

Beware of ignoring promotion recommendations



It is often easier and less expensive to promote an employee into a vacant senior post than to go through the costly and time-consuming process of hiring a new incumbent from outside the organisation. Where the employer has made sure that the junior employee being promoted has the necessary skills for the senior post such a promotion will not only be operationally advantageous but employee relations and workforce morale will be boosted by the advancement of a junior employee.

Employees want the increased remuneration that goes with promotion, they want the status, the feeling of success and recognition and/or the challenge of the higher level responsibility. Employees also enjoy the new challenge and the feeling that their efforts have been appreciated.

Despite these aspirations, employees do not have an unfettered and automatic right to be promoted. Were such an automatic right to exist this would place an unfair and impossible burden on employers. However, where certain circumstances exist employees may have a legal right to be promoted. Often such circumstances need to exist in combination with each other, but this will not always be the case. For example:

The employer orally promises the employee a promotion

The employer signs an agreement that says that the employee will be promoted. Such a clause could exist in the employment contract signed when the employee was originally appointed.

A signed agreement obliges the employer to promote the employee provided that a certain potential event takes place, and that event does take place. For example, this potential event could be that:

The employee's superior vacates his/her position for any reason including promotion, retirement, resignation, dismissal etc.

The employee 'proves himself/herself'

A particular period of time elapses

A suitable vacancy arises

A potential new customer places a large order

A new workshop is opened.

A vacancy is advertised, an internal employee applies for it and is legitimately recommended as the most suitable person for the job.

For example in the case of Mokhobo and others vs Department of Education (2005, 8 BALR 836) the employees applied for posts advertised within the Department. Despite the fact that these employees were recommended for the posts they were not promoted. At the CCMA the employer maintained that there were insufficient funds to finance the cost of the promotions and that a moratorium had been placed on appointments. The arbitrator found that:

No moratorium had been in place at the time that the employees had been recommended for the promotions

The shortage of funds was an insufficient reason not to promote the employees as they had already been recommended for promotion

The CCMA therefore ordered the employer to promote the employees in question retrospectively and to pay them compensation.

In the case of Ngidi vs Cape Peninsula University of Technology [2019] 10 BALR 1108 (CCMA) the applicant applied internally for a post of committee officer but was told that she had not been short-listed. At the CCMA the employer claimed that the applicant did not satisfy the requirements of the job even though she satisfied the requirements stated in the job advertisement.

The Commissioner noted that the advertisement required at least three years' experience in committee work but did not state that committee work must have been a primary function. The employee had performed committee work, albeit not as a core function, and was otherwise fully qualified for the post. The shortlisting committee's decision to set committee work as a core function went outside the requirements specified in the advertisement and made the applicant's exclusion from the shortlist unfair. While there was no guarantee that the applicant would have been appointed had she been shortlisted, she was entitled to an opportunity to be heard by the selection committee.

The applicant was awarded compensation equal to two months' salary.

In view of this employers are advised:

Not to advertise posts if they are unable to fund them

To make sure that those officials authorised to recommend employees for promotion are competent to do so on a purely objective basis

To ensure that job adverts must fully detail all qualification requirements.

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