

Why 'forgetting' simple tasks may add up to gross insubordination

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Subordination is a fundamental characteristic of the employment relationship and it involves the process of giving instructions to a junior employee with the reasonable expectation for compliance. In *Prabashnie Naicker v Africa Flight Services*, (delivered 21 May 2019), the Labour Court was called to decide whether an employee's failure to adhere to an instruction to copy her line manager in her emails warranted a dismissal.



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In 2013, Naicker was employed by Africa Flight Services as a customer service agent. She reported to Mellissa Fritz. Part of Naicker's duties included calculating payments.

On 3 November 2016, as a result of having provided clients with incorrect pricing, Fritz instructed Naicker to stop issuing incorrect charges and to copy her in all future emails to clients involving pricing.

Following this instruction, Naicker proceeded to forward pricing information and omitted to copy Fritz in her emails. On 7 November 2016, in a separate meeting, Fritz instructed Naicker to copy her in all her emails. The following day, on 8 November 2016, Naicker failed to comply with the instruction. Her failure to comply with the instruction continued between 14 – 16 November 2016.

On 16 November 2016, Naicker was issued with a notice to attend a disciplinary hearing. During the disciplinary hearing, she was charged with insubordination. She pleaded guilty to the charge and she was dismissed. Following her dismissal, she referred an unfair dismissal dispute to the CCMA challenging the fairness of her dismissal. She was not successful at the CCMA. Unhappy with the decision of the commissioner, she launched a review application at the Labour Court. At the Labour Court, she argued that the commissioner's decision was not reasonable because her conduct was not "serious and deliberate" because she lacked the necessary intention to defy her line manager. Simply, she had just forgotten to copy her in the emails.

The Labour Court dismissed her review application. In his analysis, Thothlalema J noted the following:

- Naicker failed to comply with the instruction on eight occasions between 3 – 15 November 2016;
- Her misconduct was persistent, prolonged and could not be equated to an honest mistake;
- Naicker was instructed to copy Fritz more than once;
- Copying someone on email was not a laborious task. It took less than a minute;
- The instruction was lawful and reasonable because Naicker was prone to providing inaccurate pricing to customers; and
- Naicker often challenged Fritz's authority, knowledge and experience as her line manager.

The learned judge concluded that Naicker's conduct of consistently disobeying a simple, lawful and reasonable instruction was overall, wilful and serious. He added that by failing to comply with the instruction, Naicker disrespected her line manager and challenged her authority, and he concluded that she was guilty of gross insubordination.

This case demonstrates that disobeying simple tasks may sometimes lead to gross insubordination. Employees are therefore warned not to disregard instructions they deem unimportant, especially if they are intended to achieve a legitimate business and/or operational objective.

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