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EMPLOYMENT

Continuously raising grievances in the workplace held to be a fair ground for dismissal

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Raising grievances in the workplace

The issue was whether the dismissal of an employee who continuously raised grievances was substantively and procedurally fair.

Summary

The dismissal of an employee who had continuously raised employment grievances that were often unfounded or had been resolved on previous occasions was considered to be substantively and procedurally fair.

Facts – employee had continued to file grievances

This was the issue considered by the Commission for Conciliation, Mediation and Arbitration ("**CCMA**") in the case of *Chemical, Energy, Paper, Printing, Wood and Allied Workers' Union obo Mokoena / Sasol Chemical Operations (Pty) Ltd [2022] BALR 105 (NBCC I)*. This case related to the alleged unfair dismissal for reasons of incompatibility. The employee lodged "endless complaints" and continuously displayed aggression to his immediate superiors. The employee claimed that his complaints arose from disagreement with his poor work performance rating by the employer.

The employee had indicated that he had financial problems and familial problems which affected his mental focus and concentration at work due to stress. He was assisted through the process of the Independent Counselling and Advisory Services ("**ICAS**") and it was established that he was fit to perform his work.

The employer assisted the employee who later continuously rejected advice and persistently raised issues that had previously been dealt with. The Commissioner noted that the evidence showed that the employer went out of their way to assist the applicant. Despite the efforts of the employer, poor work performance persisted which had resulted in the low-performance rating afforded to the employee.

Thereafter, the Commissioner noted that the employee had continued to file grievances after a successful conciliation meeting in which he had agreed to "bury old wounds". Ultimately, the relationship between the employee, his co-workers and superiors grew toxic. The employee continued to fail to follow instructions and displayed aggression.

Incompatibility had been incorporated in the employer's disciplinary policy as a form of misconduct. The employee denied that he was aware of the provisions in the employer's disciplinary code making incompatibility a disciplinary offence. This was rebutted by evidence provided by the employer which had been affirmed by the Commissioner.

Legal provisions considered by the CCMA

The Commissioner relied on the case of *Jabari v Telkom SA (Pty) Ltd [2006] 10 BLLR 924 (LC)*, in which the Labour Court highlighted important characteristics in explaining the nature of workplace incompatibility. It said that:

> *"...incompatibility refers to the employee's inability or failure to maintain cordial and harmonious relationships with his peers, incompatibility is a form of incapacity and incompatibility is an "amorphous nebulous concept" based on subjective value judgments".*

CCMA's Findings – consider his grievances

The Commissioner found that the employee had disrupted the harmony of the workplace, warranting dismissal. He had been counselled but had refused to co-operate with remedial measures or to sign minutes. The termination of his employment was the last resort since the employer had invested a lot of time to consider his grievances which were unfounded and baseless.

Importance of Case

The notion of Incompatibility is nebulous but, when proven, can serve as a valid basis for dismissal. An example of this is when an employee lodges continuous grievances which are unfounded or have been resolved on a previous occasion which disrupt the harmony in the workplace.

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