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EVENTS

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Home » Covid-19/Coronavirus » Saying no to the job could mean saying goodbye to your job

Saying no to the job could mean saying goodbye to your job



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By **SANDRO MILO, TASSO ANESTIDIS, NADIA FRONEMAN** And **KYLE LAMB**

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28 Jan 2022

On 21 January 2022, the [Commission for Conciliation, Mediation and Arbitration](#) (“CCMA”) handed down an arbitration award in the matter between Theresa Mulderij v Goldrush Group under case number GAJB2405-21. The award provides some clarity regarding whether an employee can be dismissed for refusing to comply with an employer’s mandatory vaccination policy.

Goldrush Group, the employer, implemented a mandatory vaccination policy in an effort to create a safe working environment. The employee refused to comply with the policy.

The employee sought exemption from the policy based mainly on her constitutional right to bodily integrity. The employer’s exemption committee declined her application because the committee identified the employee as a high-risk individual who interacts with her colleagues daily in confined, uncontrollable spaces. The committee found that this puts the applicant at risk and exposed her colleagues to the risk of infection.

The employer viewed the employee’s refusal as a refusal to participate in the creation of a safe working environment. Consequently, the employer called the employee to attend an incapacity enquiry. The presiding officer found that the employee was permanently incapacitated based on her refusal to be vaccinated. The permanency of the incapacity was directed at the employee’s clear indication that she would never be vaccinated in the future. The presiding officer concluded that it would be fair to terminate the employment contract and the employee was subsequently dismissed.

The employee referred an alleged unfair dismissal dispute to the CCMA challenging only the substantive fairness of her dismissal. The employee’s reasons to justify her refusal to comply with the policy were as follows: (i) her constitutional right to bodily integrity, (ii) extreme social pressure and emotional discomfort in choosing between her livelihood and being vaccinated and (iii) the fact that she strictly followed Covid-19 protocols.

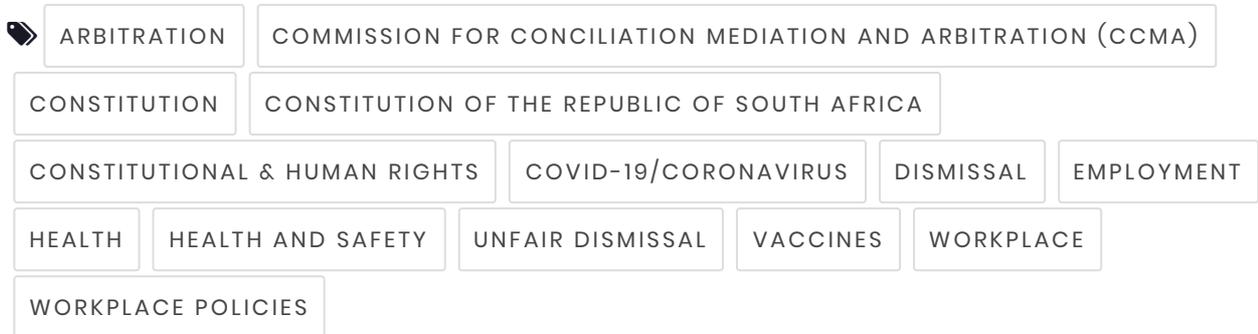
These reasons did not persuade the CCMA. The CCMA upheld the presiding officer’s finding that the employee was indeed to be regarded as being permanently

incapacitated given her refusal to be vaccinated, which, by implication was a refusal to participate in the creation of a safe working environment. Accordingly, the CCMA found that the dismissal was fair.

See also:

- [A COVID 'escorted' dismissal](#)
- [Quantifying compensation for unfair dismissal](#)
- [Right to refuse a vaccination is not cast in stone](#)
- [I may not be \(vacc\)seeing you anytime soon, is it worth the shot?](#)

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