

EMPLOYMENT

Faking sickness in order to attend a political march: You have a huge price to pay

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Our labour law allows employees to take paid sick leave when they are sick in order to attend to their health. This is so because healthy employees are pivotal to the success of any business.

Trust and confidence is the nucleus of any employment relationship between employer and employee without which, no employment relationship can exist or survive. One of the common pariahs to destroy the relationship of trust and confidence, is the act of dishonesty.

In *South African Revenue Services (SARS) v Commission for Conciliation, Mediation and Arbitration (CCMA) and Others*, the Labour Court had occasion to deal with the effect of dishonest conduct in applications for sick leave.

In this case the employee (Mathebula) sent a text message to his supervisor to the effect that he was not feeling well and that he would complete a sick leave application once the network is fine. As a result of this message his supervisor accepted that Mathebula was not fine and excused him from attending work. The following day Mathebula represented to his supervisor that he was still not feeling well. Mathebula's supervisor advised him to seek medical attention.

On the third day of being on 'sick' leave Mathebula allegedly consulted a medical doctor who issued him with a sick certificate booking him off from work for three days. Consequently Mathebula was on sick leave for 6 days.

While watching the news on television, Mathebula's supervisor spotted Mathebula participating in a protest action called by the EFF against Clicks (Pty) Ltd on the first two days that Mathebula had called him to advise that he was sick. The supervisor surprised by what he was seeing on TV gathered visuals on Youtube in order to confront Mathebula about what he had discovered, upon his return to work.

Upon Mathebula's return to work from 'sick leave', the supervisor confronted him in writing and stated that he saw him on the news participating in the EFF protest action by singing and clapping hands while he was supposed to have been sick and recuperating.

Mathebula's explanation was unsatisfactory and dishonest. Consequently, he was charged with gross dishonesty and dismissed following a disciplinary hearing. Mathebula challenged his dismissal at the CCMA which held that his dismissal was unfair and ordered his reinstatement.

Aggrieved by the CCMA outcome SARS applied to the labour court to have the arbitration award reviewed and set aside. After examining the evidence which served before the CCMA arbitrator, the court was of the view Mathebula's dishonesty was apparent from the facts, for the following reasons:

It was common cause that Mathebula participated in the protest action on a day in which he unashamedly and audaciously indicated to SARS that he was not feeling well;

It was apparent that although he was not feeling well to attend to his contractual duties, he felt well to participate in a protest action;

In light of uncontested evidence of participation in the protest action, it axiomatically followed that he was not so indisposed that he could not attend to his work.

When Mathebula misrepresented the state of his health to his supervisor, he was in truth seeking to be excused from performing his contractual duties. Knowing fully well that if he had provided the true reason for being excused from work, he would not been indulged.

The court concluded that the probabilities were overwhelming that Mathebula was not sick but was malingering in order to avail himself for the protest action. The court consequently reviewed and set aside the award issued by the CCMA. And replaced it with the order that Mathebula's dismissal was fair.

Lessons from this case

Faking illness and taking sick leave as a result of such fake illness, is gross dishonesty which destroys the trust relationship. This means that an employer may dismiss an employee guilty of such misrepresentation as employees are paid full remuneration during sick leave. There are other reported cases of sick leave fraud where in some case, an employee took and was granted sick leave, only to travel for at least a hour to watch and support a local rugby team.

Sick leave fraud and abuse is a serious disciplinary offence and will in all likelihood result in the dismissal of the employee. In the current environment where job opportunities are shrinking and sometimes hard to find, we encourage employees to act honesty insofar as any form of leave is concerned. Equally, employers should have no tolerance for such behaviour.



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