

Is a Break in the Trust Relationship, a prerequisite to Dismissal?

By Alex Davies

INTRODUCTION:

In the past employers have been required to lead specific evidence at a disciplinary hearing and during arbitration to show that the trust relationship between the employer and employee has broken down to such an extent that future employment is no longer tenable in order to justify the imposition of dismissal as a sanction. This is no longer necessarily a prerequisite required for dismissal to be an appropriate sanction.

EDCON LIMITED // PILLEMER N.O. AND OTHERS^[1]

The *Edcon* judgment has been the basis for the standard of proof required of Employers with regard to the trust relationship.

The employee was charged with a breakdown in the trust relationship due to her misconduct (permitting her son to drive her company car which he damaged) and her initial dishonesty relating to the incident.

The Employee presented evidence at the arbitration which indicated that there was in fact no break down in the trust relationship which Edcon did not refute.

The Supreme Court of Appeal stated the following:

'(The Commissioner) was entitled and in fact expected, in the scheme of things, to explore if there was evidence by Edcon and/or on record before her showing that dismissal was the appropriate sanction under the circumstances. This was because Edcon's decision was underpinned by its view that the trust relationship had been destroyed. She could find no evidence suggestive of the alleged breakdown and specifically mentioned this as one of her reasons for concluding that Reddy's dismissal was inappropriate.

^[2]

IMPALA PLATINUM LIMITED // JANSEN AND OTHERS

^[3]

The Labour Appeal Court referred to the *Edcon* judgment and concluded that *Edcon* is not authority for a rule that evidence was required to be presented relating to the breakdown of the trust relationship in all circumstances. The Court highlighted that the charge against Reddy (in *Edcon*) specifically related to the trust relationship which the Employer was therefore required to prove in order to find the employee guilty.

In *Impala* the employee was charged with gross misconduct. The Employee acted in direct conflict with instructions given to him and failed to act in the best interests of his employer. The Employee permitted a subcontractor, owned by his wife, access to the mine without completion of the requisite training of staff and placed pressure on contractors to utilise the services of his wife's company. The Employee was found guilty and dismissed.

The Court summarised the position as follows:

"The Commissioner rightly found that Jansen's conduct went to the root of the employment relationship deserving of the severest sanction. This cannot be faulted. In fact, it would be unfair to expect the Appellant to retain Jansen in its employ where Jansen had not only displayed gross misconduct in failing to comply with statutory regulations but also contravened the duty to act in good faith by promoting his wife's business to Appellant's service providers thereby compromising fairness and honesty within the Appellant's business relationships. In the circumstances, there was no need to lead any evidence of a breakdown in the relationship, as it was obviously the case."

^[4]

CONCLUSION:

In matters where an employee is charged with misconduct an employer is required to lead evidence pertaining to the break in the trust relationship if this is not clearly borne out of the evidence pertaining to the charges against the employee. If however, it is clear from the evidence and the charges that the employee's conduct breached the trust relationship then it may be inferred by that the trust relationship is in fact broken down in absence of specific evidence in this respect.

[1](#)] [2010] 1 BLLR 1 (SCA)

[2](#)] At paragraph 22

[3](#)] Unreported judgment of the Labour Appeal Court under case number JA100/14

[4](#)] At paragraph 20