

<i>Hoffmann v South African Airways</i>	
Project code ¹	SAF
URL	http://www.saflii.org/za/cases/ZACC/2000/17.pdf
Citations	(CCT17/00) [2000] ZACC 17; 2001 (1) SA 1; 2000 (11) BCLR 1211; [2000] 12 BLLR 1365 (CC) (28 September 2000)
Country	South Africa
Date of judgment	28 September 2000
Court	Constitutional Court of South Africa
Location	Braamfontein
Case type ²	Appeal
Result	Allowed
Flynote ³	Human rights and fundamental freedoms - Bill of Rights - violation of the right to equality, human dignity and fair labour practices
Legislation and International Instruments ⁴	<p>Legislation</p> <ul style="list-style-type: none"> • Promotion of Equality and Prevention of Unfair Discrimination Act, 4 of 2000 • Employment Equity Act, 55 of 1998 <p>International instruments</p> <ul style="list-style-type: none"> • The African Charter on Human and Peoples' Rights • the Convention on the Elimination of All Forms of Discrimination Against Women • The International Covenant on Civil and Political Rights • the International Convention on the Elimination of All Forms of Racial Discrimination. • ILO Convention 111, Discrimination (Employment and Occupation) Convention. • Code of Conduct on HIV/AIDS and Employment in the Southern African Development Community (SADC), 1997
Cases cited as authority ⁵	<ul style="list-style-type: none"> • <i>Harksen v Lane NO and Others</i> 1998 (1) SA 300 (CC); 1997 (11) BCLR 1489 (CC) at para 53. In <i>Jooste v Score Supermarket Trading (Pty) Ltd (Minister of Labour Intervening)</i> 1999 (2) SA 1 (CC); 1999 (2) BCLR 139 (CC)

¹ Project code is the combination of the three jurisdiction letters (KEN for Kenya, SAF for South Africa etc) and the unique case identification number for the index. E.g., a project code could be KEN1, SAF34, ZAM12).

² Whether Trial, Application or Appeal.

³ **Area of law** - topic - subtopic.

⁴ Legislation/ International instrument title and section numbers.

⁵ List of cases considered to be important precedent (case name and citation).

	<ul style="list-style-type: none"> • <i>National Coalition for Gay and Lesbian Equality and Another v Minister of Justice and Others</i> 1999 (1) SA 6 (CC); 1998 (12) BCLR 1517 (CC) • <i>President of the Republic of South Africa and Another v Hugo</i> 1997 (4) SA 1 (CC); 1997 (6) BCLR 708 (CC) • <i>S v Makwanyane and Another</i> 1995 (3) SA 391 (CC); 1995 (6) BCLR 665 (CC) • <i>MX of Bombay Indian Inhabitant v M/s ZY and another</i> AIR 1997 (Bombay) 406 • <i>August and Another v Electoral Commission and Others</i> 1999 (3) SA 1 (CC); 1999 (4) BCLR 363 (CC) • <i>Fose v Minister of Safety and Security</i> 1997 (3) SA 786 (CC); 1997 (7) BCLR 851 (CC) • <i>National Coalition for Gay and Lesbian Equality and Others v Minister of Home Affairs and Others</i> 2000 (2) SA 1 (CC); 2000 (1) BCLR 39 (CC) • <i>National Union of Metalworkers of South Africa and Others v Henred Fruehauf Trailers (Pty) Ltd</i> 1995 (4) SA 456 (A)
Facts ⁶	<p>In September 1996, the appellant applied for a cabin attendant position with South African Airways (SAA). After a four-stage selection process, including interviews and role-playing, he was deemed suitable pending a medical examination. The examination indicated that he was clinically fit but tested positive for HIV. As a result, the medical report was altered to label him "H.I.V. positive" and considered "unsuitable" for employment. The appellant challenged the refusal to hire him based on constitutional grounds in the Witwatersrand High Court but was unsuccessful. However, he successfully appealed the matter directly to the Constitutional Court under rule 18 of the Constitutional Rules.</p>
Summary ⁷	<p>The Constitutional Court determined the constitutionality of South African Airways' (SAA) policy of excluding HIV-positive individuals from cabin attendant positions. They addressed whether this practice violated the Bill of Rights and determined the appropriate remedy. SAA justified their policy based on safety, medical factors, and operational requirements, citing other airlines with similar practices. The High Court supported SAA's position, emphasizing the</p>

⁶ Brief facts about the case (max 150 words).

⁷ Summary of the determination of legal questions and/or grounds of appeal (between 150-250 words).

	importance of passenger and crew health and the airline's reputation. However, the Constitutional Court, with input from the Aids Law Project, found SAA's justifications to be unfounded. In a unanimous decision, the court ruled that SAA violated the appellant's constitutional right to be free from discrimination. They emphasized that not all HIV-positive individuals pose the alleged risks and that the practices of other airlines were irrelevant. Therefore, the court concluded that SAA's refusal to employ the appellant based on his HIV status was unconstitutional.
Decision/ Judgment ⁸	The Constitutional Court allowed the appeal, overturning the High Court's decision. They ordered SAA to offer immediate employment to the appellant and ruled that SAA must bear the costs of the application in both the High Court and the Constitutional Court.
Basis of the decision ⁹	The Constitutional Court held that reinstatement was the appropriate remedy for the individual who was unfairly denied employment due to discrimination. However, taking the specific circumstances into account, it was deemed unfair to SAA to apply the order retroactively.
Reported by Date	Abongile Nkamisa 16 June 2023

⁸ A brief summary of the ruling/judgment of the court (max 100 words).

⁹ A 1-2 sentence summary of the basis of the decision (i.e., which legal rules were relied on).