



EMPLOYMENT

A charge by any other name would smell as sweet

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The Labour Appeal Court's judgment in *Machi v Chep SA (Pty) Ltd and Others* serves as an important reminder that workplace discipline is concerned with substance rather than technicalities. While employees are entitled to know the case they must meet, disciplinary proceedings are not criminal trials, and imperfectly drafted charges will not necessarily save an employee whose conduct fundamentally undermines the trust relationship.

The employee was employed by Chep as a Senior Human Resources Business Partner. In July 2017, while attending a company event in Cape Town, she requested permission to return early to Durban, explaining that she was feeling unwell and emotionally affected by the recent suspension of a colleague for fraud. Her manager approved the request and she flew back to Durban during normal working hours. However, instead of returning home to recover or reporting back to work, she went directly to the offices of a third-party company, Zala Corporates, where she chaired a disciplinary hearing. She later issued a finding in that matter describing herself as the company's "HR Director", despite not being a director or employee of Zala. Following an investigation, Chep charged her with misconduct and dishonesty. She was ultimately dismissed.

The matter became more complicated at arbitration. The CCMA commissioner found the employee not guilty of the three formal charges contained in the charge sheet. Nevertheless, the commissioner concluded that the evidence revealed what was described as an "unexpressed fourth allegation" – namely that the employee had abused her employer's trust by obtaining permission to leave a work

function on grounds of illness and then performing work for another organisation during company time. The commissioner found that this conduct had destroyed the trust relationship and held the dismissal to be substantively fair, although procedurally unfair.

The employee challenged the award, arguing that the commissioner had improperly created a new charge that did not appear in the disciplinary notice. She contended that once she had been acquitted of the formal charges, the commissioner could not formulate a different basis to justify her dismissal. The Labour Appeal Court disagreed.

The Court held that the commissioner had not invented a new charge at all. Instead, the so-called "unexpressed fourth allegation" was simply a description of the conduct that had always formed the core of the employer's case. The events of 6 July 2017 constituted a single factual narrative, and the employee had been fully aware throughout the disciplinary hearing and arbitration that her conduct in performing work for another entity after being excused from a company function was central to the allegations against her.

Importantly, the Court reaffirmed that disciplinary charges need not be drafted with technical precision. The real question is whether the employee understood the substance of the allegations and had a fair opportunity to defend herself. An employee suffers prejudice only where they are genuinely unaware of the case they are required to answer. In this instance, the employee had dealt extensively with the allegations during both the disciplinary process and arbitration and could not credibly claim to have been ambushed.

The Court was equally clear on sanction. As a senior HR professional, the employee occupied a position requiring a high degree of integrity, judgment and trust. By claiming to be unwell in order to avoid a work commitment and then undertaking work for another organisation during working hours, she engaged in conduct that struck at the heart of the employment relationship. Her actions were not viewed as a mere technical breach of policy, but as a deliberate and dishonest abuse of trust.

In dismissing the appeal, the Labour Appeal Court confirmed that dishonesty remains one of the most serious forms of workplace misconduct. Where an employee consciously acts in a manner that deceives the employer and undermines the trust relationship, dismissal will often be justified, particularly where the employee occupies a senior or fiduciary position.

The judgment offers a practical lesson for employers. While disciplinary charges should always be drafted carefully, labour tribunals will focus on the substance of the misconduct rather than the technical wording of the charge sheet. Ultimately, trust is the foundation of every employment relationship, and once that trust is deliberately betrayed, even a drafting defect is unlikely to save the employee.



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