MS Inc.
MCACISO STANSFIELD

CASE
LAW STUDY

INTENT: THE BRIDGE BETWEEN GROSS NEGLIGENCE V DISHONESTY

Employers are rightfully entitled to expect honesty from their employees. However, when disciplinary action - particularly dismissal - is taken on the basis of dishonesty, our courts require something more than suspicion or negligence. There must be clear and convincing evidence of intent to deceive.

The Labour Appeal Court's decision in Drs Dietrich, Voigt & Mia (Pty) Ltd t/a PathCare v Bennett and Others [2019] ZALAC 31 underscores this principle and offers a timely reminder for employers to tread carefully when dealing with misconduct that is labelled as "dishonesty."

BACKGROUND

An employee of PathCare, submitted multiple overtime claims over a period of time. It later emerged that these claims included 13 days on which the employee had also taken lunch breaks - during which he was not, strictly speaking, entitled to overtime.

The employee apologised for these discrepancies and repaid the full amount claimed in error, however PathCare still charged the employee with dishonesty and dismissed him after a disciplinary process. The employee referred the matter to the CCMA, where the arbitrator found that PathCare had failed to prove that the employee had acted with fraudulent intent. Reinstatement was ordered with a final written warning. This finding was upheld by both the Labour Court and, on appeal, the Labour Appeal Court.

THE COURT'S REASONING

The Labour Appeal Court affirmed the principle that where an employee is dismissed for dishonesty, the onus lies with the employer to prove that the employee acted with the intention to deceive. In this case, there was no evidence to show that the employee deliberately and knowingly sought to mislead his employer.

KEY TAKEAWAY

This case highlights several important considerations for employers when dealing with misconduct allegations rooted in dishonesty –

- ***Proving intent is critical***: Mere irregularities or errors are not enough. The employer must be able to show, on a balance of probabilities, that the employee intended to deceive;
- ***Mistakes***: Misconduct: Not every procedural or administrative failing amounts to fraud. A failure to distinguish between error and deceit can result in unfair dismissal findings;
- ***Proportionality matters***: Even where misconduct is established, the sanction must be appropriate. A final written warning may be more suitable where intent is lacking;
- ***Follow a fair process***: A robust and impartial disciplinary process that assesses the facts and intent behind the conduct is essential to ensure legal defensibility;
- ***Consider alternative charge***: Where an employer's evidentiary material cannot satisfy the onus of proving intent, it would be prudent to consider a lesser charge such as gross negligence.

CONCLUSION

The PathCare judgment serves as a caution to employers - when dishonesty is alleged, the evidentiary standard is high. Proceeding with a dismissal motivated by a dishonesty charge, in lieu of gross negligence, without solid proof of intent can lead to reinstatement orders, legal costs, and reputational harm.

Don't guess - ***ask us at MS Inc.***- for guidance before making critical disciplinary decisions. Our expertise in labour law helps ensure that your actions are both procedurally and substantively fair.

ZOLA MCACISO
Director
LLB LLM
m: 062 732 1339 e: zola@msinc.africa

GAVIN STANSFIELD
Director
BA LLB LLM HDipCoLaw Cert.Pension Law
m: 082 412 1598 e: gavin@msinc.africa

HEINEKE BRAND
Director
BSocSci BA(Hons) LLB LLM
m: 078 318 3952 e: heineke@msinc.africa