

11 October 2021

**YOUR RACIST COMMENTS ONLINE WILL  
GET YOU FIRED AND STANDING IN THE  
UIF-LINE**

Please find attached hereto judgment that was handed down electronically by circulation to the parties' legal representatives by email, publication on the Labour Court's website and released to SAFLII.

From the contents of the attached judgment you will note that NHLANHLA CHRISTOPHER MAKHOBA (herein after referred to as the applicant) was employed by the CLOVER S.A. (PTY) LTD (herein after referred to as the respondent) as a general worker with ten years' service. Following a report by a member of the public that the applicant had **posted a comment on the Facebook page of Eyewitness News that all white people must be killed**, he was charged with two offences relating, firstly, to the making of a racist comment on social media and secondly, to thereby acting contrary to the interests of the company. At the disciplinary enquiry, the applicant denied that he had posted the Facebook comment 'Whites mz b all killed', and he pleaded that his Facebook page had

been hacked. He was found guilty of both charges and dismissed in May 2017. He referred a dispute to the CCMA in terms of section 191 of the Labour Relations Act alleging unfair dismissal.

COMMISSIONER R. LYSTER was required to determine the substantive and procedural fairness of the dismissal. He found that the **dismissal of the applicant was both substantively and procedurally fair**. The commissioner determined that there was nothing about the progress of the disciplinary inquiry that was in any manner irregular and unfair. In as far as the substantive fairness of the dismissal is concerned the commissioner noted inter alia the following:

"16. The applicant made a public social media comment that all white people should be killed. In a country like South Africa, which has suffered for hundreds of years from racism, it is a grossly offensive form of racist misconduct to call for members of one race group to be killed. Aside from the fact that the company's disciplinary code provides that dismissal is the appropriate sanction for making racist comments, any person who lives and works in this country, or indeed in any society, must



be presumed to be aware that to call for the killing of all members of a particular race group is a shocking form of misconduct. The only appropriate sanction for such misconduct is dismissal, see **Crown Chickens (Pty) Ltd t/a Rocklands Poultry v Kapp and others in which Zondo JP** stated the following:

within the context of labour and employment disputes this Court and the Labour Court will deal with acts of racism very firmly. This will show not only this Court's and the Labour Court's absolute rejection of racism but it will also show our revulsion at acts of racism in general and acts of racism in the workplace particularly. This approach will also contribute to the fight for the elimination of racism in general and racism in the workplace in particular and will help to promote the constitutional values which form the foundation of our society.'

it is noted that the learned judge commented on racism in general, as well as racism in the workplace.

17. A person who is prepared to make such comments as the applicant did, does so at his own risk, and must take the consequences which arise from this sort of gross misconduct.

The applicant attempted to justify his comment by saying that he is a member of the ANC who loves his president and that he was angry because the other people on the Facebook page were criticising the ANC. That is no excuse for calling for people to be murdered. The ANC has always stood for a non-racial democratic society and has always publicly condemned people, of whatever group or political party, who encourage racial animosity and racial violence. The applicant only has himself to blame for the situation in which he now finds himself."

The matter was taken on review to the Labour and during the course of the review application, the **Labour Court had to deal with the question whether offences committed outside of working hours constitute offences over which an employer could exercise discipline.** The Labour Court recently considered and dealt with this question extensively in **Edcon v Cantamessaand** others where the Court stated as follows:

'[12] [Where] misconduct does not fall within the express terms of a disciplinary code, such misconduct may still be of such a nature that the employer may nonetheless, be entitled to discipline its



employee. Likewise, the fact that the misconduct complained of occurred away from the workplace would not necessarily preclude the employer from disciplining its employee in respect thereof. The Court held in *Hoechst (Pty) Ltd v Chemical Workers Industrial Union and Another* that:

“In our view the competence of an employer to discipline an employee for misconduct not covered in a disciplinary code depends on a multi-faceted factual enquiry. This enquiry would include but would not be limited to the nature of the misconduct, the nature of the work performed by the employee, the employer’s size, the nature and size of the employer’s work force, the position which the employer occupies in the market place and its profile therein, the nature of the work or services performed by the employer, the relationship between the employee and the victim, the impact of the misconduct on the work force as a whole, as well as on the relationship between the employer and the employee and the capacity of the employee to perform his job. At the end of the enquiry what would have to be determined is if the employee’s misconduct ‘had the effect of destroying

or of seriously damaging the relationship of employer and employee between the parties’ (See *Anglo American Farms T/a Boschendal Restaurant v Konjwayo* (1992) 13 ILJ573 (LAC) 589 (G –H).”

It is clear from the various authorities cited by the Labour Court in the attached judgment that **an employer can exercise discipline over an employee for off-duty misconduct if an enquiry into the factors listed in the Hoechst’s matter shows that there was a connection between his conduct and the employment relationship. More so, in making racist comments in the public domain, the actions of the employee may foreseeably negatively affect the business of his employer or the working relationship between him and his employer or colleagues (See Rustenburg Platinum Mine v SAEWA obo Bester and others).**

Now therefore, the judgment serves as a timeously reminder that our courts take a firm stand against acts of racism, given the history of racism and racial abuse in this country and the constitutional values of human dignity and equality.





strata-g  
labour . excellence

## HEADLINE NEWS

YOUR RACIST  
COMMENTS ONLINE  
WILL GET YOU FIRED  
AND STANDING IN THE  
UIF-LINE

Like our Court, all employers have a duty to combat racism and racist abuse in accordance with the Employment Equity Act, 1997. Besides, it ought to be recalled that the use of racist language against a person or class of persons also constitutes hate speech and is prohibited and outlawed under the Constitution and the law.



011 462 5408



[enquiries@strata-g.co.za](mailto:enquiries@strata-g.co.za)