Can the employer dismiss an employee for refusing to testify?

The employee was appointed as an assistant administrator in 2012 and was later promoted to a human resources admin clerk position.

While busy performing her duties, the employee overheard raised voices in a colleague's office. She then rushed in to separate the colleagues, one of whom was Mr Maili.

As a result of the incident, Mr Maili was subjected to a disciplinary hearing and subsequently dismissed. The employee was instructed to attend the hearing to testify, and she refused. Mr Maili then referred the dispute to the CCMA.

The employee was also subjected to a disciplinary hearing and dismissed for disobeying reasonable instruction and leaking confidential information.

The employee referred a dispute to the CCMA, alleging that her dismissal was unfair.

At the arbitration hearing, the commissioner ruled a sanction short of dismissal was the appropriate sanction, and he issued a final warning valid for six months.

The employer was not happy with the outcome, and he referred the dispute to the Labour Court. The Labour Court arrived at the same decision which the arbitrator came at but with different reasons.

The employer was still not satisfied, and he referred the dispute to the Labour Appeal Court.

The Labour Appeal Court noted that both the CCMA and the Labour Court significantly relied on subpoena issuing in circumstances where the employee refused to testify.

The court ruled that the fact that no subpoena was issued does not mean that the employee cannot be disciplined.

The Labour Appeal Court concluded that the employee was guilty of misconduct

in the absence of a valid and reasonable explanation. The appropriate sanction is dismissal, considering that the employee's failure to testify constitutes a challenge to the employer's authority.

The appeal was upheld, and the employee was dismissed.

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