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EMPLOYMENT

Dismissal for misrepresentation when applying for a position

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Falsely misrepresented credentials during the job application process

An employee may be found guilty of misconduct if an employer can prove that the employee falsely misrepresented his/her credentials during the job application process. The employer need not prove that the misrepresentation induced the employer to appoint the particular employee over all other candidates. A subsequent admission to the misrepresentation by the employee does not negate the employee's guilt for misconduct but may mitigate the sanction imposed for the charge.

Misrepresentation

In the case of the *Department of Home Affairs, the Minister of Home Affairs and Simphiwe Emanuela Ndlovu and Others* (DA11/2012) [2014] ZALAC 11, the Labour Appeal Court determined the fairness of an employee's dismissal for misrepresenting his qualifications in his curriculum vitae ("CV"). The employee had stated in his CV, among others, that he held a particular degree; the employer subsequently discovered that he had neither qualified for the degree nor had the degree been conferred upon him at the time of his appointment.

The Court held that the fact that he had falsely misrepresented his qualifications was enough to charge him with misconduct and sufficient to warrant dismissal. In this regard, the Court noted that *'the dishonesty as contained in the CV is ultimately what underpins the substantive fairness of the first respondent's dismissal.'* The Court added that it was, therefore, unnecessary for the employer to establish a nexus between the misrepresentation and the employee's appointment over other candidates.

The employee argued that he had subsequently disclosed to the employer that the degree had not yet been conferred upon him and therefore the charge of gross misconduct (and his subsequent dismissal) was not warranted in light of this disclosure. The Court dismissed this argument and held that even if he had indeed made such a disclosure, the employee would still be guilty of misconduct for the initial misrepresentation.

The disclosure would however be a factor weighed up against other factors which the Court would use to determine the substantive fairness of a dismissal in the circumstances. The rationale of the Court's finding was the egregious nature of dishonesty in the employment context given the high level of trust required in the employment relationship. On this basis, the Court held that the employee's charge for misconduct and dismissal on this basis was fair in the circumstances.

Importance of the case

Applicants should ensure that all the information they present to a potential employer in the job application is true and correct and should be aware that they may be justifiably dismissed if the employer later discovers that they made a misrepresentation at any stage of the process. Employers should investigate the content of applicants' CVs and not simply accept the same at face value.



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