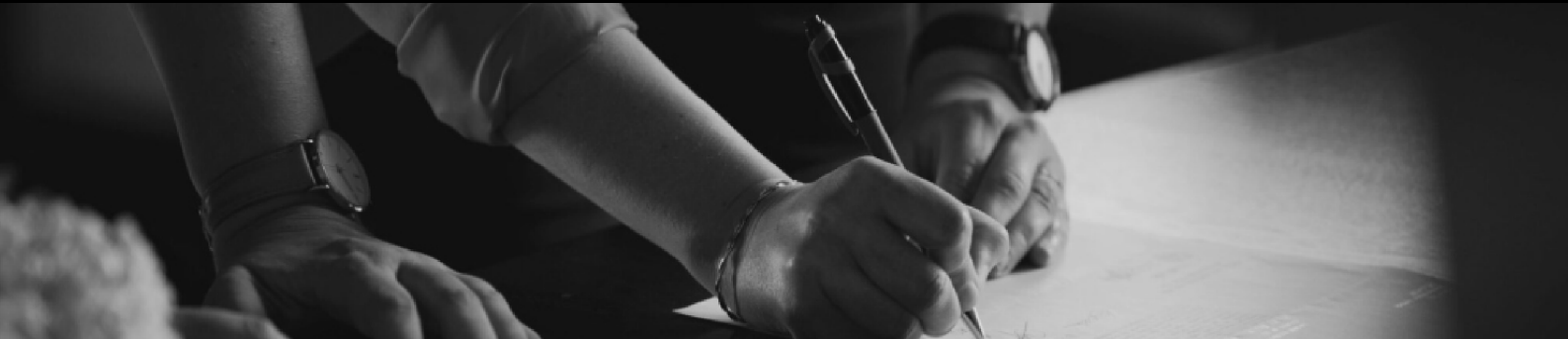




EMPLOYMENT

# To dismiss or not to dismiss – That is the operational question

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The recent Labour Court judgment in *Inxuba Yethemba Municipality v Msweli & others* underscores two important principles for both employers and commissioners at the CCMA: firstly, that dismissal is an operational business assessment even when the reason for the dismissal is the misconduct of the employee, rather than an expression of moral outrage in reaction to the employee's conduct. Secondly, that the commissioner's role is not to substitute their own sanction in the arbitration process, but to assess whether the sanction imposed by the employer falls within a band of reasonableness.

The matter arose when the municipality dismissed an employee for serious misconduct relating to irregular expenditure. The CCMA found the dismissal substantively unfair and reinstated the employee with a final written warning. On review, the Labour Court took a different view.

The Court confirmed that the decision by an employer to dismiss must be based on operational considerations, such as trust, the nature of the misconduct, and the potential risk to the employer's operations – not on whether the employer is "morally offended" by the employee's conduct. The operational lens focuses on whether the employee's continued presence in the workplace is viable and consistent with the needs of the enterprise. In this context, an employer may properly conclude that the trust relationship is irretrievably broken without the need for punitive moral condemnation.

Equally significant was the Court's reaffirmation of the *Sidumo* principle: the commissioner's role is to determine whether the sanction of dismissal imposed by the employer was reasonable in the circumstances. It is not for the commissioner to impose what they consider to be the "correct" or "fair" sanction, but to assess whether the employer's choice of sanction is one that a reasonable decision-maker could reach. By substituting dismissal with a final written warning without adequate consideration of the operational impact, the commissioner exceeded their mandate. In this case, since the employer was a municipality and was to additional statutory duties arising from the Municipal Finance Management Act, the court found that the CCMA should not "readily and without earnest reflection, second guess a [employer] which adopted strict, even harsh measures, to combat the cancer of corruption, patronage and maladministration and maintained, or sought to rehabilitate, the integrity of its systems of financial management."

Ultimately, the Court set aside the award and upheld the dismissal, sending a clear reminder that fairness in dismissal cases rests on reasonableness, operational realities, and the preservation of the trust relationship – not on subjective moral judgments.



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