

Short Notes on:

THE FINE LINE BETWEEN NEGLIGENCE AND POOR PERFORMANCE

Introduction

Gross negligence is a form of misconduct that allows for summary dismissal if found guilty. But often employees are left speechless, unaware that what they had done or failed to do had amounted to gross negligence. To attempt to avoid a claim for unfair dismissal, employers should ensure they have considered the merits in detail and that the conduct did not amount to poor performance. So what do you do if you are found guilty of gross negligence in respect of your duties when you have tried your best but to no avail? Is it poor performance?

Case Study

"A" has been moved into a new role within the company after having being employed there for six years. A is expected to fulfil duties and responsibilities that he was not previously required to do in his former role. Despite advising the company that he required training, he had not received it and has made several mistakes that have resulted in significant losses for the company. On the face of it, A may be guilty of poor work performance on the grounds of incompetence for the lack of skill and care, and or the failure to reach the reasonable and attainable standards required.

However, the employer may succeed with a charge of gross negligence against A for the following reasons:

- The mistakes made by A is something that a reasonable person would foresee and take the relevant steps to prevent; and
- A did not display a duty of care towards the output of work, which standard was both legitimate and fair.

If found guilty, the employer may summarily dismiss A for misconduct. However, if A had in writing the discussions and requests for further training and made attempts to rectify the errors, the employer would need to consider the following:

- Have they allowed A to improve?
- Have they provided with the necessary training?

If the employer had already provided A with the necessary training and opportunities to improve, it would not amount to poor work performance. A would then have a slim chance at defending a charge of gross negligence.

Conclusion

It is vital that at all times when taking on a position where you lack the necessary skills, knowledge and or experience, you ensure that you have it in writing that you require training or assistance

before accepting the position. It is frowned upon where individuals take roles without possessing the necessary skills and then claim after that that training is needed – especially for jobs that are geared towards a specialised skill. Likewise, employers need to ensure that when dealing with cases that are borderline poor work performance – gross negligence, that they follow the correct procedures to ensure fairness across the board. At SchoemanLaw, our Labour experts are equipped with the know-how to guide you through your labour matters, including reviewing your policies and procedures to ensure compliance thereof. For all your labour-related queries, contact us directly on Whatsapp +27716870378.

