FACEBOOK GOT ME FIRED!

Category: Commercial Law,Media and OTT
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A recent ruling in the *Metal and Engineering Industries Bargaining Council* ("**MEIBC**") found a dismissal of an employee was substantively fair after an employee was dismissed as a result of a post on Facebook.

In *Gordon / National Oilwell Varco**[1]**,* an employee's mother was injured in an ambulance hijack. Outraged by the incident, the employee posted a message on Facebook that contained racial expletives and that he might as well leave the country.

When the employer was notified about the Facebook post, they charged the employee with inciting racial hatred and bringing the employer's name into disrepute. The employee's defence was that he was reacting to his mother's terrible incident without thinking and "out of despair".

The commissioner noted that although the circumstances did warrant sympathy, this needed to be balanced against the right of protection against discrimination. As the post was on a public platform, and many people had access to it, the commissioner found the dismissal to be fair.

Cases involving dismissals due to social media are novel and as a result, the Labour Court has not had to deal with any. Various bargaining councils and the Commission for Conciliation, Mediation and Arbitration ("**the CCMA**") have dealt with these matters though.

In *Sedick & another v Krisray (Pty) Ltd**[2]* and *Fredericks v Jo Barkett Fashions**[3]**,* employees were dismissed due to derogatory Facebook posts they had made. The CCMA had found in these cases that Facebook pages are in the public domain, unless privacy settings are in place. The employees failed to use privacy settings and had therefore abandoned his right to privacy and protection and ultimately, the dismissal was found to be fair.

In *Media Workers Association of SA obo Mvemve v Kathorus Community Radio**[4]**,* an employee was dismissed after criticising their company's board and that another employee was a criminal in a post on Facebook. The CCMA held that the dismissal was fair as the employee had posted allegations without evidence and without raising the issue internally first.

It is recommended that an employer has a clear social media policy stating that it will be a serious offence if an employee brings the company's name into disrepute through the use of social media. It

is better to have a separate social media policy than one incorporated in employment contracts as it gives the employer more freedom when amending the policies.

[1] [2017] 9 BALR 935 (MEIBC)

[2] [2011] 8 BALR 879 (CCMA)

[3] [2011] JOL 27923 (CCMA)

[4] [2010] 31 ILJ 2217 (CCMA)