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NEWSLETTER 20

SACWU & another v NCP Chlorchem (Pty) Ltd & others [2007] 7 BLLR 663 (LC)

Dismissal – Consistency – Employee dismissed after making insincere apology to colleague he had falsely accused of racism – Dismissal not inconsistent because other cases in which employees were not dismissed had been amicably resolved by parties. Dismissal – Misconduct – Racism in workplace – Employee falsely accusing colleague of “racist attitude” – Unjustified accusations of racism normally strikes at root of employment relationship and warrants dismissal.

Summary

During a routine team meeting attended by the applicant employee, a colleague and their team leader, the colleague expressed concerns about the employee’s work performance. The employee later accused his colleague of “talking behind his back.” The colleague sought advice, and another meeting was convened. At this meeting, the employee refused to apologise to his colleague, accused him of having a “racist attitude” and threatened to report him to his union and to call for his dismissal. The colleague filed a formal grievance against the employee during which the employee’s union representative instructed him to apologise to the complainant. The employee did so, but the complainant refused to accept the apology. Disciplinary action was then instituted against the employee, and he was dismissed. The respondent arbitrator found the dismissal fair.

The Court accepted that the employee had accused a colleague of being a racist, and that he had threatened to have him dismissed. It was in the light of these findings that the award was to be assessed. The applicant had contended that to advise somebody that he was demonstrating a racist attitude could not be construed as “using racist words”, which was the offence with which he had been charged and for which he had been dismissed. **The Court held** that to accuse a person of racism or of displaying a racist attitude is racially offensive. Such words are also insulting and abusive. The arbitrator had noted that the respondent employer had attempted to “make the employees respect each other” and that such efforts were to be commended. The arbitrator had correctly rejected the employee’s further claim that he had been provoked. As to the applicants’ plea of inconsistency, the Court noted that the arbitrator had assessed all the cases with which the present was compared, and concluded that, in each, the parties had been willing to resolve their dispute. The commissioner could not be faulted for finding that the employee had showed no remorse, and that he had ultimately apologised only because he had been instructed to do so by his union representative. There was no evidence before the commissioner or on the papers before the Court that the employee had once conceded that he had been wrong.

The Court held further that while employees must be protected against retribution for reporting incidents of racism to their employer or to their union, employees who make unjustified allegations of racism must also expect to be disciplined. **Unjustified accusations of racism must be addressed by employers with the same fervour as racism itself. Such conduct strikes at the heart of racial harmony in the workplace, and constitutes a very serious offence.** The Court found no ground on which the decision to dismiss the employee could be interfered with.

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