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EMPLOYMENT

Dismissing an employee for refusing to obey instructions

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ISSUE

Can you dismiss an employee who refuses to obey instructions?

SUMMARY

An employee can be dismissed for refusing to obey instructions if such instructions are fair and lawful and the refusal constitutes gross insubordination.

COURT'S DECISION

In the case of *Media Workers' Association of South Africa obo Hoohlo and others v SABC SOC Ltd* [2018] 8 BALR 891 (CCMA), the Commission for Conciliation, Mediation and Arbitration ("CCMA") had to consider whether the employees were fairly dismissed for gross insubordination. The applicants were all media specialists in SABC's department of marketing services.

Mr Mulaudzi, the Group Executive for Commercial Enterprises was tasked with reviewing the performance of certain divisions within SABC, one such division being the marketing services division. Mulaudzi instructed the applicants to do an individual presentation of their work done for the period April to September 2016, in order to assess their performance. Mulaudzi drew up a template to be used by the applicants for their presentation. Prior to the date of the presentation, the applicant's raised a concern regarding the management style of Ms Kikine, to whom the applicants reported. This concern was not addressed. On the day of the presentation, the applicants again raised their concern with regards to Ms Kikine and no presentation took place. The presentation was postponed for a week. On the following date of the presentation, Mulaudzi continuously attempted to persuade the applicants to do their presentations, but they refused to do so. The applicants insisted that their concerns regarding Ms Kikine be addressed before they undertook to do their presentations. Mulaudzi regarded the applicants' refusal as insubordination.

One of the employees, Ms Hoohlo testified that they were never asked to do presentations in the past. She further testified that on the day of the presentation, the applicants were ready to present, but would not do so until their concerns were addressed.

The Commissioner held that Mulaudzi's instruction was neither unfair nor unlawful, and was given in clear terms. The Commissioner assessed the meaning of 'gross' as denoting conduct that is so reckless as to demonstrate a substantial lack of concern for one's obligations and whether injury or loss results. The Commissioner held that the applicants' actions were a deliberate and gross challenge to Mulaudzi's authority, and thus constituted gross insubordination. The Commissioner concluded that the applicants conduct could not be condoned, as they were acutely aware of what was required of them. The Commissioner noted that the applicants' failure to furnish any evidence of their presentations supported the inference that they had not prepared anything. In light of all of the evidence, the Commissioner held that the dismissal of the applicants was procedurally and substantively fair.

IMPORTANCE OF THIS CASE

The notion of "gross insubordination" entails:

- The giving of an instruction in clear terms. The employees must be aware of what is required of them;
- The instruction must be fair and lawful. They employees should be able to carry out the instruction and it should not be unlawful;

The employees' refusal must be (in order to be gross) conduct that is so reckless as to demonstrate a substantial lack of concern for one's obligations and should, potentially or actually result in injury or loss.

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