

EMPLOYMENT

Dismissal for poor work performance: the importance of setting realistic targets and providing assistance in the achievement of such targets

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ISSUE(S)

The importance of setting realistic targets for employees and providing the employees with resources to reach such targets.

SUMMARY

COURT'S DECISION

In the matter of *Damelin (Pty) Ltd v Solidarity obo Parkinson and others (2017) 26 LAC 8.1.1* the Court had to deal with these issues.

Mr Steve W Parkinson ("employee") was employed as the general manager of Damelin's ("employer") Boksburg campus. He commenced his employment on 3 January 2011. The employer is a company operating in the tertiary education sector and has a number of campuses throughout the Republic of South Africa. The employee's employment contract contained a clause that stipulated that performance goals determined by the employer must be periodically evaluated and that continued non-attainment of performance goals may result in the termination of employment.

The employee was given a target to enrol a specified number of first year students for the year 2012. The Employee queried the above target on the basis that it was based on unrealistic numbers and that by implication the targets were unrealistic / unachievable. The targets were unrealistic in part due to unrealistic calculations and in part due to a narrowing of the 'catchment area' for students arising out of the nearby opening of a campus in Benoni.

Nevertheless, the employer proceeded to issue several threats complaining about the employee's failure to enrol sufficient students for the Boksburg campus. On 25 January 2012 the employer issued a letter to the employee registering its dissatisfaction. The letter cautioned that if the employee's performance did not improve, a disciplinary hearing would be convened against him and his leave would be cancelled. The employee did not reach his targets.

The employee was summoned to a disciplinary hearing and dismissed for poor work performance. The employee then referred an unfair dismissal dispute to the CCMA. The Commissioner found in favour of the employer, upholding the employee's dismissal. The employee sought to review the decision before Labour Court ("LC"). The LC noted that it was incumbent on the employer to prove that the dismissal was substantively and procedurally fair. The LC reviewed the decision of the Commissioner (ie found the Employee's dismissal was unfair). The employer appealed to the Labour Appeal Court ("LAC").

LAC'S DECISION

In deciding the matter, the LAC noted that the employer has the obligation to prove that the employee's dismissal was substantively and procedurally fair. In deciding whether this obligation had been met regard must be had to the applicable provisions of the Labour Relations Act 66 of 1995 ("LRA") as well as the Code of Good Practice: Dismissal ("Dismissal"). The relevant provisions of the Code include the following:

- "Any person determining whether a dismissal for poor work performance is unfair should consider –*
- (a) whether or not the employee failed to meet a performance standard; and*
 - (b) if the employee did not meet a required performance standard whether or not –*
 - (i) the employee was aware, or could reasonably be expected to have been aware, of the required performance standard;*
 - (ii) the employee was given a fair opportunity to meet the required performance standard; and*
 - (iii) dismissal was an appropriate sanction for not meeting the required performance standard."*

The LAC noted that whether the employee was given a fair opportunity to meet the standard required depended to a great extent on whether the target was achievable. The employer claimed it was, stating that the fault lay with the employee who was putting insufficient effort into achieving the result required. The employee, in turn, claimed that the target was unachievable.

Having regard to the above, as well as the facts of the matter, the LAC agreed with the LC and held that accepting that the letter date 25 January 2012 constituted a final warning, the period of some 27 days within which to achieve the reduced target set in the letter, given all that preceded it and taking into account that it was not achieved even with assistance afforded by the employer's head office indicated that either the period was too short or that the target was incapable of being achieved. The employer is expected to provide the employee with resources to attain set targets. This it did not do.

IMPORTANCE OF THIS CASE

This case highlights the importance of an employer setting reasonable and achievable deliverables as well as the obligations placed on an employer to assist an employee in reaching established targets.



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