

LEGAL UPDATE

Employment in South Africa – a relationship built on trust

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The employment relationship between an employer and its employees is heavily regulated in South African law and there are a number of statutory instruments which have significant inroads into an employment relationship.

However, at the heart of it a contract of employment between an employer and an employee is a personal relationship which requires an implicit duty of good faith between the parties and requires, for the continuation of the employment relationship, that there be a great degree of ongoing trust between the parties. As such it has always been recognized that honesty between the parties is a material requirement for the continuation of the relationship.

The corollary is that when the trust relationship breaks down, or when an employee displays dishonest conduct, this usually justifies the end of the relationship.

A new case has given credence to the above principles and confirms that the labour courts of South Africa will come to the aid of an employer which believes that the employment relationship should be ended as a result of dishonest conduct on the part of an employee.

In the recent case of *South African Revenue Services (SARS) versus the Commission for Conciliation Mediation and Arbitration (CCMA) and Benneth Mathebula* (Labour Court, 2023) the Labour Court considered the situation in which the employee was absent from the workplace, due to his supposed illness and resultant inability to work, but unfortunately for the employee, was later spotted by his manager in a YouTube video which showed footage from a public television broadcast participating in a political rally.

The Labour Court held that honesty is an important lynch-pin of the employment relationship and that Mathebula appreciated that had he requested time off work to attend a political rally, this may have been refused and thus when the employee sought to conceal the real reason for his absence from work, his dishonesty had a material impact on the trust which SARS required he display towards it.

When Mathebula tried to explain that he had indeed been ill, but had felt better by the time that the rally took place, this allegation was rejected. Especially when it became apparent that he had initially sought to take advantage of SARS' policy that a medical aid certificate was not necessary for absences less than two days, but Mathebula provided a medical certificate only after the fact when SARS queried whether he had truly been ill, he had been less than honest towards his employer.

The Labour Court found that if the employee was well enough to clap and sing, he should have been well enough to perform his duties. His reactions were not those of an honest employee. Mathebula's dismissal was found to be substantively fair.

This case is important in stressing the principle that honesty is an important aspect of the employment relationship, and this does not need to be displayed only in relation to critical functions such as the handling of money for the employer.

Wherever the employee has shown themselves to be dishonest, it is problematic for the employer to be able to trust the employee and dismissal may be appropriate.



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