

Employer's Dismissal of Employee for Sexual Harassment and Victimisation Found Justified

Skinner v Ekapa Mining and Others [2025] 1 BLLR 60 (LC)

INTRODUCTION

The Labour Court, hearing the review application from the CCMA, granted an order in favour of the Ekapa Mining Company and others ("**Respondent**") against Elton Skinner ("**Applicant**"). The judgement validated the actions of the Respondent in dismissing the Applicant for misconduct in the workplace.

BACKGROUND FACTS OF THE CASE

In or around 2020, the Applicant was an acting shift supervisor working for the Respondent. The Applicant had allegedly engaged in constantly sexually harassing one of his female subordinates ("**Complainant**"), victimizing her by allegedly making suggestive comments towards the Complainant. After having been asked to stop, the Applicant then retaliated by abusing his power and allocating the Complainant's shift to work in an unsafe area and unreasonably questioned the validity of the Complainant's sick notes.

The CCMA accepted the Complainant's version and found that the Applicant's dismissal by the Respondent had been procedurally and substantively fair. The Applicant took the CCMA award on review on the basis that the arbitrator failed to appropriately evaluate the evidence and facts before the CCMA.

SECTION 145 OF LRA

Section 145 of the Labour Relations Act permits a party to apply to the Labour Court if there is a potential defect in an arbitration award. This provision serves as a safeguard, ensuring that arbitration decisions are fair and based on sound legal reasoning. The Applicant exercised this right, seeking to have the CCMA ruling overturned.

Section 145 of the LRA allows for the review of arbitration awards on the following grounds:

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1. the commissioner committed misconduct in relation to the duties of the commissioner as an arbitrator;
2. the commissioner committed a gross irregularity in the conduct of the arbitration proceedings;
3. the commissioner exceeded the commissioner's powers;
4. an award has been improperly obtained.

THE LABOUR COURT FINDINGS

The court evaluated witness credibility and evidence. It found the Applicant had victimized the Complainant, portraying her as a poor employee without taking disciplinary action. It deemed his conduct "deplorable, offensive, inappropriate," and a violation of her dignity.

Regarding sexual harassment, the court upheld the CCMA's ruling, noting the Complainant had no reason to fabricate her allegations. Her testimony was found to be consistent and credible.

EMPLOYER'S ROLE IN ENSURING COMPLIANCE WITH LRA

Employers must enforce labour laws by ensuring compliance with procedural and substantive legal standards. Proper disciplinary action involves:

1. establishing clear workplace rules;
2. investigating misconduct thoroughly;
3. assessing the severity of infractions;
4. ensuring employees understand the consequences of rule violations.

Employers should seek legal guidance to handle disputes correctly and maintain workplace integrity.

PROFESSIONALISM IN WORKPLACE?

Sexual harassment impacts a person's working environment and affects a person's right to dignity. Sexual harassment undermines dignity and creates a hostile work environment. Employers must enforce compliance with workplace policies and labour laws, safeguarding their business' integrity from errant employees who threaten its professional standards.

CONCLUSION

This case highlights the serious consequences of workplace harassment and victimization. The Labour Court's decision affirms the principle that misconduct, particularly involving abuse of power and harassment, cannot be tolerated. Employers must ensure that all employees are made aware of workplace policies and the legal consequences of misconduct through formal training and written guidelines.

The Applicant's dismissal was found to be substantively fair, demonstrating that the Respondent correctly followed labour laws in handling the case. The Labour Court dismissed the review application.

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