



When Does Attendance at a Rugby Match Trigger a Dismissal from Employment?

"This is dishonest conduct of a kind which clearly negatively impairs upon a relationship of trust between an employer and employee." (Extract from judgment below)

An all-too-common complaint in workplaces comes from employers who notice a sudden surge in employees calling in sick on the day of a major sports fixture, or perhaps just on a "good beach day".

So as an employer what can you do about it if your "sick" employee is captured on TV enthusiastically waving a patriotic flag in the stands at a test match, or is recognised by another beachgoer frolicking in the waves at Muizenberg?

A recent Labour Appeal Court decision dealt with a case where the employee's dishonesty about a "sick day" had clearly led to a breakdown in trust, which goes to the heart of any employer/employee relationship.

The sick leave claim, the rugby match and the dismissal

- A "relatively senior" supermarket employee advised a manager that he had been taken ill and would not be attending work that day.
- In fact it turned out that he had travelled to watch a rugby match in support of his local team. On his return to work he made no secret of this fact, openly telling his manager about it.
- He was found guilty at a disciplinary enquiry on a charge of gross misconduct, and dismissed.
- He had on previous occasions been disciplined for absence and for late arrival at work and although most of the warnings had expired, one was still in force at the date of his disciplinary hearing.
- The employee took the matter to the CCMA (Commission for Conciliation, Mediation and Arbitration) which ordered his reinstatement, but eventually the matter ended up before the Labour Appeal Court, which, having noted that the case turned on the answer to the question "When does attendance at a rugby match trigger a dismissal from employment?", confirmed the dismissal as being "clearly the appropriate sanction".
- The employer was justified, said the Court, in adopting the approach that the employee "was required to act with integrity and abide by the [employer]'s policies, procedures and codes". The CCMA's order of reinstatement was a "... lenient approach to dishonesty [which] cannot be countenanced." As a mark of how seriously the Court viewed the employee's dishonest conduct, it very nearly granted a costs order against him (which is rare, and reserved for cases of "egregious conduct").
- Critically, the Court found that the employer/employee relationship of trust had broken down as a result of the employee's "initial unreliability and now dishonest conduct". "He was palpably dishonest, even on his own version. He expected to get away with the enjoyment of attendance at a rugby match on the basis of claiming sick leave and then enjoying the benefits thereof. **This is dishonest conduct of a kind which clearly negatively impairs upon a relationship of trust between an employer and employee.**" (Emphasis supplied).

The bottom line for employers is to act firmly in cases of employee dishonesty (as always, the intricacies of this area of law are such that specialist professional advice is essential) and for employees this case is yet another warning shot from our courts to the effect that dishonesty affecting the employer/employee trust relationship could well cost you your job.

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