



LABOUR LAW UPDATE

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Case 1

CASE SYNOPSIS:

The duty of respect

Over the years, the duty of respect has been watered down and employees have often found themselves on the wrong side of disciplinary action after forgetting this key fiduciary duty – You may not like your boss, but you need to respect the position he/she holds

Augustus / Mass Discounters (Pty) Ltd - (2015)24 CCMA 8.18.7 goes some way to address this issue.

The employee was dismissed after a disciplinary hearing held in his absence. He was found guilty of gross insubordination and making false and defamatory allegations about management and its legal advisors.

Sadly for the employee's case, not only did he not testify but he also walked out of his own enquiry.

The employee made the mistake of trying to pressurise his employer by over-emphasising his rights to confidential info, being insubordinate and refusing instructions.

With the employee not testifying, the Commission had to accept the employer's version and found in their favour.

What this means to you?

- 1) Insubordination remains a dismissable offence as emphasised by Schedule 8 of the Labour Relations Act
- 2) Employees who do not testify or walk out of their own hearing, severely damage their case and leave the adjudicating officer with only one version – the employer's





Case 2

CASE SYNOPSIS:

Probation dismissals

Often one finds that employers are at the two extremes when it comes to dealing with probationary employees—1) following no process and simply dismissing at the end of the period 2) following an excessively formal process, particularly with regards to poor performance.

In truth, the process is somewhere in the middle.

Rheinmetall Denel Munition (Pty) Ltd v National Bargaining Council for the Chemical Industry and others - (2015)24 LC 8.1.1 deals with this balancing act.

Before the employee's probationary period expired, she was dismissed for dishonesty, poor work performance and absenteeism.

Despite the fact that the employee had pleaded guilty to the charge of dishonesty, had failed to carry out instructions and had performed poorly, the Commissioner had found that the sanction of dismissal was too harsh, and reinstated her with full retrospective effect.

The Court found that the Commissioner missed a number of points in assessing the appropriate sanction. The Commissioner had also failed to take into account the guidelines for dealing with probationary employees

What the Commissioner failed to recognise that the behaviour that the employee exhibited was not subject to training or mentoring as she had simply failed to follow workplace rules.

The court found that the Commission had erred in finding in the employee's favour

What this means?

When it comes to probation the normal process of misconduct, ill health or retrenchment need to be followed. However, when it comes to poor performance, there is less onus on the employer in terms of process and also not the employer's responsibility to train the person for the job.

