Labour Appeal Court Rules That Depression Is Not An Excuse For Employee's Misconduct

The Labour Appeal Court (LAC) overruled the judgement by the Labour Court in the case of the Legal Aid South Africa v Ockert Jansen. The judgement by the Labour Court was based on the employee's allegations that he was being unfairly discriminated against on the ground of his depression. The Labour Court consequently ordered that the employee be reinstated and compensated. The LAC then overruled the judgement.

The Respondent, (Jansen), was a paralegal at George Legal Aid Centre from March 2007. He was diagnosed with depression in 2010, but the illness was under control. However, in 2012, his ex-wife launched domestic violence proceedings against him. Mrs Jansen was represented by his colleague and manager, Mr Terblanche. It was during this time that Mr Jansen's illness worsened and as a result, he absented from work for 17days.

During his absence from work, he coincidentally met with Mr Terblanche at the CCMA and when the latter enquired about his absence from work, he engaged in an act of insolence by turning his back and made a dismissive gesture towards him. He was then charged with absence from work and insolence, and was subsequently dismissed. He referred the matter to the CCMA, claiming to be discriminated against based on his illness. CCMA did not possess the necessary jurisdiction and he referred the matter to the Labour Court.

Labour Court

In the Labour Court, he framed his dispute as an automatic unfair dismissal. The Labour Court made a surprise ruling that the employer was required to lead evidence first despite the onus being on the employee. The Legal Aid took a bold move of closing its case without leading evidence. At the end of Jansen's case, he asked for absolution, but it was refused. The court made a ruling that Legal Aid failed to testify, thus accepting the version by Jansen. The court finally made an order that Jansen be reinstated with full retrospective effects and payment of compensation equivalent to 6 months' salary.

Labour Appeal Court

The Legal Aid took the matter on appeal to the Labour Appeal Court. The Appeal court reiterated that to prove automatic unfair dismissal, the Applicant must prove factual causation. In addition to that, the Applicant was also required to prove legal causation. Mr Jansen could not prove that his acts of depression were due to his depression or that he was dismissed as a result of his depression. The court found that the most proximate cause of his dismissal was his misconduct and not his depression. Acting Appeal Judge John Murphy writes in the unanimous judgment: "The evidence in this case, convincingly shows that the respondent was depressed … Accepting thus that the respondent was depressed and had been suffering from depression since 2011, he nonetheless remained reasonably functional and able to carry out his duties throughout most of that period. He was not wholly incapacitated. Moreover, the appellant's policy was merely to require employees compelled to take sick leave to advise the appellant of the fact that they would not be reporting for duty".

Acting Appeal Judge John Murphy writes in the unanimous judgment (Cont.): The LAC further emphasised that employers have a duty to deal with depression sympathetically and to consider sanctions which reflect that approach.

Finally, the court held that "As already discussed, but worthy of repeating, that is not to say that the depression of an employee is of insignificant relevance. Depression, sadly, is a prevalent illness in the current environment. Employers have a duty to deal with it sympathetically and should investigate it fully and consider reasonable accommodation and alternatives short of dismissal. In addition, where depression may account in part for an employee's misconduct, depending on the circumstances and the nature of the misconduct, dismissal may not be appropriate. However, for the reasons explained, in this instance, there was no proper claim of substantive unfairness before the Labour Court which is the subject of an appeal or cross-appeal before us".

The Appeal was upheld with no costs order.

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