Assault dismissals can rock the labour law tightrope

According to the Code of Good Practice: Dismissal, a dismissal for a first offence is not appropriate unless it is so serious that it makes a continued employment relationship intolerable. Included amongst offences that might merit dismissal for a first offence are wilful endangering of the safety of others and physical assault. This provision applies regardless of whether or not the victim is a colleague of the culprit or a non-employee.

Assault at the workplace is normally seen as serious misconduct because of:

the harm or potential harm to the victim of the assault;
the potential disruption of workplace harmony;
the potential for the employer to be sued for vicarious liability by the assault victim;
the loss in working time due the need for an assaulted employee to take sick leave
the loss of business if the victim of the assault is a client.

Despite this, employers sometimes bungle disciplinary action against alleged assault culprits, and this is often because of the emotion attached to incidents of assault. This can be disastrous for the employer because section 188(1)(a) of the Labour Relations Act (LRA) makes it clear that the employer cannot fire an employee without good cause.

Should the employee dispute a dismissal via the CCMA or a bargaining council the employer will have the legal duty to prove that the dismissed employee was guilty of the assault and that, under the specific circumstances, dismissal was the most appropriate corrective measure. If the employer fails to convince the arbitrator of this the arbitrator could award reinstatement with back pay or could order the employer to pay up to 12 months' remuneration in compensation.

In the case of Mafete vs SARS (Lex Info, 11 November 2024. Labour Court case number JR1479/21) Mafete, a Customs section manager, pleaded guilty to assaulting a tourist and was dismissed. The tourist

had refused to pay the customs duty on items she had declared at customs. Mafete and a colleague had made several attempts to persuade her that she was required to pay the levied amount. Despite this she flatly refused to pay, to hand over her passport and to surrender the bag of items in question. When Mafete tried to confiscate the bag the tourist fled with the bag.

When Mafete caught up with her the bag fell to the floor. The video footage showed that, while Mafete was in the process of attempting to pick the bag up, the tourist ran forward in an attempt to grab the bag, but Mafete fended her off with his arm. As the CCMA upheld the fairness of the dismissal Mafete took the matter on review to the Labour Court.

The Court, noted that, while Mafete had admitted that he had committed assault, he had done so in the context of his duty. The Customs and Excise Act entitled officials to commit assault in cases where it was necessary to uphold the law. The Court noted that Mafete had been duty bound to use force to prevent the onrushing tourist from taking the confiscated bag. The Court therefore found that the dismissal had been unfair and ordered SARS to reinstate Mafete with 3 years and 5 months' backpay.

This very costly outcome highlights the need for employers to understand that, in labour law, the outcome of cases is based not on technical guilt but on the principle of fairness as applied to the unique circumstances of each case.