

EMPLOYMENT

Automatically unfair dismissals

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ISSUE IN DISPUTE

If an employee does not adhere to the dress code in the workplace because of his religion, culture or gender and is then dismissed for failing to do so such a dismissal may be regarded as automatically unfair in terms of section 187 (1) (f) of the [Labour Relations Act](#) ("the LRA"). Section 187 (1) (f) of the LRA states that 'a dismissal is automatically unfair if the employer, in dismissing the employee...unfairly discriminated against the employee, directly or indirectly, on any arbitrary ground, including but not limited to race, gender, sex, ethnic, or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, political opinion, culture, language, marital status or family responsibility'.

COURT'S DECISION

In *Department of Correctional Services and another v Police and Civil Rights Union (POPCRU) and 5 others* (107/12) [2013] ZASCA 40 (dated 28 March 2013) the Supreme Court of Appeal ("the SCA") was called upon to consider whether the Respondents, who were all male correctional officers at Pollsmoor Prison in Cape Town employed by the Department of Correctional Services at the time of their dismissals, had been automatically unfairly dismissed on religious grounds. The employees all wore dreadlocks albeit for different reasons, contrary to the employer's clear dress code prohibiting dreadlocks in the workplace. The employer requested them to cut their hair to comply with the department's dress code, failing which they would be disciplined. The employees refused to comply. Some argued that their Rastafarian religion required them to wear dreadlocks while others argued that they were required to wear dreadlocks by their Xhosa culture. The employees were charged with breaching the employer's disciplinary code and procedure and dress code by wearing dreadlocks on duty, alternatively, failing to carry out a lawful order or routine without just or reasonable excuse. Subsequent to a disciplinary enquiry they were dismissed.

The SCA held that the dismissals of the employees were automatically unfair as contemplated in section 187 (1) (f) of the LRA on the grounds of discrimination relating to gender, religion and culture. The Court held that a dress code policy is not justified if it discriminates between males and females or if it restricts a practice of religious belief or cultural belief where that belief or practice does not affect the employee's ability to perform his duties, nor jeopardize the safety of the public or other employees nor cause undue hardship to the employer in a practical sense.

IMPORTANCE

In drafting and implementing policies and procedures within the workplace employers must ensure that they take adequate heed of employees' rights not to be discriminated against on the basis of race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, political opinion, culture, language, marital status and family responsibility. In the absence of a good reason justifying a provision in a policy which has the effect of discriminating against an employee such discrimination will be regarded as unfair and, in the instance of dismissal, will give rise to a claim for automatically unfair dismissal.



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