Dismissal for Gross Insubordination Through the Lens of

Association of Mineworkers and Construction Workers Union obo Mkhonto v Commission for Conciliation, Mediation and Arbitration
(2023) 44 *ILJ* 1046 (LC)[1]

1 Introduction

Insubordination is widely known as a form of misconduct for which an employee may be dismissed and has been extensively explored. Despite the wealth of literature on the subject, uncertainties remain regarding the precise definition of insubordination and the thresholds thereof that warrant dismissal as a consequence.

While the Labour Relations Act (66 of 1995) (LRA) does not explicitly define insubordination, it does acknowledge the potential for dismissal in cases of gross insubordination. This note delves into the courts' definition of insubordination, examining the circumstances under which an employee may be dismissed for such conduct. Drawing insights from the case of *Association of Mineworkers and Construction Workers Union obo Mkhonto v Commission for Conciliation, Mediation and Arbitration* ((2023) 44 *ILJ* 1046 (LC)) (*AMCU obo Mkhonto v CCMA*), this exploration aims to shed light on the uncertainties surrounding gross insubordination. Furthermore, the note addresses concerns related to overtime work that have surfaced in the aforementioned case, offering insights into the legislative framework surrounding overtime, as well as dismissal. The note also considers the decisions in various cases dealing with dismissal for gross insubordination, provides recommendations for the mitigation of incorrect findings, and concludes with a way forward.

2 *AMCU obo Mkhonto v CCMA*

The employees here were charged with gross insubordination and dismissed for refusing to obey an instruction to work overtime. The issue to be decided was whether the refusal to work overtime amounted to insubordination

[1] All references in this case note to the Code of Good Practice: Dismissal are to Schedule 8 of the Labour Relations Act 66 of 1995. Although Schedule 8 was subsequently replaced by the Code of Good Practice on Dismissal, 2025 (GN 3470 in *GG* 53294 of September 2025), the former Code was applicable at the time the dispute was decided, as well as when this note was accepted for publication.

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warranting dismissal. The employees' normal working hours were 6 am to 4 pm. On the day in question, the manager required them to work an additional two hours from 4 to 6 pm; they refused and were sanctioned and dismissed. Dissatisfied with the dismissal, AMCU referred a dispute on behalf of its member employees.

The starting point in determining whether a refusal to obey an instruction amounts to insubordination is to determine whether such an instruction was lawful. The Basic Conditions of Employment Act (75 of 1997) (BCEA) makes it clear that overtime has to be agreed to, and in this regard, the employer argued that the employees were bound to work overtime in terms of their employment contracts. There was, however, no agreement regarding overtime on the day in question. In addition, the employees refused to work overtime for health and safety reasons, in terms of the Mine Health and Safety Act (29 of 1996) (MHSA).

The main issue in contention was whether the instruction given to work overtime was based on an agreement, and therefore lawful. According to section 10(1)(*a*) of the BCEA, overtime work may not be worked unless it is in terms of an agreement. Section 10(5) further states that such an agreement lapses after a year. In addressing whether the instruction to work overtime was lawful and in terms of an agreement, it is prudent to consider the employment contracts concerned. Mr Nthako's contract did not contain a clause regarding overtime work; as such, there was no obligation on him to do so. Ms Nkebe and Mr Mkhonto's contracts did include such clauses; however, their contracts were concluded in July 2008 and January 2011, respectively. Therefore, when the instruction was given on 25 May 2017, their agreements regarding overtime work had lapsed, making the request to work overtime unlawful as it was not based on any valid and binding agreement.

Insubordination depends on various factors, including the reasonableness of the instruction and, as is seen in *Maripane v Glencore Operations South Africa (Pty) Ltd (Lion Ferrochrome)* ([2019] 9 BLLR 750 (LAC)) (*Maripane v Glencore)*, the reasonableness of an instruction depends on its lawfulness; an instruction to do what is unlawful or in breach of a contractual term cannot be reasonable. It is evident from a reading of section 10 of the BCEA, as well as the exposition of reasonableness in *Maripane v Glencore*, that in the absence of an express agreement to work overtime, it may in certain circumstances be possible to infer a tacit or implied agreement. However, no evidence existed in the present matter to support such a finding. On the contrary, the employees expressly refused to work overtime on the basis that they would be "going to church". Nor was there any evidence of a prior pattern of employees working overtime from which a tacit agreement could be inferred. The fact that Mr Veere resorted to threatening disciplinary action further underscores the absence of any prior consent to work overtime.

When the matter in *AMCU obo Mkhonto v CCMA* was before the commissioner, there was a disagreement regarding whether or not all of the employees concerned were present when the instruction to work overtime was given, and whether therefore they were aware of the fact that they were required to work overtime. However, it was clear from the evidence

presented that all of the employees were aware that they were requested to work overtime.

When dealing with a dismissal owing to an employee's misconduct, one of the guiding factors in determining the fairness thereof is whether the dismissal was an appropriate sanction under the circumstances. When considering this, there needs to be a determination as to the level of misconduct, and in this regard, the level of insubordination. The court here referred to *Palluci Home Depot v Herskowitz* ([2015] 5 BLLR 484 (LAC)) (*Palluci Home Depot v Herskowitz*), where it was determined that "acts of mere insolence and insubordination do not justify dismissal unless they are serious and wilful". In addition to an emphasis being placed on "wilful and serious", an emphasis was placed on the fact that an employer must issue a prior warning before having recourse to the final act of dismissal. The employees concerned had not previously refused to work overtime, nor was there a warning issued for this refusal to work overtime, which alludes to a misconception of what qualifies as gross insubordination warranting dismissal.

The emphasis placed on "wilful and serious" is reinforced by item 3(4) of the Code of Good Practice: Dismissal (Schedule 8 to the Labour Relations Act 66 of 1995), which provides that "it is inappropriate for an employer to dismiss an employee for a first offence, except if the misconduct is serious and of such gravity that it makes a continued employment relationship intolerable". Although the Code of Good Practice on Dismissal, 2025 (GN 3470 in GG 53294 of September 2025) has since been repealed Schedule 8, the former Code was applicable at the time of the dispute. Furthermore, as was seen in *Sidumo v Rustenburg Platinum Mines Ltd* (2008 (2) SA 24 (CC)) (*Sidumo*), the determination of the appropriateness of dismissal as a sanction requires a consideration of the totality of the circumstances, including the reason that dismissal was imposed as a sanction, and the harm caused by the employee's conduct. It is clear that the commissioner had not considered the totality of the circumstances, in the sense that: this was a first offence; they did not act wilfully; and their refusal was based on a misguided belief that it was covered by section 23 of the MHSA.

Based on the evidence before it, the court therefore found that the dismissal was disproportionate and unfair and that the substantive fairness of the dismissal was vitiated by unreasonableness. The dismissal was found to be substantively unfair; reinstatement was ordered, as well as full back pay.

3 Legislative framework

The primary legislative framework governing overtime work is the BCEA. This legislation not only outlines the definition of overtime but also prescribes limits on the amount of overtime that an employee can undertake. Overtime is defined as the work done in addition to, or in excess of, ordinary working hours (s 1 of the BCEA). Ordinary working hours are defined as no more than 45 hours in any working week, and 9 hours in any day if the employee

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works for 5 days or less in a week; or 8 hours in any day if the employee works on more than 5 days a week (s 9(1)(*a*), (*b*) and (*c*) of the BCEA). These hours can be extended by agreement, by up to 15 minutes a day or 60 minutes a week, where it is necessary to continue serving the public after completion of ordinary working hours (s 9(2) of the BCEA).

The BCEA further dictates that overtime must be agreed upon and should not surpass three hours per day or ten hours per week (s 10(1)(*b*) of the BCEA). Furthermore, employees engaged in overtime work must be compensated at a rate of one-and-a-half times their regular wage (s 10(2) of the BCEA). However, an agreement between an employee and employer may permit a lower wage (equivalent to the ordinary wage) if the employee is granted 30 minutes off for every hour of overtime worked, or 90 minutes off if not compensated at the higher rate (s 3(10)(*a*) and (*b*) of the BCEA). Crucially, any agreement related to overtime work expires one year after its conclusion (s 10(5) of the BCEA). In *AMCU obo Mkhonto,* it is evident that any agreement relating to overtime work had already lapsed on the day in question.

In the realm of dismissals, the LRA and the Code of Good Practice govern the legislative landscape. The Code of Good Practice emphasises that a dismissal will be deemed unfair if it lacks a fair reason (substantive fairness) and fails to follow a fair procedure (procedural fairness) (item 2(1) of the Code of Good Practice). The Code of Good Practice goes on to state what such fair reasons are, namely, dismissal relating to: the conduct of an employee; the capacity of an employee; and the operational requirements of the employer (item 2(2) of the Code of Good Practice). Whether dismissal is for a fair reason is also largely dependent on the facts of the case and whether dismissal is an appropriate sanction under the given circumstances. While the dismissal in *AMCU obo Mkhonto v CCMA* was for a fair reason, the exact nature and level of the misconduct complained of were not given due consideration. *Sidumo* makes it clear that the totality of circumstances must be considered.

Concerning a fair procedure, the Code of Good Practice provides that an investigation must be conducted to determine the grounds for dismissal, and in this regard, the employee should be notified of the allegations against them in a language and form they understand. The employee should be given a reasonable opportunity to state their case in response to the allegations, and is entitled to a reasonable time to prepare such a response with the assistance of a trade-union representative or a fellow employee. Once the investigation is completed, the employer should communicate the decision taken to the employee, preferably in writing (item 4(1) of the Code of Good Practice). Furthermore, if the employee is dismissed, they should be given the reason for the dismissal and reminded of any rights to refer the matter to a council with jurisdiction or the Commission or any dispute-resolution procedures established in terms of a collective agreement (item 4(3) of the Code of Good Practice). It is only in exceptional circumstances where an employer is unable to comply with these guidelines that they may dispense with them (item 4(3) of the Code of Good Practice).

Regarding dismissal for misconduct, the Code of Good Practice provides factors that must be considered in assessing the appropriateness of

dismissal as a sanction under the given circumstances. These factors are as follows:

> "Any person who is determining whether a dismissal for misconduct is unfair should consider–
> a. whether or not the employee contravened a rule or standard regulating conduct in, or of relevance to, the workplace and
> b. if a rule or standard was contravened, whether or not–
> i. the rule was a valid or reasonable rule or standard;
> ii. the employee was aware, or could reasonably be expected to have been aware, of the rule or standard;
> iii. the rule or standard has been consistently applied by the employer; and
> iv. dismissal was an appropriate sanction for the contravention of the rule or standard." (item 7 of the Code of Good Practice)

If a dismissal is determined to be lacking a fair reason and/or fails to adhere to a fair procedure, it may be deemed unfair and could be contested by the affected employee (item 2(4) of the Code of Good Practice).

The BCEA and LRA were enacted to address various workplace issues in post-apartheid South Africa (Mtayi "The Basic Conditions of Employment Act 75 of 1997" 1998 *De Rebus* 51; Theron "The Erosion of Workers' Rights and the Presumption as to Who Is an Employee" 2002 6 *Law, Democracy and Development* 27). These Acts aimed to balance employee protection with employer requirements, particularly considering high unemployment rates (Godfrey and Clarke "The Basic Conditions of Employment Act: More Questions than Answers" 2002 6(1) *Law, Democracy, and Development* 1). The BCEA introduced the concept of "regulated flexibility", allowing for variations in worker protections through various mechanisms while maintaining certain core rights (Godfrey and Clarke 2002 *Law, Development and Democracy*). The Acts addressed concerns such as regulation of overtime work and unfair dismissals, forming part of a comprehensive overhaul of the labour dispensation (Mtayi 1998 *De Rebus*).

4 Insubordination warranting dismissal

To determine what insubordination is and when it will warrant a sanction of dismissal, case law needs to be consulted. Insubordination has been defined by our courts many times over as "a wilful and serious refusal by an employee to obey a lawful and reasonable instruction, or where the conduct of an employee poses a deliberate and serious challenge to the employer's authority" (*Commercial Catering & Allied Workers Union of SA v Wooltru Ltd t/a Woolworths (Randburg)* (1989) 10 *ILJ* 311 (IC) 314H–J) (*Wooltru*). This definition makes it evident that the employer's instruction must be both lawful and reasonable – that is, it must be one that the employer is legally entitled to make. In addition, the refusal to comply with the instruction must be so grave as to pose a challenge to the employer's authority. Further to this, the Code of Good Practice specifies that only instances of gross insubordination would warrant dismissal, as well as the fact that only a repeated offence

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would render the employment relationship intolerable (item 3(4) of the Code of Good Practice).

The issue in *Lynx Geosystem SA (Pty) Ltd v Commission for Conciliation, Mediation, and Arbitration* ([2010] ZALC 154) (*Lynx Geosystem v CCMA*) concerned the employees' refusal to work on a public holiday – in this case, 22 March 2004. The employees were issued with a memorandum to the effect that they would be required to work on public holidays. The employees' reason for their refusal was that they had not previously been required to work on public holidays, and if they had to work on a public holiday, they should be compensated through a day off. The commissioner noted that insubordination was a serious offence but dismissal would only be justified where it was serious, persistent and deliberate; and that the seriousness of insubordination depends on a myriad factors, including the reasonableness of the request and whether the employee could legally be required to fulfil the request. The Labour Court (LC) reaffirmed the requirements for insubordination to warrant dismissal, relying on *Ntsibande v Union Carriage and Wagon* ((1993) 14 *ILJ* 1566 (IC)), to the effect that it must be shown that the employee deliberately refused to obey a reasonable and lawful order by the employer.

In *Maripane v Glencore,* the issue to be determined was whether a refusal by an employee to return to his position as raw materials operator (RMO), following an election of new leadership, amounted to gross insubordination justifying dismissal as a sanction. Glencore (the employer) and the National Union of Mineworkers (NUM) had entered into an agreement in terms of which a full-time health and safety representative (HSR) would be appointed at one of Glencore's smelters, Lion Ferrochrome, for a three-year period. Mr Maripane had been appointed as the HSR in 2012. However, in 2013, NUM held elections after which there was new leadership. Mr Maripane's name was not on the list of these newly elected leaders. As a result, the employer believed that he was no longer the HSR and instructed him to return to his position as RMO. Instead of returning to this position, he opted to discuss the matter with the employer.

Having been instructed on two further occasions to return to his position, with the same outcome, the employer charged him with gross insubordination relating to his failure to heed the instruction to return to his position as RMO. There were meetings held between the employer's representatives and Mr Maripane, where he refused to return to his position as RMO, asserting that he was still the HSR, and despite having been informed of the consequences of his refusal, he maintained his position. On 7 February 2014, Mr Maripane was dismissed from his employment after a disciplinary hearing at which he was found guilty of gross insubordination. He unsuccessfully appealed this finding and thereafter referred the matter to the CCMA as an unfair dismissal dispute.

At the CCMA, the dismissal was found to be substantively unfair, and reinstatement and back pay were ordered. In the LC, a review application was upheld on the grounds that the dismissal was justified by the fact that Mr Maripane had deliberately continued to disobey instructions. In addition, the LC was guided by the fact that the disciplinary code provided that sanctions were merely a guideline. In the Labour Appeal Court (LAC), the

issues to be considered were whether a reasonable commissioner would have found Mr Maripane guilty of insubordination; reinstated Mr Maripane; and awarded him compensation. As to the first and most relevant finding for current purposes, the LAC relied on the fact that the instruction to return to his position as RMO was unreasonable since he had not been removed as HSR; by insisting that he return to his position as RMO, the employer was compelling him out of office prematurely, supporting a finding of unreasonableness concerning the instruction.

As is evident from the LRA as well as the Code of Good Practice, there is an onus on the employer to prove that the employee is guilty of misconduct and, to justify dismissal for such misconduct, that the insubordination was gross – that is, that it was serious, persistent and deliberate. In addition, other factors to be considered in this regard are: the employee's conduct before the alleged insubordination; the wilfulness of the employee's refusal to obey; and the reasonableness of the instruction. Moreover, the reasonableness of the instruction depends on its lawfulness and enforceability. There was no evidence before the commissioner to suggest that Mr Maripane had been removed as HSR, and therefore the employer's requirement that he return to his position as RMO was a breach of the agreement in terms of which Mr Maripane was elected and appointed as HSR. The instruction by the employer that he return to his position as RMO was thus legally unenforceable and thus unreasonable. It then follows that Mr Maripane should not have been found guilty of misconduct.

In *Palluci Home Depot v Herskowitz* ([2015] 5 BLLR 484 (LAC) (*Palluci*)), the issue to be determined was whether certain conduct by the employee (Herskowitz) could be considered sufficient to warrant a dismissal for gross insubordination. Herskowitz was employed on a fixed-term basis as manager by Palluci Home Depot (Palluci), following its purchase by the Tafelberg Group in March of 2011. She was dismissed for reasons relating to gross insubordination and poor work performance in January 2012. After receiving complaints from the staff members regarding how Herskowitz spoke to and addressed employees, Gareth Baker (Baker) from human resources called a meeting with Herskowitz to address these complaints and thereafter advised her to desist from such behaviour in the future. On 26 April 2011, Herskowitz received a letter from Riaan Lambrecht (Lambrecht), Managing Director of Palluci, stating that they had received further complaints regarding her behaviour and that if she did not desist, there would be serious consequences. In September 2011, Herskowitz's harsh manner of speaking was complained of by an employee working for another business under the Tafelberg Group. After Lambrecht raised this issue with Herskowitz via SMS, she called him and apparently became harsh and abusive towards him. Baker then received a complaint concerning Herskowitz's behaviour and called for an investigation into this behaviour, whereafter a counselling session was held with Herskowitz on 28 September 2011. On 24 October 2011, she was sent a letter containing a record of all the behaviour that had led to complaints. In this letter, she was cautioned that if she continued with such behaviour, disciplinary action would be taken against her.

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As a result of issues relating to the state of a warehouse under Herskowitz's supervision, management decided to visit the warehouse regularly to ensure that the established rescue plan was being implemented. On one such visit by Baker, Herskowitz raised operational issues, which Baker instructed her to put in writing that could then be addressed in a meeting the following day. That particular meeting was interrupted by an altercation between Herskowitz and Lambrecht regarding the misuse of an office cellphone by warehouse employees, which subsequently resulted in the deduction of R6 297.80 from Herskowitz's December salary. Aggrieved by this deduction, she raised the issue with Baker on 20 December, who advised that if she could identify the responsible party, he would effect a reversal of the deduction.

Herskowitz then attempted to raise the issue with Lambrecht the following morning during the meeting scheduled to address the operational issues. According to Lambrecht, he was not willing to address the issue as it was still under investigation. Unhappy with this response, Herskowitz became upset and started screaming and shouting at him, calling him "unprofessional" and "not an MD" (managing director). This altercation continued into the corridor, and Lambrecht requested her to lower her voice as other colleagues could hear. The matter was investigated, and on 23 December 2011, she was charged and given notification of a disciplinary hearing. The charges listed included gross insubordination, poor work performance, and a refusal to carry out a reasonable instruction given by a superior. The disciplinary hearing was held on 29 December 2011, and the chairperson recommended that Herskowitz be dismissed on the grounds of insubordination and incapacity. Herskowitz was dismissed in terms of a written termination dated 4 January 2012.

Dissatisfied with her dismissal, Herskowitz referred an unfair dismissal dispute to the CCMA, where, after arbitration, the commissioner found her guilty of insubordination, failure to carry out instructions, and failure to perform at an acceptable standard. Herskowitz then took the matter on review to the LC. The LC upheld the review and set aside the decision on the basis that: Herskowitz should have been found guilty of insolence instead of insubordination; the arbitrator acted *ultra vires* by finding her guilty of failing to carry out instructions, as this was not dealt with in the disciplinary hearing; and the sanction of dismissal was too harsh for a finding of poor work performance. Therefore, the LC held that the dismissal was too harsh; that Herskowitz should instead have received a final written warning; and that she was entitled to 10 months' compensation for her unfair dismissal.

It is submitted that the judgment by the LAC demonstrates that the review of the commissioner's award by the LC goes beyond mere identification of process-related errors to reveal the commissioner's failure to apply his mind to considerations material to the outcome of the dispute, thereby resulting in a misconceived hearing and a decision that should not have been made. In *Mofokeng* (*Head of Department of Education v Jonas Mohale Mofokeng* [2014] ZALAC 50), Kathree-Setiloane AJA aptly points out that it is not only the unreasonableness of the outcome of an arbitrator's award that is subject to scrutiny but also whether the arbitrator undertook the inquiry in a misconceived manner, thereby leading to issues relating to the fairness of

the trial (par 31). The LC found that the arbitrator had misconstrued the nature of the inquiry by failing to distinguish between insolence and insubordination. Herskowitz was found guilty of insubordination for failing to heed Lambrecht's instruction to stop addressing him in the manner in which she had, yet such instruction was not relied upon in the gross insubordination charge, thereby leading the LC to find that although her conduct was confrontational, there was no instruction given to her, and her conduct could therefore not amount to gross insubordination.

In *Palluci*, Kathree-Setiloane AJA points out that this finding does not consider the fact that refusal to obey an instruction is not the only basis giving rise to a charge of gross insubordination (par 19). Relying on *Wooltru,* she notes that gross insubordination has been defined by the courts as a wilful and serious refusal by an employee to obey a lawful and reasonable instruction, or where the conduct of the employee poses a wilful and serious challenge to the employer's authority. It is not necessary for an instruction to be given or disobeyed to give rise to a challenge to the employer's authority.

In concluding that Herskowitz's conduct amounted to insolence as opposed to insubordination, the LC relied on the decision in *Wooltru,* which states the importance of distinguishing between the two concepts. The court in *Wooltru* describes "insolence" as conduct that is offensive, disrespectful, impudent, cheeky, rude, insulting or contemptuous; and "insubordination" as resistance to or defiance of authority, disobedience, and a refusal to obey an order of a superior. An important distinction is drawn in *Wooltru* – that an employee can be both insolent and insubordinate at the same time, but they can be insolent without necessarily being insubordinate. Furthermore, the court notes that to warrant dismissal, contemptuousness of authority must be wilful and serious and that it is essential to distinguish between insolence and insubordination, as they are not the same kind of offence.

In relying on this decision and witness testimony from the arbitration hearing, the LAC found that Herskowitz's behaviour was not sufficient to amount to insubordination, as it was not a "serious, persistent and deliberate challenge to the authority" of the employer. They found instead that her behaviour amounted to gross insolence, which would warrant a final written warning.

5 Discussion

While labour legislation is designed to safeguard both employer and employee, it is often the employee who is most prejudiced. The purpose of most, if not all, legislation is to protect the interests of the vulnerable. However, this case and the decision therein underscore how this objective is sometimes not met owing to a lack of attention to the matter at hand.

The significance of the cases discussed above lies in the extensive definition of gross insubordination, which has become necessary owing to the lack of an explicit definition within the LRA. Furthermore, it is crucial to differentiate gross insubordination from gross insolence, as the latter constitutes a distinct offence that has been recognised since 1989. Despite

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this classification, there remain instances where employees are found to have been “fairly” dismissed for gross insubordination based on conduct that falls short of the thresholds for either insolence or gross insubordination. Given the considerable body of legislation and established case law surrounding the concept of gross insubordination, the persistence of such errors seems illogical. It is clear from the cases discussed above that to warrant dismissal, the conduct complained of must be serious, wilful and deliberate; an employee cannot be dismissed for a first offence; and if the reason is the refusal to obey an instruction, such instruction must be reasonable and lawful. The failure in these cases is that the totality of circumstances was not considered.

Commissioners or arbitrators need to be fully aware of all pertinent facts when adjudicating a matter to ensure the delivery of a correct decision. Should a commissioner overlook relevant facts or consider irrelevant factors, they will inevitably be unable to render an accurate finding. Commissioners must possess a thorough understanding of the law, encompassing both legislation and case law, and must be able to determine accurately the nature of the issues at hand based on the facts presented. In addition, they must be adept at identifying the applicable legal principles and distinguishing between different legal offences that warrant dismissal.

Analysis of the cases of *Palluci Home Depot* and *AMCU obo Mkhonto v CCMA* reveals that the arbitrators failed adequately to consider the relevant facts necessary for determining the fairness of dismissals related to gross insubordination. Whether their errors stemmed from a misunderstanding of the relevant facts or a lack of clarity regarding the precise definition of gross insubordination is not the primary concern, as it is their responsibility to prevent unnecessary errors from occurring. Misconstruing a matter leads to an inability to make appropriate findings regarding the issues presented. It is evident from *Sidumo* that when considering whether dismissal is an appropriate sanction for the offence committed, regard must be had to all of the surrounding circumstances to make a correct finding. This was not done in this instance, which is not a trivial matter, but a significant issue that calls for immediate attention and rectification.

The frequency of such instances raises serious concerns. The CCMA, along with the commissioners, operates as a statutory body and must therefore be well versed in the relevant legislation. In cases where the legislation lacks clarity on certain aspects, commissioners must be familiar with case law that provides definitions and elaborations. They must remain informed about changes or amendments to the legislation or case law. Failure to do so may result in unnecessary errors, leading to further reviews in the LC and the LAC.

To mitigate the occurrence of such errors, the CCMA needs to improve its training programmes for commissioners. Such training would ensure that they remain updated on the law and any amendments, effectively identify the issues before them, and ultimately make informed decisions on the matters they adjudicate. This would equip them with the necessary skills to make accurate decisions, thereby enhancing the fairness and integrity of the legal system. In addition, the CCMA should look into why such errors continue to be made and address this accordingly.

This judgment is not only welcomed but applauded for several reasons. First, it brings clarity to the employment environment, which, despite being sufficiently regulated and having a vast body of decided cases, still harbours elements of uncertainty. This judgment has clarified issues such as the conditions under which an employee can be required to work overtime and the process for executing this. It also reaffirms the definition of gross insubordination justifying dismissal. Most importantly, this decision underscores that commissioners often err in their judgments. Despite the existing legislation and body of decided cases, misinterpretation of facts often leads to incorrect findings. This highlights the need for improved training of commissioners to ensure accurate identification and handling of matters. Unnecessary referral to the LC is not only costly but also often prejudices the very employee the legislation aims to protect.

6 Conclusion

Looking forward, this judgment could serve as a precedent for future cases, particularly those involving the interpretation of overtime work regulations and the definition of gross insubordination. It underscores the need for continuous training and development for commissioners to ensure fair and accurate judgments. Specifically, regular training programmes focusing on the interpretation of labour laws and the analysis of case facts could be beneficial. The development of a standardised guideline for commissioners could also help reduce the rate of misinterpretation and incorrect findings.

While labour laws aim to protect the vulnerable, their effectiveness is often hampered by misinterpretation and lack of clarity. This judgment serves as a reminder of the importance of clarity, continuous learning and the ultimate goal of legislation – protecting the interests of the vulnerable. The case also emphasises the broader societal implications of labour law, as it not only impacts the parties involved but also shapes the working conditions and rights of employees in general.

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