Employers can now dismiss employees who refuse to get the covid-19 vaccine!

In a recent CCMA case between Theresa Mulderij and Goldrush Group (case number GAJB 24054-21), the Commissioner ruled that the dismissal of an employee for refusing to be vaccinated against COVID-19 was substantially fair.

The background to the facts was that the employer had adopted a COVID-19 vaccine mandate, and the employee refused to get vaccinated. The employee was identified to be a high-risk individual who interacted with employees daily and therefore was found to potentially expose other employees to the risk of infection.

It is further worth noting that the employer duly complied with the requirements of adopting a COVID-19 vaccine mandate as per the Regulations, and the employer conducted consultations that took place for a period of three months to ensure that the COVID-19 policy was read and explained to all the employees and unions.

During the hearing, the employee testified that the COVID-19 vaccine infringed on her right to bodily integrity in terms of section 12(2) of the Constitution. She further testified that she has never infected any person, nor has she been infected herself and that there was no proof that the vaccine is 100% effective against Covid-19.

The employer, on the other hand, testified that the employee's refusal to get vaccinated by implication meant that the employee was refusing to participate in creating a safe working environment.

Upon ruling, the Commissioner took cognisance of the employee's right to bodily integrity in terms of section 12(2). However, the Commissioner stated that this right is not absolute when it could potentially endanger others.

The Commissioner further stated that the employer followed all the crucial steps in adopting the COVID-19 vaccine policy and agreed that the employee's refusal to get vaccinated amounted to her refusal in participating in creating a safe

working environment for the other employees.

The Commissioner, on these grounds, dismissed the employee’s application.

Therefore, the most important lesson that can be taken from this case is that employers who wish to adopt a COVID-19 vaccine mandate must comply with the requirements

as per the Regulations. These requirements ensure that the employer reasonably accommodates those employees who refuse to get vaccinated before considering dismissal as a last resort.

Furthermore, it is evident from the case that compliance with these requirements may serve as a defence against cases of unfair dismissals.

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