intolerable" working environment, and do I opine that this even more difficult in the case of bullying, if such bullying is the cause of a resignation by the

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85 (2015) 36 *ILJ* 2259 (LAC).

86 See also Grogan 2014:61.

87 Safodien 2022:55.

employee. The quest to prove beyond a balance of probabilities that the working place was "intolerable" makes it challenging because the term is not broadly defined in the LRA. Therefore, there must be a development in the statutes to help alleviate workplace bullying in order to prevent the employees from claiming constructive dismissals because they bear a heavy burden of proof. This would require a reform of the EEA to include bullying as a listed ground because the burden of proof for constructive dismissal claims which result from workplace bullying will be less heavy on employees. Lastly, the Harassment Code defines bullying, however it does so under the limitation of section 6 of the EEA.

Chapter Five

Recommendations and Conclusion

The main overriding question that I attempted to answer was whether workplace bullying can be alleviated without resorting to constructive dismissal. The substantive chapters covered the notion of workplace bullying and constructive dismissal, and with the Centre for Autism case being the point of reference because it tied both concepts together. It was found that constructive dismissal can be claimed by employees who resigned due to bullying, however, it was emphasised on the significance of evidence and using the grievance procedure to resolve the matter before resignation. Chapter three aimed to highlight the stance of the ILO on workplace bullying and constructive dismissal. It was found that the ILO Convention no.190 and its corresponding Recommendation no.206 does provide employees and employers, as well as trade unions with possible solutions to resolve harassment issues in the workplace and that South Africa should uphold its standards. Chapter four addressed the existing legal framework dealing with constructive dismissal and workplace bullying. It was found that the EEA should include bullying as a listed ground to make it easier for employees to prove constructive dismissal claims. The Harassment Code has provisions for bullying but it regards it as un unfair discrimination. Furthermore, the Occupational Health & Safety Act states that harassment is an occupational risk, therefore, it should regulate bullying as well.

The ILO Recommendation no.206 recommends that employers should work together with trade unions to set up policies in the workplace that will efficiently combat

workplace bullying. Furthermore, it highlights the importance of an integrated approach that will protect all employees from different sectors, and such an approach will include educating and training for everyone in the workplace to deal with bullying issues better. Restorative practice is also a suggested principle for effective repairing of the problems caused by bullying in the workplace.[88] It is stated that it focusses on healing, preventing subsequent bullying instances and repairing the employer-employee relationship from becoming completely degraded.[89]

Restorative practice or justice was also suggested by Einarsen *et al* because such a route will mediate the process of the survivor and their perpetrator.[90] To put it into perspective, the perpetrator or bully would have to offer reparation, material or symbolic in nature, as a way of showing remorse and the intention of rebuilding the employer-employee relationship that is on the brink of being diminished.[91] I concur with the authors in this regard because this is the kind of method that could restore trust in the employment relationship and prevent the working place from being intolerable. In addition, the employee would not have to resort to constructive dismissal claim and bear the heavy burden of proof. Constructive dismissal is a reactive remedy, one which does not usually favour the employees. There ought to be more avenues implemented into our legislation to make it easier to prove such claims, especially those which resulted from workplace bullying. It should not be accepted that South Africa is not persistent in developing its labour laws to eradicate prevalent issues such as bullying, and provide proactive remedies besides constructive dismissal claims.

88 Duncan 2011(a):2331.
89 Duncan 2011(b):2331.
90 Einarsen *et al* 2003(a):322.
91 Einarsen et al 2003(b):322.

BIBLIOGRAPHY

CALITZ K

2022. Bullying in the workplace: The plight of South African Employees. *Potchefstroom Electronic Law Journal* 25. https://dx.doi.org/10.17159/1727-3781/2022/v25i0a128291 (accessed on 6 March 2023).

CUNNIF L & MOSTERT K

2012. Prevalence of workplace bullying of South African employees. *South African Journal of Human Resource Management* 10(1):1-15.

EINARSEN S

1999. The Nature and Causes of Bullying at Work. *International Journal of Manpower* 16-27.

EINARSEN S, HOEL H, ZAPF D & COOPER CL (eds)

2003. *Bullying and Emotional Abuse in the workplace: International perspectives in research and practice.* London: Taylor & Francis Inc.

GROGAN J

2014. *Workplace Law.* 13th edition. Cape Town: Juta & Co. Ltd 137-140.

JANGAM RK

2021. Writing an effective legal research proposal for thesis and dissertation in empirical or non-doctrinal research. *International Journal of Law Management and Humanities* 4(2):1797-1816.

RYCROFT A

2009. Workplace Bullying: Unfair Discrimination, Dignity Violation or Unfair Labour Practice? *Industrial Law Journal* 1431-1450.

SAFODIEN F

2022. Workplace Bullying: An Evaluation of the Legal Framework on Workplace Bullying in South Africa: Need for Reform. Unpublished LLM dissertation. Western Cape: University of the Western Cape.

DUNCAN SH

2011. Workplace Bullying and the role restorative practices can play in preventing and addressing the problem. *Industrial Law Journal* 32(2):2331.

TSHOOSE C

2017. Constructive dismissal arising from work-related stress: National Health Laboratory Service v Yona & Others. *Journal for Juridical Science* 42(1):121-138.

CASE LAW

Anglo American Farms t/a Boschendal Restaurant v Komjwayo (1992) 13 ILJ 573 (LAC).

Bakker v CCMA & Others (2018) 39 *ILJ* 1568 (LC).

Centre for Autism Research and Education CC v Commission for Conciliation, Mediation and Arbitration 2020 11 *BLR* 1123 (LC).

Copeland and New Dawn Prophesy Business Solutions (Pty) Ltd 2010 31 *ILJ* 204 (CCMA).

Ferodo (Pty) Ltd v De Ruiter 1993 14 *ILJ* 974 (LAC).

Gold One Limited v Madalani & Others (2020) 41 *ILJ* 2832 (LC); [2021] 2 *BLLR* 198 (LC).

Jonker v Amalgamated Beverages Industries (1993) 14 *ILJ* 199 (IC).

Jooste v Transnet Ltd t/a South African Airways (1995) 16 *ILJ* 629 (LAC).

Jordaan v CCMA & Others (2010) 31 *ILJ* 2331 (LAC).

Lang v Daliff Precision Engineering (Pty) Ltd (1993) 14 *ILJ* 1359 (IC).

Le Monde Luggage CC t/a Pakwells Petje v Dunn NO & Others (2007) 28 *ILJ* 2238 (LAC).

Marsland v New Way Motor & Diesel Engineering (2009) 30 *ILJ* 169 (LC).

Mkhize and Dube Transport 2019 40 *ILJ* 929 (CCMA).

Murray v Minister of Defence [2008] 6 BLLR 513 (SCA).

National Health Laboratory Service v Yona & Others (2015) 36 ILJ 2259 (LAC).

Olivier and Imperial Bank Ltd (2006) 27 *ILJ* 1049 (CCMA).

Pretoria Society for the Care of the Retarded v Loots [1997] 6 BLLR 721 (LAC).

Solid Doors (Pty) Ltd v Commissioner Theron & Others (2004) 25 *ILJ* 2337 (LAC).

Shoprite Checkers (Pty) Ltd v Samka & others (2018) 39 *ILJ* 2347 (LC).

LEGISLATION

Code of Good Practice on the Handling of Sexual Harassment Cases in the Workplace GN 27865 of 4 August 2005.

Constitution of the Republic of South Africa, 1996.

Employment Equity Act 55 of 1998.

Labour Relations Act 66 of 1995.

Naidoo & Others v Parliament of the Republic of South Africa 2019 (3) BLLR 291 (LC).

Occupational Health and Safety Act 85 of 1993.

Protected Disclosures Act 26 of 2000.

Protection from Harassment Act 17 of 2011.

INTERNET SOURCES

Code of Good Practice on the Prevention and Elimination of Harassment in the World of Work

2022.https://www.gov.za/documents/employment-equity-act-code-good-

practice-prevention-and-elimination-harassment-workplace. (Accessed on 27

February 2023).

International Labour Organisation

1958. Discrimination (Employment and Occupation) Convention no.111

https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102888 (accessed on 30 July 2023).

International Labour Organisation

2019. Violence and Harassment Convention no.190 and Recommendation no.206

https://www.ilo.org./dyn/normlex/en/f?p=NORMLEXPUB:1200:0::NO::P12100ILOCODE:C159 (Accessed on 27 February 2023).

International Labour Organisation

1982. Termination of Employment Convention (no.158). https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C158#:~:text=Article%208-,1.,tribunal%2C%20arbitration%20committee%20or%20arbitrator. (Accessed on 24 May 2023).

International Labour Organisation

2011. "Domestic Workers Convention no.189", https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C189 (accessed on 6 August 2023).

International Labour Organisation

“International Labour Standards on Equality of opportunity and Treatment” https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/equality-of-opportunity-and-treatment/lang--en/index.htm (accessed on 30 July 2023).

International Labour Organisation

"Subjects covered by International Labour Standards", https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/lang--en/index.htm (accessed on 30 July 2023).

International Labour Organisation

"Ratifications for South Africa", https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102888 (accessed on 30 July 2023).

International Labour Organisation

"The Need for Social Justice", https://www.ilo.org/global/standards/introduction-to-international-labour-standards/need-for- social-justice/lang--en/index.htm (accessed on 30 July 2023).

International Labour Organisation

"South Africa ratifies the Violence and Harassment Convention", https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/equality-of-opportunity-and-treatment/WCMS_832079/lang—en/index.htm#:~:text=On%2029%20November%202021%2C%20South%20Africa%20deposited%20withNovember%202022%2C%20one%20year%20after%20its%20ratification (accessed on 30 July).

International Labour Organisation

"History of the ILO", https://www.ilo.org/global/about-the- ilo/history/lang--en/index.htm (accessed on 30 July 2023).

International Labour Organisation

"How the ILO works: Tripartism and Social Dialogue", https://www.ilo.org/global/about-the-ilo/how-the-ilo-works/lang--en/index.htm (accessed on 30 July 2023).

The National Debt Review Center

"The Labour Relations Act Explained: 5 Things You Should Know", https://ndrc.org.za/wp-content/uploads/2022/10/Labour-Relations-Act-1.pdf (accessed on 24 June 2023).