



Fired For Moonlighting

“She failed to disclose these obviously material activities to her employer and was therefore manifestly acting in violation of her duty of good faith to her employer.”
(Extract from judgment below)

“Moonlighting” is the practice of employees boosting their monthly income with a “side-job” or “side-business”. It has been a feature of working relationships since the dawn of history, but now the pandemic lockdowns and the shift to the “gig economy” (where independent contractors and freelancers are paid for short-term assignments) have seen dramatic increases in the number of employees forced to supplement their incomes in this way. Some stats suggest that now almost half of all employees have a second source of income, and both they and their employers need to take note of a recent Labour Appeal Court decision confirming the dismissal of an employee for failing to disclose her side-business to her employer.

Selling biltong secretly

- A sales agent for a meat products company was found to be running her own “formal business” (with at least one full-time employee and from rented premises) selling biltong over weekends. She had not only kept that fact from her employer but had positively stated in a letter to it that she had no source of income other than her salary and maintenance from her divorce.
- Found guilty of dishonesty because she failed to advise her employer of her side-line business, she was dismissed.
- She referred an unfair dismissal dispute to the CCMA (Commission for Conciliation, Mediation and Arbitration) and, long story short, she ended up before the Labour Appeal Court which confirmed her dismissal, finding that -
 - * “[She] failed to disclose an essential and important fact that she was running ‘a side-line business’ in the market for the sale of meat products, albeit that they might not have been identical to the meat products which were sold by [her employer]”.
 - * “That she was able to discharge her duties to [her employer]” does not take her case any further.”
 - * The CCMA’s conclusion that “employees act in bad faith if conflict of interest may arise even though no real competition actually results” was, held the Court, unassailable.
 - * “She was employed as a sales representative in a business that was involved in the sale of meat products. As a side-line business, she conducted a business which involved the sale of biltong, namely a meat product. **She failed to disclose these obviously material activities to her employer and was therefore manifestly acting in violation of her duty of good faith to her employer.**” (Emphasis supplied).

A note for employers...

Avoid any doubt in your workplace with a clear, balanced and fair policy on the question of employees holding second jobs or running “side-hustles” and include a clause to that effect in your employment contracts. Professional advice is vital given the stakes in any labour law dispute.

And a note for employees...

Many employers will be very understanding if you are totally honest with them about any moonlighting you get involved in, whether it’s through economic necessity or just a desire to pursue something you are passionate about.

Disclose everything in writing (keep proof!), whether or not you will be impinging on your working hours. You risk dismissal even if there is “no real competition” with your main job, and even if your work performance is not impacted – it’s the “bad faith” element of secreting your side business that will sink your case.

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