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Measuring the level of acceptance and dealing with foul language in the workplace



More often than not, working environments have become places where the use of foul language and derogatory remarks is tolerated; however, what happens when the line is really crossed, or when the victim no longer finds humour in the utterances or takes serious offence?

In this blog we wish to re-emphasize the importance of social conduct and/or good manners, especially with the advent of technology such as *WhatsApp Messenger* becoming a common tool of communication.

Sharing and distribution of content in workplace context

Without realising it, we often share and/or distribute content and/or make utterances, which we may consider as humorous without considering the diverse cultural minorities which make up the landscape of our working environments.

This was seen in the case of *Cronje v Toyota Manufacturing ((2001) 22 ILJ 735 (CCMA))*, where a managerial employee of the company was dismissed, *inter alia*, for distributing racist or inflammatory material (via e-mail and in hard copy), and for violating the company's internal internet and e-mail use code.

Caselaw: *Nkuna v Outsurance Insurance Company Limited* [2021] 4 BALR 408 (CCMA)

In the abovementioned case, the applicant, who was part of a WhatsApp group that consisted mainly of her team members, sent a text to the group, which read: 'The MF was a racist piece of sh*t', out of frustration emanating from an unsuccessful call on a client which probably had resulted in the sale not going according to plan.

- The applicant, however, thought nothing of their actions and was under the impression that they were simply venting their feelings. This, however, did not sit well with some members of the group, which eventually led to a dismissal due to the racial undertone contained therein.
- This further led to the applicant referring the matter to the CCMA on the basis that the dismissal amounted to inconsistent application of discipline. In the past the employer had dealt with such allegations where a team member used racially abusive language by merely issuing a final warning.
- At arbitration, however, the procedural and substantive fairness of the decision was tested. The court found that the sanction was incorrect as racially disparaging remarks in the past when words such as B***h and/or N*gg* were used had been dealt with very differently.

It was further concluded that the applicant could learn from her mistake and that the consequences for her in terms of future income and career prospects may be severe as a result of the ruling. As such, it was correctly overturned.

In conclusion

Employers often accept misconduct from some while the very same is dealt with differently when committed by others. This directly affects the way in which sanctions are received. A typical example would be when employers and other employees have knowledge of acts committed in plain sight with witnesses present, yet the reaction to same differs vastly. This essentially renders legally sound workplace policies null and void at times and may even destroy the fabric of other related rules and regulations. Maintaining consistent application of workplace policy may never be understated and the value of this advice is extremely important in the workplace environment.

SERR Synergy assists businesses with drafting, implementing and maintaining company policies that are applied in a fair and equitable manner, having due regard for progressive discipline and upholding consistency at all times.

About the Author: Yusuf Amod joined SERR Synergy in October 2017 and is a Senior Legal Advisor: Labour at our Durban Branch. He is an admitted attorney of the High Court of South Africa and completed his LLB degree at the University of South Africa. (**Sources: ConCourt Collections.org**)

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