

THE ROLE OF HUMAN DIGNITY IN THE ASSESSMENT OF FAIR COMPENSATION FOR UNFAIR DISMISSALS

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SUMMARY

South African labour law is concerned with the attainment of fairness for both the employer and the employee. In weighing up the interests of the respective parties it is of paramount importance to ensure that a delicate balance is achieved so as to give credence to commercial reality as well as an individual's right to dignity. In other words the attainment of fairness in the employment relationship must give cognisance not only to surrounding socio-economic reality but also to human rights. The environment within which the world of work operates has at its core a free enterprise economy. Ultimately, an employer should generally not be penalised to the extent that it is crippled and unable to continue operating. It is argued in this article that in ascertaining what constitutes appropriate compensation for an unfair dismissal, the underlying reality that labour law operates in a free enterprise system must be and is given cognisance to by the legislation and the courts. At the same time in ascertaining what constitutes fair compensation for unfair dismissal due regard must be had not only to the labour rights contained in the *Constitution* but also to other rights protected in terms of the *Constitution*, most importantly, the rights to dignity and equality.

The fact that the basis of the employment relationship is commercial and an employer is entitled and even encouraged to make profits is reflected in our law by the fact that there are caps on the amount of compensation for unfair dismissal in the interests of business efficiency and certainty. However, an analysis of relevant case law demonstrates that this can never be at the expense of a person's dignity. Hence the notion that the employment relationship is relational. This is reflected by the

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interpretation given to the legislation by the courts. Where there has been discrimination or an impairment of the employee's dignity, there are no such limits as to the amount of compensation a court can award. If there has been unfair discrimination, the courts may even award punitive and non-pecuniary damages.

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