

EMPLOYMENT

Dismissal as an appropriate sanction for workplace bullying

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Workplace bullying

The dismissal of an employee for bullying his subordinates in the workplace on the basis of gender, was found to be procedurally and substantively fair.

Gender-based bullying

Whether or not the conduct of an employee amounted to gender-based bullying in the workplace, rendering his dismissal procedurally and substantively fair.

Facts

The above issue was considered by the Commission for Conciliation, Mediation and Arbitration (CCMA) in the case of *FA / University of Witwatersrand* [2022] 9 BALR 879 (CCMA).

The employee in this matter was employed by the University of Witwatersrand, as the Head of School (HOS) of the School of Geography, Archaeology and Environmental Sciences (GAES).

Following several complaints by various complainants received between the 2016 to 2017, an investigation was conducted.

The complaints proffered against the employee can broadly be categorised as gender-based bullying.

An enquiry panel was appointed after the initial investigation. The enquiry panel ultimately found that, on an assessment of the evidence and on a balance of probabilities, the employee had engaged in systemic gender-based bullying of seven complainants in the course and scope of his employment.

The panel recommended that the employee be summarily dismissed. The employee appealed and a final outcome was given, effectively upholding the findings of the panel and enforcing the recommendation of dismissal. The University dismissed the employee with immediate effect.

Dissatisfied with the findings and outcome, the employee referred a dispute to the CCMA in terms of which he challenged the procedural and substantial fairness of his dismissal.

Cases concerning workplace bullying

The CCMA relied on the findings of the Labour Court (LC) judgement in *Standard Bank of South Africa v Zimbini Makuleni* [2021] ZALCJHB 309 (LC) (*Standard Bank*) where the Court dealt with the issue of workplace bullying by a senior employee of several of her subordinates. The

Court held that a similar approach to that which is adopted in sexual harassment cases should be adopted when dealing with cases concerning workplace bullying. The Court set out the approach as follows; A Commissioner must:

1. have regard to the totality of the evidence and not compartmentalise it into pieces, and then try and break it down. Rather, the evidence adduced must be holistically considered;
2. not criticise the witnesses by looking at the evidence individualistically rather than cumulatively. A Commissioner must consider the extent to which each witness corroborated each other, and not focus on a failure by a witness to lodge a grievance or record a complaint. None of that would be the true enquiry; and
3. have regard to the general tenor and communality that arose from each of the witnesses' own experience and independent experience of how they were treated by the perpetrator.

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When applying this approach the Judge held that:

"All of [the complainant witnesses] gave separate instances where they were treated in a similar fashion, being in a disrespectful, discourteous manner and in a manner which, in my view, would constitute bullying in the workplace".

The CCMA commissioner found that, from the objective facts, the only reasonable conclusion to be reached was that the employee was guilty of all of the allegations for which he was dismissed and that he was in breach of the workplace rule against gender-based bullying.

The commissioner further found that the employee had conducted himself in a manner which had destroyed the employment relationship by creating such disharmony and anxiety for the complainants, that he was no longer fit to continue with his duties and responsibilities, which was to manage and oversee the School.

The sanction of dismissal was therefore both substantively and procedurally fair.

Importance of case

This case highlights the seriousness with which our labour forums regard workplace bullying and that a similar approach to that which is adopted in sexual harassment cases will be followed when determining whether workplace bullying occurred.



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