

LEGAL PROFESSION

The following article was supplied by senior labour attorney, Chris Haralambous. He is a partner at Cox Yeats Attorneys and heads up its labour law team.

THE terms “dishonesty” and “breach of trust” have been buzz-words in labour relations circles for many decades now, often forming the topic of many a conversation around the question of whether employers are justified to dismiss employees for acts of dishonesty in various situations and in numerous sets of circumstances.

What is often apparent is that employers sometimes seem to place misguided emphasis upon acts of dishonesty. For example, in this age of embellishments and disinformation, is a fib uttered by an employee or an undisclosed piece of information withheld by an employee, always grounds to dismiss?

One can think of many instances where employees fail to tell the whole truth or perhaps conveniently omit a piece of information from their communications to management. For instance, if a staff member attended a work-related function and upon being asked by management whether or not a particular attendee was present at the function, the employee perhaps falsely states that the particular attendee was indeed in attendance (when in fact the attendee was not in attendance), is the lie a sufficient ground to dismiss? Similarly, where for instance an employee is asked to report on a particular interaction with a customer, if the staff member were to omit to mention that the customer in question expressed complaints about the employer, should that omission suffice to constitute a falsity deserving of dismissal?

One can then stretch the concept into the realms of infinity by conceiving of many instances where other embellishments or exaggerations, perhaps relating to non-work information, could conceivably amount to acts of dishonesty. The question is: when does the lie translate into a basis for dismissal?

The short answer is – it depends on the context and materiality of the lie.

Employers would do well to take note that South Africa’s Labour Court is certainly not going to accept an employer’s subjective view that there has indeed been a breach of trust. This was confirmed in *Amalgamated Pharmaceuticals Ltd v Grober NO & Others* [2004] 6 BLLR 537 (LC), where it was held:

“... The mere fact that the (employer) does not trust the (employee) cannot, without more, be a basis for holding that the employment relationship has broken down ...”

Therefore, it is a question of the extent to which the act of dishonesty impacts upon the employment relationship and whether or not it amounts to a breach of trust.

In *De Beers Consolidated Mines Limited vs CCMA & Others* (2000) 21 ILJ 1051 (LAC) it was held that:

“... The seriousness of dishonesty – i.e. whether it can be stigmatised as gross or not – depends not only, or even mainly, on the act of dishonesty itself but on the way it impacts on the employer’s business...”

In the leading decision of *Edcon vs Pillemer NO & Others* (191/2008) (2009) ZASCA 135 (5 October 2009), the Supreme Court of Appeal (SCA) confirmed



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the pertinent principle that it is necessary for the employer to deal with the impact of the misconduct on the trust relationship, in order to determine the extent to which the misconduct has destroyed or undermined the trust relationship, and therefore:

- Evidence of the consequences of the misconduct and its effect on the trust relationship is required; and
- Evidence demonstrating in what respects the misconduct breached the trust relationship is required.

In other words, it is necessary to contextualise the act of dishonesty and the overall effect it has on the trust relationship.

Employers should therefore be mindful, before embarking upon disciplinary action, in reaction to what they perceive to be dishonest conduct. That is not to say that dishonesty in the workplace must be tolerated. However, such intolerance must be distinguished from discerning situations where dismissal would be appropriate.

For further information, contact Chris Haralambous at Cox Yeats Attorneys.

INTRODUCING THE COX YEATS LABOUR LAW TEAM

IN its ongoing pursuit to offer its valued clients a wide range of specialised expert legal services, Cox Yeats recently introduced its dedicated labour law team.

Senior labour attorney, Chris Haralambous, who was appointed a partner at Cox Yeats on March 1, will head up the team. Working with and assisting Haralambous will be Jason Moodley, an associate at Cox Yeats. Together, the team has more than 20 years’ experience in legal practice, specialised in advising and assisting clients on employment law issues.

Is ‘dishonesty’ always grounds for dismissal?

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