

ISSUE

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TOO SICK TO WORK, BUT NOT TOO SICK TO SOCIALIZE:

A LEGAL PERSPECTIVE

When Sick Leave and Social Activities Collide

A common issue arises when employees on authorised sick leave are spotted attending social events. Employers often find themselves questioning the integrity of an employee who claims to be too unwell to work but is seen enjoying social activities. With the rise of social media platforms like Facebook and Instagram, employees may even post pictures of their outings, creating a perception of dishonesty. This paradox of being “too sick to work but not too sick to socialize” can lead employers to wonder whether grounds exist for dismissal in such cases.

A Case Study: Woolworths (Pty) Ltd v CCMA and Others

In the case *Woolworths (Pty) Ltd v CCMA and Others*, the Labour Appeal Court examined the legal implications of an employee on paid sick leave attending a rugby match.

Here’s what happened: the employee notified his manager that he was too ill to work. However, during his sick day, he attended a rugby match, which he admitted when questioned by his manager the next day. He explained that he felt better by the time he went to the game. Following this admission, the employee faced disciplinary charges and was dismissed for gross misconduct, as the company viewed his actions as an abuse of authorized sick leave.

CCMA's Initial Ruling: Procedural and Substantive Fairness

The employee challenged his dismissal, claiming it was unfair. During arbitration, the CCMA found that:

- The employee was not specifically charged with dishonesty.
- He did not hide his attendance at the rugby match.
- No evidence showed he'd been previously warned about similar actions.

The arbitrator thus ruled that the dismissal was both procedurally and substantively unfair, ordering reinstatement with full retroactive pay.

Company Appeals: Labour Court and Labour Appeal Court Review

Disagreeing with the CCMA's decision, the company sought a review from the Labour Court. The Labour Court maintained that the dismissal was substantively unfair but disagreed on procedural grounds. The company then escalated the matter to the Labour Appeal Court (LAC).

The LAC examined the employee's admission that accepting payment while attending the rugby match was dishonest and acknowledged his behaviour set a poor example for subordinates. Although the employee wasn't explicitly charged with dishonesty, the LAC ruled that his actions—taking paid sick leave under false pretences to attend a social event—were clearly dishonest.

The Importance of Integrity in the Workplace

The LAC emphasized that honesty and adherence to company policies are essential, especially for employees in senior roles who set examples for their teams. The court found that the employee's behaviour severely damaged the trust relationship, which is fundamental to the employment relationship.

The LAC ultimately concluded that dismissal was the appropriate action. This case highlights the importance of maintaining honesty and transparency, as well as the employer's right to expect integrity from their employees.

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