Employment Law

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SOUTH AFRICA

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EMPLOYMENT LAW ALERT

A mental health condition does not automatically shield an employee against a performance-based dismissal

Facts

The applicant was appointed as a faculty administrator at the University of Stellenbosch (the respondent) from 2006 and was dismissed on 23 May 2022 for poor work performance. The applicant had been diagnosed with depression in January 2021 following his parents' deaths in December 2020. However, his poor work performance issues predated the diagnosis. The respondent argued that attempts were made to accommodate the applicant, but his performance did not improve.

The applicant was afforded an opportunity to make written submissions before a final decision could be taken. Additionally, the respondent had offered the applicant a settlement proposal for an amount equivalent to eight months' salary, which he declined, while also denying that his performance was poor. The applicant challenged his dismissal at the Commission for Conciliation, Mediation and Arbitration, arguing that he was dismissed because of his mental health condition rather than poor work performance.

The law

An employee alleging that his dismissal is a result of a mental health condition, which has affected his work performance must show a causal link between the mental health condition in question and the poor work performance.

A mental health condition does not automatically shield an employee against a performance-based dismissal

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Application of the law to the facts

The arbitrator found that while the applicant suffered from depression, the primary reason for his dismissal was consistent poor work performance over a protracted period, not the mental health condition. The arbitrator held that the applicant failed to establish a direct causal link between his depression and poor work performance, noting that his performance issues predated the depression diagnosis. Additionally, the arbitrator found that the respondent had made reasonable accommodation attempts and followed proper procedures. Having considered the evidence, the arbitrator concluded that the dismissal of the applicant was both procedurally and substantively fair.

On review, the Labour Court considered the case authorities the arbitrator had relied on and confirmed that mental health conditions do not automatically preclude performance-based dismissals, particularly where senior employees are concerned.

The court further confirmed the position that while there is a duty on employers to reasonably accommodate employees who suffer from mental health conditions, the employee must still show that there is a causal link between the mental health condition in question and the poor work performance. The court held that the arbitrator's findings could not be faulted as they were reasonable, and thus dismissed the review application.

A mental health condition does not automatically shield an employee against a performance-based dismissal

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Key takeaways

An employee alleging unfair dismissal due to mental health or using mental health as a defence against poor work performance allegations must show that a mental health condition directly caused the poor work performance and that this was the primary reason for dismissal.

Employers are required to reasonably accommodate employees who suffer from mental health conditions. This exercise includes providing training, counselling, issuing warnings and trying to find alternatives for these employees. Where these steps do not yield positive results, the employer may dismiss the employee based on poor work performance.

Where senior employees are concerned, the requirements of counselling, training and warnings for poor work performance may be dispensed with as senior employees are required to assess whether their performance is up to a reasonable standard.

Employers must maintain proper evidence of accommodation attempts and performance management processes, which are crucial for defending dismissals for poor work performance.

Thabang Rapuleng, Biron Madisa and Chantell De Gouveia

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The limits of protected disclosure and section 188A(11) of the LRA

In *Letakgomo v Johnson Matthey (Pty) Ltd* (J683/23) [2025] ZALCJHB 240 (31 May 2025), Mr Thabo Letakgomo (the applicant), was employed as a plant manager/managing director at Johnson Matthey (Pty) Ltd (the respondent), a company that manufactures platinum group metals catalytic converters.

Facts

In 2022, the respondent began noticing significant losses of platinum group metals, prompting both an internal investigation and a report to the South African Police Service. In January 2023, the applicant discovered a converter in the possession of his tenant, which the tenant confessed was stolen property. The applicant reported these facts to the respondent's officials, believing the information would assist with ongoing investigations. However, the respondent suspended the applicant in late January 2023 and later charged him with gross negligence and recklessness stemming from his alleged conduct around the discovery and reporting of the stolen converter.

Shortly before the disciplinary hearing, the applicant contended that he had made a "*protected disclosure*" and invoked section 188A(11) of the Labour Relations Act 66 of 1995 (LRA), seeking to have the disciplinary process conducted as a formal inquiry at the Commission for Conciliation, Mediation and Arbitration (CCMA), rather than internally. He also claimed his employer's insistence on proceeding internally amounted to an occupational detriment under the Protected Disclosures Act 26 of 2000 (PDA).

The limits of protected disclosure and section 188A(11) of the LRA

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Court's analysis

The court focused primarily on whether the applicant had made a valid disclosure under the PDA and whether the internal disciplinary proceedings constituted an occupational detriment. Under section 1 of the PDA, information qualifies as a *"protected disclosure"* only if it reveals criminal or other unlawful conduct by the employer or its employees. The court held that merely reporting a possible crime to one's employer – especially if it did not implicate the employer or its own staff – does not automatically make that report a *"protected disclosure"*. Moreover, the court highlighted that there must be a demonstrable link between the disclosure and any subsequent detrimental action, as required by section 3 of the PDA.

In this case, the alleged disclosure concerned the criminal activity of an unnamed *"White guy"*, rather than an identifiable employee of the respondent. Because no employer or employee conduct was implicated, the court found no valid protected disclosure had occurred. Consequently, the disciplinary hearing was not considered an occupational detriment under the PDA. Additionally, the court underscored that section 188A(11) of the LRA cannot be successfully invoked when there is an absence of a legitimate protected disclosure. The mere fact that an employee claims to have made a protected disclosure does not itself terminate the employer's right to hold an internal disciplinary hearing.

The court further emphasised that holding an inquiry into alleged misconduct in and of itself is not a detriment. Rather, it is generally part of fair disciplinary processes affording employees the opportunity to be heard. The legislative intent behind section 188A(11) was to prevent undue collateral litigation, not to convert every internal hearing into a prohibited occupational detriment simply because an employee invokes the PDA.

The limits of protected disclosure and section 188A(11) of the LRA

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Court's findings and takeaways

Ultimately, the court dismissed the applicant's urgent application for relief, finding that no valid protected disclosure existed under the PDA and, therefore, section 188A(11) was not triggered. It declared that the internal process need not be terminated simply because the employee alleged retaliation. An employer objecting to a section 188A(11) request is not obligated to fund a CCMA inquiry, barring clear statutory authority or agreement to the contrary. The court ordered costs against the applicant, broadly reiterating its disapproval of attempts to stall or halt incomplete disciplinary proceedings without a solid basis.

The judgment provides clarity on the threshold for a disclosure to be protected under the PDA and reaffirms that a standard internal hearing typically does not amount to an occupational detriment. Employers retain a right to manage discipline unless there is a genuine, credible disclosure involving employer or employee wrongdoing. Attempting to invoke section 188A(11) without meeting the jurisdictional requirements risks incurring legal costs and may be dismissed by the courts.

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