

No leniency for dishonesty in the workplace

 By Jacques van Wyk

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Here we review whether an employee's dismissal for dishonesty for infringing the employer's Covid-19 protocols was procedurally and substantively fair.



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Summary

The dismissal of an employee who had colluded to corroborate a false statement of facts in relation to the breach of Covid-19 protocols by a fellow employee, was considered to be substantively and procedurally fair.

Facts

This was the issue considered by the Commission for Conciliation, Mediation and Arbitration (CCMA) in the case of *Ntini v In2Food Group (Pty) Ltd [2022]*. In this matter, the employee was found guilty of gross dishonesty for aiding a fellow employee in attempting to deceive the employer regarding the facts in disciplinary proceedings relating to Covid-19 protocols. The incident concerned two co-workers of the employee who had embraced one another in a greeting, which was in breach of the Covid regulations. The employer submitted that the employee colluded with a fellow employee in order to protect said employee from discipline for contravening Covid regulations "by hugging". The employer submitted that the employee and his co-worker colluded in order to misrepresent what actually happened on the day. The incident was videotaped and the footage provided directly contradicted the averments by the employees.

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Legal provisions considered by the CCMA

In considering whether Mr Ntini ought to have been given a final written warning as opposed to being dismissed, the Commissioner considered *Transnet Freight Rail v Transnet Bargaining Council and others* [2011] (LC) which held that:

“ ...the importance of the rule and the implications of its transgression must be an essential consideration in determining whether dismissal is justified. A further consideration ought to be the implications of being lenient in the application of an important rule and the message such lenience sends to other employees regarding the infringement of such a rule. The need to deter other employees from committing the same misconduct is a response to risk management and is as legitimate a reason for dismissal as a breakdown in trust. ”

CCMA's findings

The Commissioner found that the employee had been dishonest in his representations during disciplinary proceedings. The Commissioner found that dishonesty during disciplinary proceedings warranted dismissal as opposed to a final warning in order to deter others from committing the same offence, and to maintain the legitimacy of the disciplinary process.

Importance of judgment

Honesty is an inherent requirement of an employment relationship and an employer should be able to rely on an employee's honest testimony in disciplinary hearings.

ABOUT JACQUES VAN WYK

Jacques van Wyk is a director in Labour and Employment Law at Werksmans Attorneys. He was named as a recommended lawyer in Labour & Employment by the Legal500 (2010-2012), and co-authored 'Labour Law in Action - A Handbook on the new Labour Relations Act - 1997' with Frances Anderson. Jacques specialises in commercial employment transactions arising during mergers and acquisitions, corporate restructures, executive employee terminations of employment, drafting employment contracts and letters of appointment; disciplinary codes and procedures; and grievance procedures.

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