



EMPLOYMENT

Sorry Not Sorry

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In the recent Labour Court decision of *Standard Bank Insurance Brokers (Pty) Ltd v Dlamini & Others* (JR15/24), the issue of remorse – or rather the conspicuous absence thereof – became the proverbial elephant in the arbitration room. The judgment serves as a timely reminder that while disciplinary labels may dance between "negligence" and "gross negligence," what really breaks the camel's back in employment disputes is often not the misconduct itself, but the attitude that follows.

The case concerned Ms Dlamini, a senior Wealth Insurance Manager in a tightly regulated sector. She was dismissed for failing to comply with renewal protocols under the FAIS Act and related Codes – failures that directly exposed her employer to severe regulatory risk. The company's systems had flagged the pending renewals well in advance. The response? A shrug, a vague "I don't remember," and a baffling suggestion that the system would somehow resolve things on its own.

Yet, when the CCMA arbitrator reviewed the matter, the focus shifted away from the employee's dereliction and towards the supposed inappropriateness of the dismissal. The arbitrator accepted Dlamini's guilt, but found dismissal too harsh. This was because, in part, she was found guilty of "negligence" rather than "gross negligence," she had long service, and – supposedly – showed remorse.

The Labour Court however was quick to call the arbitrator out for failing to grapple with the substance of the misconduct, the real risks at play, and critically, the absence of genuine remorse. The Court noted that while Dlamini mouthed words of contrition during the disciplinary process, her arbitration testimony was a masterclass in deflection. She denied wrongdoing, blamed the system, and insisted that her conduct was business as usual. Genuine remorse, the Court held, must be more than hollow words. It must reflect insight, accountability, and a willingness to change. Dlamini showed none.

This matters. Remorse isn't just a tick-box item on a mitigation checklist. In the employment context, it is a window into whether the trust relationship can be salvaged. As the Court aptly put it: *"Without the requisite remorse, it is not possible to restore the relationship of trust that forms the foundation of the employment relationship."*

The lesson here? Employees need not grovel to save their jobs, but when misconduct is proven, obstinate denial and blame-shifting will slam the door shut on any hope of reinstatement. And arbitrators who gloss over this critical aspect of fairness do so at their own peril – and at the expense of sound labour law principles.

Ultimately, the Labour Court reviewed and set aside the CCMA award, substituting it with a finding that the dismissal was substantively fair. Sorry not sorry indeed.

This case underscores that in serious misconduct matters, an expression of remorse isn't a formality – it could potentially be the foundation of the continued relationship. Without it, even long-serving employees may find that the only thing awaiting them at arbitration is confirmation of the fairness of the dismissal, with the court's blessing.



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