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EMPLOYMENT

Consequences of employees misrepresenting their qualifications and professional memberships

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Issue

Whether an employee may be dismissed if he/she misrepresented his/her qualifications and/or professional memberships, but nevertheless met the minimum requirements of the position to which he/she was appointed.

Facts

The above issue was considered in the Labour Court **(LC)** in the case of *Lesedi Local Municipality v Mphele and Others* (JR1546/20) [2023] ZALCJHB 183 (***Lesedi Municipality v Mphele***). The facts of the matter are briefly as follows:

Lesedi Local Municipality (**the Municipality**) sought to appoint a Chief Financial Officer (**CFO**) in 2015. Mr T.P. Mpele (**the employee**) completed an application, submitted his curriculum vitae (**CV**), went through the Municipality's recruitment process, and was ultimately appointed into the position.

In and during 2018, the Municipality conducted a forensic investigation into the employee's qualifications. It emerged that the employee, so it was contended, misrepresented his qualifications and professional memberships in his CV.

The Municipality subsequently instituted disciplinary action against the employee on the grounds of gross dishonesty. A disciplinary hearing was held, where the employee was found guilty as charged and was dismissed.

Aggrieved by his dismissal, the employee referred an unfair dismissal dispute to the Commission for Conciliation Mediation and Arbitration (**CCMA**).

At the CCMA, the forensic investigator led documentary evidence and testified that the employee factually misrepresented having the qualifications and memberships below —

> "15.1 A BCom Accounting (**BAcc**) degree from the University of Durban Westville, whilst in fact he only obtained a BCom degree.
>
> 15.2 An Honours Degree in GRAP (Generally Recognised Accounting Practice), from the University of Stellenbosch, whilst this was not an honours degree but an executive short course with a NQF 8 recognition level;
>
> 15.3 Memberships with the Institute of Internal Auditors of South Africa, entitling him to use the title GIA (General Internal Auditor), whilst he had on 7 November 2013, cancelled his membership with the IIA SA and could not thereafter, have used that designation;
>
> 15.4 Holding out to be a Registered Accounting Officer with the Institute of Administration and Commence (IAC) whilst he has not been a registered Accounting Officer with the IAC since 2008".

The forensic investigator acknowledged that the employee *"met the general requirement for the position as CFO"*. He was, however, considerably favoured above the other applicants on the basis that claimed to be a BCom Accounting graduate.

Despite being unable to justify the rationale for overstating his accounting qualification, the employee argued that he was not being dishonest. The employee conceded, after initially being evasive, that he did not have all the qualifications as set out in his CV.

He was unable to properly explain why he overstated his qualification, indicating rather that it was an error on his part. He denied that he had been dishonest.

Insofar as his statement, that he had an honours degree and held certain professional memberships, the employee offered up certain explanations but conceded that, in certain respects, the information was incorrect.

Labour Court

The Municipality instituted review proceedings in the LC on the ground that the ruling is not one that a reasonable commissioner would reach.

In reaching its decision, the LC reiterated that the test for review is that of a reasonable decision-maker, as set out in *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others* (2007) 28 ILJ 2405 (CC).

In essence, when applying the reasonableness test, a Commissioner's conduct is assessed against that of the reasonable decision-maker.

Moreover, two interrelated components are considered when applying the test (a) the process followed in the enquiry and (b) the assessment of the evidence placed before the commissioner in arriving at the decision. The LC stated that "this constitutes the true nature of the enquiries before the commissioners".

Moreover, the review test dictates that a decision is unreasonable if it is not justifiable when regard is had to the evidential material placed before a decision maker. A decision is reasonable if it is just, rational and appropriate in the circumstances. Similarly, a decision is unreasonable if it is unjust, irrational and inappropriate.

In applying the test above, the LC stated importantly that the true nature of the enquiry was not whether the employee met the requirements for the position that he applied for, but rather, **whether he was grossly dishonest when he presented himself as the holder of degrees and professional memberships, which he did not possess (emphasis added)**.

In this regard, the conclusion arrived at by the Commissioner did not accord with the evidence placed before him. The LC held that the Commissioner failed to **properly** assess the evidence presented. The Commissioner did not expound why the one party's version was "more compelling than the other".

Furthermore, the LC was not swayed by the employee's argument that he had made an error when he reflected his qualifications and memberships in his CV. Rather, upon a consideration of various application judicial authorities, the LC found that the employee was grossly dishonest and that this warranted his dismissal.

Had the Commissioner properly assessed the evidence and the true nature of the enquiry, he would have found that the employee misrepresented himself.

As such, the Commissioner's

> *"decision to reinstate [the employee] in circumstances where he misrepresented his qualifications and professional status, was unreasonable and constitutes a decision a reasonable decision-maker could not reach."*

The award of the CCMA was, therefore, set aside and the employee's dismissal was held to be both procedurally and substantively fair.

Importance of the case

This case is a further example, in a long line of previous examples, indicating that where an employee misrepresents his/her qualifications/professional status it is, **on its own**, a serious offence that may warrant dismissal.

The Arbitrating Commissioner (**Commissioner**) found the employee's dismissal to have been substantively unfair and ordered his retrospective reinstatement with back-pay in the amount of R 2 058 333.27 (Two million, fifty-eight thousand, three hundred and thirty-three

rand, twenty-seven cents). The Commissioner did so on the basis that the employee had met the qualifications for the position to which he was appointed.

This is regardless of whether the employee met the requirements of the post, or not. The fact is that whether or not the employee meets the minimum requirements of the post does not detract from the dishonesty of misrepresenting one's qualifications.

Furthermore, employees should be aware that aside from being dismissed, the latter can potentially lead to further legal consequences (i.e., being found to have committed a criminal offence etc). Employers are also reminded of the importance of the need to verify all qualifications and professional memberships employees record in their CVs.



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