LABOUR LAW UPDATE

Enquiries contact: Johnny@iafrica.com
www.globalbusiness.co.za

CASE 1

Solidarity obo Mohammed / Air Traffic and Navigation Services Ltd - (2011) 20 CCMA 7.22.2

CASE SYNOPSIS:

The Applicant, a senior Financial Manager, was given a final written warning after erroneously transferring R4m of pension fund money into the incorrect account, and after agreeing to repay the R7 000 in interest that had been lost as a result of the error. He claimed that he had been subjected to double jeopardy by being given a warning and being made to repay the loss, that the sanction was inconsistent because the Financial Officer had not been disciplined, and that his disciplinary hearing was unfair because the Chief Financial Officer had acted as both initiator and witness.

The Commissioner found that the employee had been grossly negligent, and that a final warning was a reasonable penalty in the circumstances. The inconsistency argument was rejected because the Chief Financial Officer had, on discovering the error, taken immediate steps to correct it. The reclaiming of the money was not part of the disciplinary process, and did not constitute a sanction. The double jeopardy principle did not, therefore, apply. In any event, the applicant had agreed without protest to sign an acknowledgement of debt.

The application was dismissed.

WHAT THIS MEANS FOR YOU:

This serves as confirmation of a debate that often rages. Clearly a warning as well as repayment does not constitute double jeopardy.

CASE 2

Fredericks / Jo Barkett Fashions – (2011) 20 LC 1.23.1

CASE SYNOPSIS:

The Applicant had been employed by the respondent as an Administrative Assistant since 1 July 2010 and she was dismissed on 8 April 2011.

A witness for the Respondent, who was also their General Manager, gave evidence stating that it had been brought to her attention that "the Applicant was publishing derogatory statements on her Facebook page". Upon checking on this to verify it, she found that it was true. The applicant was charged subsequent to a thorough investigation and she was thereafter dismissed.

The Respondent's HR Manager testified that the "Applicant had breached the contract and destroyed the name of the Company as well as its reputation".

The Applicant contended that her dismissal was unfair and that the "Company was supposed to use corrective measures other than to dismiss her." She went on to apologise for having used Facebook as a platform and stated that her constitutional right to privacy had been infringed.

The issue in dispute was whether or not the dismissal of the Applicant was procedurally and substantively fair as well as the appropriate relief for the outcome.

The Labour Court found that the Applicant's actions were not justifiable and that she had used the "wrong platform to address her grievance". Her dismissal was found to be substantively fair on a balance of probabilities.

The application was dismissed.

There was no order as to costs.

WHAT THIS MEANS FOR YOU:

More often these days, employees are using Facebook as a way to air their grievances or make racist or other unsavory statements towards their superiors, co-workers or others. Employees are to be aware of the fact that this platform is not to be seen as private and that employers can act against any conduct which occurs on these sites