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EMPLOYMENT

No time for dark humour in the workplace – Load shedding is no joke!!

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Issue

Whether an employee's dismissal for posting a WhatsApp message, purporting to be from the employer's management, on the employer's group (**"the group"**) in which the employees are informed that the employer's Plant will be closed on 3 May 2023, for the afternoon and nightshift from 8pm until 6am the following morning due to Stage 6 load shedding, was substantively fair.

Facts

The above issue was considered by the Commission for Conciliation Mediation and Arbitration (**"CCMA"**) in the case of *National Union of Metalworkers of South Africa obo Mahlangeni v Ford Motor Company SA (Pty) Ltd* (2023) 32 CCMA. The facts of the matter are briefly as follows.

The Applicant, Mr Mahlangeni (**"Mahlangeni"**) was employed by Ford Motor Company of South Africa (Pty) Ltd (**"Ford"**) as an operator at one of their plants. On 3 May 2023, Mahlangeni posted a message on Ford's group (without any authorisation) stating that "*due to the Stage 6 Load Shedding, the Ford Struandale Engine Plant would on 3 May 2023, be closed for the afternoon and night shift from 8pm until 6am on the following morning". In addition, the message stated that "the affected shifts would be placed on a lay-off on Wednesday, 3 May 2023 and that in the absence of any changes the affected employees would be required to come to work on the following day, 4 May 2023*". Approximately 47 employees were part of the group.

As a result of posting the above message to the group, Mahlangeni was charged and found guilty of misconduct for "*Falsifying information with regards to the lay-off communication and attempting to sabotage the Production on the 03 May 2023...*" and was thereafter, dismissed. Dissatisfied with this outcome, Mahlangeni challenged the substantive fairness of his dismissal at the CCMA (he did not contest the procedural fairness of his dismissal).

Ford's version

Ford argued, amongst others, that Mahlangeni's misconduct was "*very serious and tantamount to fraud...*" and could have *"resulted in approximately 47 employees not reporting for duty*". This in turn, would have affected Ford's production, they would have failed to meet their daily targets and not have met customers' demands/needs. For the reasons mentioned above, Ford argued that the dismissal was substantively fair.

Applicant's version

Although Mahlangeni did not dispute sending the message to the group, he, however, claimed that it was deleted "within seconds" and that he sent another message to the group stating that the earlier message was "*just a joke*" (emphasis added). The latter was, however, disputed by Ford who argued that the message was only deleted after management intervened. Mahlangeni further argued that by deleting the message, he acknowledged that what he had done was wrong. He also stated that Ford did not suffer any losses and Ford's production was not affected as a result of his message. Based on the latter, Mahlangeni argued that the sanction of dismissal was too harsh.

CCMA'S ANALYSIS

In analysing the evidence presented, the Commissioner referred to the Code of Good Practice: Dismissal (**"the Code"**) of the Labour Relations Act 66 of 1995 (**"LRA"**). In particular, the Commissioner emphasized that the Code provides that "*employers and employees should treat each other with mutual respect*" and that "*employers are entitled to satisfactory conduct and work performance from their employees*".

Given that Mahlangeni only challenged the substantive fairness of his dismissal and, in particular, the appropriateness of the sanction of his dismissal, the Commissioner referred to item 7 of the Code which requires any person who is considering whether a dismissal for misconduct is unfair to consider, "whether or not the employee contravened rule or standard regulating conduct in, or of relevance to the workplace; and (a) if the rule or standard was contravened, whether or not… (iv) *dismissal was the appropriate sanction for the contravention of the rule or standard*" (our emphasis).

Turning to question of whether dismissal was the appropriate sanction for the misconduct, the Commissioner considered "*gravity of the misconduct"* (our emphasis) as well as the importance of deterring fellow employees from engaging in such misconduct. In considering the gravity of the misconduct, the Commissioner stated that one must have regard to the context of the message. The Commissioner noted that South Africa is facing many challenges as a result of load shedding and that "*the disruption of electricity supply has placed many if not all employers in a very precarious position in their ability to meet their daily targets in relation to production is under immense strain*". The effect of the latter is that customers' demands are not met which leaves them frustrated. The Commissioner stated importantly that "*the issue of load shedding and its adverse implications is a very serious matter and not a matter of a joke*" (our emphasis).

Referring to Mahlangeni's misconduct, the Commissioner stated that employees who are part of the group would have believed that false message given the context above, and this would have deterred them from coming to work. This would have affected Ford's production, resulted in them not meeting their daily targets and caused irreparable harm. According to the Commissioner, Mahlangeni was also dishonest in that the posting of the message was deliberate and a calculated effort. The fact that the message was deleted did not rescue Mahlangeni in that it should never have been posted.

The Commissioner, therefore, held that dismissal was an appropriate sanction and substantively fair given the severity of the misconduct.

Importance of the case

Employees who post messages on their employer's social media groups must consider the impact of same on the employer and other employees.



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