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EMPLOYMENT

What does a medical certificate prove?

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In the case of *NEHAWU obo Matras v Commission for Conciliation, Mediation and Arbitration and Others*[1] Mr Matras ("the employee"), was employed by Mediclinic from 2006 until his dismissal in 2012.

The employee informed his employer that he was ill by submitting a medical certificate (sick note) issued by a general medical practitioner. He was absent from work from 1 June to 3 June 2012.

On the first day of his sick leave, the employee's supervisor informed him via SMS that she believed he was booked off sick to attend a family member's wedding. This suspicion emerged because of a conversation that the employee previously had with her.

Upon the employee's return to work, the employer charged the employee with the following charge:

> *"Very serious misconduct due to your dishonest behaviour in that you submitted a sick certificate to cover your absence for the period 01 June 2012 to 03 June 2012 at Mediclinic Potchefstroom. However, during this period you attended to private matters in the region of George."*

The employee was found guilty as charged and was dismissed following an internal disciplinary hearing held by the employer. The employee, dissatisfied with the outcome, referred the matter to the Commission of Conciliation Mediation and Arbitration (CCMA). The CCMA found the employee's dismissal to both be procedurally and substantively fair.

The employee subsequently applied to the Labour Court to have the CCMA's award reviewed on the grounds that the Commissioner of the CCMA (the Commissioner) committed a gross irregularity by not applying her mind to the evidence before her, resulting in the decision not being one that a reasonable decision-maker could have reached.

The employee contended that Mediclinic had no basis and/or reason to dispute that he was ill during the weekend of 1 June 2012 to 3 June 2012, given that he had submitted a medical certificate to cover this period of absence. He alleged that the Mediclinic failed to call the medical practitioner who issued the sick note to him to dispute the recordal by the medical practitioner that he was too sick to work during this period.

The employee's supervisor testified that she believed the employee had dishonestly informed the medical practitioner that he was ill.

In considering the matter, the Labour Court stated that medical certificates constitute hearsay evidence of a person's incapacity, which must be dealt with as such. The onus to substantiate the medical certificate and call the medical practitioner in question as a witness rests on the employee and not the employer. The fact that the employee did not call the medical practitioner therefore meant that the probative value of the medical certificate was reduced.

The version of events tendered by the witnesses of the employer and the witnesses of the employee differed in material respects. The commissioner was therefore faced with two conflicting versions of evidence before her.

The Labour Court held that the CCMA Guidelines on Misconduct Arbitrations provides that when analysing evidence, the evidence must weighed up as a whole, taking into account factors such as the probability of the different versions and the reliability of witnesses. This approach is endorsed by our Courts.

The Labour Court found that it was evident that the commissioner considered all the evidence as a whole and that she was intimately aware of her duties as an arbitrator and how she needed to approach the conflicting versions presented to her, as well as the hearsay and circumstantial evidence that she was required to analyse to come to her ultimate findings.

The commissioner ultimately preferred the employer's version and found the employee's dismissal both substantially and procedurally fair. The Labour Court confirmed this decision, ruling that her finding was reasonable.

Importance of the case

Medical certificates constitute hearsay evidence of a person's incapacity. An employer is therefore entitled to interrogate same, should it suspect that an employee is being dishonest about his or her illness. The onus to substantiate the medical certificate and call the medical practitioner as a witness rests on the employee and not the employer.

Employment practice area

Footnotes

[1] (JR1970/17) [2021] ZALCJHB 285



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