



SASLAW NATIONAL WEBINAR

Is Dishonesty Always Dismissible? A Jurisprudential Analysis of MPACT OPERATIONS (PTY) LTD V METAL AND ENGINEERING BARGAINING COUNCIL AND OTHERS DELIVERED ON 15 JANUARY 2026

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The story of the wandering toilet roll

Budget 1-ply options are priced around R4.99–R7.99, while 2-ply options from brands like Baby Soft and Twinsaver typically range from R9.99 to R14.99.



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LLB Evidence Final Examination: Question 1-

- Which of the above toilet paper belong to Mpact and which one to Mr April?
(5marks)
- In not more than 30 words, provide cogent reasons for your answer(25marks)

First- Principles relating to dishonesty, including where it manifest itself in the form of theft-Throwback to the 80s and 90s

LLB Evidence Final Examination: Question 2

- In 1989, how much did a single 300ml can of Fanta Orange generally cost ?





CENTRAL NEWS AGENCY (PTY) LTD V COMMERCIAL CATERING & ALLIED WORKERS UNION OF SA & ANOTHER(1991) 12 J ILJ 340 (LAC) AT 345A

- Appellant terminated its contractual relationship with second respondent as it was entitled to do because of the breach by second respondent of a basic term of the contract of employment, ie that the employee would not steal from the employer and that the employee would not breach the position of trust in which he had been placed by being allowed into appellant's store room. In my view it is axiomatic to the relationship between employer and employee that the employer should be entitled to rely on the employee not to steal from the employer. This trust which the employer places in the employee is basic to and forms the substratum of the relationship between them. A breach of this duty goes to the root of the contract of employment and of the relationship between employer and employee.

ANGLO AMERICAN FARMS T/A BOSCHENDAL RESTAURANT V KOMJWAYO (1992)
13 ILJ 573 (LAC)

- The incident which led thereto took place at the restaurant on 28 August 1989, whilst respondent was on duty as a waiter. As a result of this incident, he was accused by appellant of misappropriation of company property, in the form of one tin of a soft drink called Fanta”(valued at 65 cents in 1989 when the incident occurred.)

- As regards the intrinsic substantive fairness or unfairness of the dismissal, much was made on respondent's behalf, both in the industrial court and in this court, of the small value of the Fanta soft drink, **viz 65 cents**. There is no doubt that the value of an article which is stolen may, and often does, play a significant role when the question of an appropriate penalty is considered. However, this role is not always, or necessarily, such that low value is always a conclusive indication that only a lenient penalty is called for.
- In contending that respondent's dismissal by applicant was substantively fair, Mr Duminy, who appeared for appellant, **submitted that the value of what was stolen was of comparatively little importance in this matter, and that the true question to be considered was whether or not what respondent did had the effect of destroying, or of seriously damaging, the relationship of employer and employee between the parties, so that the continuation of that relationship could be regarded as intolerable....** I find myself in respectful agreement with these statements, and I think that there is merit in Mr Duminy's above submission as to the correct test to be applied as regards this aspect of the case.

- These are all, in my view, aggravating factors which enhance the fairness of the dismissal. But, fundamentally, as I have said, I conclude that the dismissal was fair because, in the circumstances, the effect of respondent's misconduct on the relationship between the parties was such that its continuation would have been intolerable for appellant. To use the language of the arbitrator in the MAN case, the dismissal seems to me, in the circumstances, to 'make commercial sense

MATSEKOLENG V SHOPRITE CHECKERS (PTY) LTD

[2013] 2 BLLR 130 (LAC)

It was common cause that-

- on 24 February 2003 a donation of a 2 litre plastic bottle of milk was delivered to the respondent by Schoeman Melkery (Dairy)



- After the appellant had shown the milk together with the signed receipt to the security guard, he had then opened the milk, went to the tea room where he used it for tea and shared it with his colleagues.
- The value of the milk in question was about **R9-49**, being the extent of the financial loss the respondent allegedly suffered consequent to the appellant's action

- “There could be no dispute that a two litre bottle of milk had a relatively paltry value. It was common cause that its value was approximately R9-49. However, it has been held, as a general rule, that the dismissal of an employee who committed a misconduct involving theft or misappropriation of a commodity or other property belonging to the employer, regardless of the value of the thing stolen (and, indeed, regardless even of the length of service of the employee), is substantively fair; and particularly so in situations where there is an existing shrinkage or suspected pilferage problem in the workplace. There is always an element of dishonesty or gross dishonesty (depending on the gravity of the situation), inherent in misconduct at the workplace involving theft or misappropriation. This phenomenon strikes at the root of the trust and employment relationship.”

RECENT CASE LAW

- TOYOTA SA MOTORS (PTY)LTD V RADEBE & OTHERS (2000) 21 1LT 340 (LAC)

“Although a long period of service of any employee will usually be a mitigation factor where such employee is guilty of misconduct, the point must be made that there are certain acts of misconduct which are of such a serious nature that no length of service can save an employee who is guilty of them from dismissal. To my mind one such clear act of misconduct is gross dishonesty. I am not saying that there can be no sufficient mitigating factors in cases of dishonesty nor am I saying dismissal is always an appropriate sanction for misconduct involving dishonesty. In my judgement the moment dishonesty is accepted in a particular case as being of such a serious degree as to be described as gross, then dismissal inter alia, (is) an appropriate and fair sanction.

- DE BEERS CONSOLIDATED MINES LTD V COMMISSION FOR CONCILIATION MEDIATION AND ARBITRATION AND OTHERS (JA68/99) [2000] ZALAC 10;

“[24] The employees *in casu* were not dismissed in order to punish them. They were dismissed because the employer was not prepared to run the risk of employing them any longer once they had been shown to be dishonest. Long service is, of course, not entirely irrelevant It is relevant in determining whether an employee is likely to repeat his misdemeanour. An employee who has long and faithfully served his employer has shown that he has little propensity for offending. That historical experience may persuade an employer to accept the risk of continuing to employ him now that it is known that he is not as honest as had been thought. Depending on the circumstances, long service may be a weighty consideration. But the risk factor is paramount. If, despite the *prima facie* impression of reliability arising from long service, it appears that in all the circumstances, particularly the required degree of trust and the employee’s lack of commitment to reform, continued employment of the offender will be operationally too risky, he will be dismissed.

National Commissioner of South African Police Service and Another v Mphalele N.O. and Another (CA15/2017) [2018] ZALAC 42; [2019] 4 BLLR 357 (LAC); (2019) 40 ILJ 806 (LAC) (11 December 2018)

[19] We agree with the appellants that the Labour Court erred in this respect. The evidence demonstrates indisputably that Mezichel had succumbed to his personal difficulties and had acted fraudulently in a manner that made him wholly unreliable as a police officer, a lawyer and an employee in whom the station commander needed to repose considerable trust. Such an employee is required to observe the highest standard of integrity, good faith, honesty and reliability. Police officers and lawyers should always (not only in the discharge of their official duties) act honourably in a manner befitting their office, free from fraud, deceit and falsehood, and be virtuous in their behaviour

A police officer must maintain high standards of rectitude in private as well as in public life. A police officer, who in fulfilment of his duties is required to act against fraud, when he practices such in his or her own life, is a hypocrite. This inevitably will result in a total loss of confidence in the officer concerned, which could rub off on the SAPS more generally, adding to a loss of public confidence in SAPS. Brigadier van Niekerk correctly made that point in her testimony. The appeal authority unreasonably failed to make the connection between that evidence and the purpose of the disciplinary measures.”

Does Mpact alter the law on dishonesty as we understand it?

- Sadly, I must burst the bubble right here.
- Mpact has nothing to do with changing in any way the principles or jurisprudence around dismissal for dishonesty.
- It does not at all suggest that the value of a toilet roll is so miniscule that an employee cannot be dismissed for stealing one from his /her employer.

- It does not suggest that employers must treat thieving or dishonest employees with kid gloves, to the potential detriment of their businesses
- It does not say that length of service can serve as sufficient mitigating factor to displace dismissal as a sanction for a proven act of misconduct involving dishonesty(in the form of theft.)

What does Mpact say?

Mpact is about-

- An abject failure to investigate an allegation of misconduct, gather all the relevant evidence and present that evidence at both the disciplinary and arbitration hearings.
- Mr April was found in possession of a toilet paper, just as he was leaving the employer's premises.
- Acting on tip-off security confronted him at the gate and demanded to search his bag.

- Inside the bag, security found a of toilet roll. Mr April insisted that it was his toilet roll, and not one that belonged to the company.
- The security guards looked at the roll, claimed it belonged to Mpact, took pictures of it and let Mr April take it any way.
- The security did not take pictures of Mr April's roll alongside that of Mpact at that very time at the gate when they were searching him. Senior personnel in the form of Mr Rall, the Security manager, Mr Kwati, Security officer and Mr Arndese, Safety and Security manager were presnet when Mr April was being searched and photos of his roll taken, but not photos of the company's toilet roll were taken.

- Mr April was charged and brought to a disciplinary hearing. He brought a toilet roll to the hearing. There is no shred of evidence that this is the same roll that was found in his bag when he was searched on the date of the incident.
- At the hearing, the company took photos of Mr April's toilet roll and that of another toilet roll, presumably belonging to Mpact.
- The photographs taken do not show the distinctiveness between the two toilet rolls. One cannot say which one belonged to Mr April and which one belonged to Mpact

Disciplinary Charges

- **'Theft or unauthorized possession of Company Property: in that on the 21st of October 2022, security found a roll of toilet paper in your possession after your shift had ended. The toilet paper was the same brand as what the company are using.**
- **Dishonesty: In that you attempted to remove company property without authorization and permission.'**

- Had the security officials
 - taken photos of both toilet rolls(one found in Mr April's bag and the other from Mpact's bathroom/stock) on the date of the incident;
 - retained the toilet roll found in Mr April's bag in a sealed evidence bag;

- conducted a stock take and reconciliation of toilet rolls delivered to the bathrooms used by Mr April and his colleagues

Mr April would in all probability have been found guilty of the main charge of theft/possession of company property/removal of company property without approval(leaving aside whether this a duplication of charges) and fairly dismissed .

THE OTHER RULE AT MPACT

- MPACT's other rule is that employees must declare items that they bring from home to work if they are the same/similar to items that are on its premises.
- Mr April, on his version, brought a toilet roll from home and did not declare it .
- He thus breached this rule.
- He would have been found guilty, but possibly not dismissed, if this was a charge, which it was not.

PROBLEM

- The company did not prove that the toilet roll found in Mr April's bag belonged to Mpact, primarily by failing to-
 - take photos of the Mpact toilet roll alongside that of Mr April on the day of the incident; and
 - allowing Mr April to leave with the toilet roll, which he said belonged to him; and
 - not charging Mr April with failure to declare an item, to wit, a toilet roll, that he brought from home as it was the same or similar to items that are on its premises.

- **Once the Labour Court found that his guilt had not been proven-**
 - Dishonesty/theft/breach of any rule fell away;
 - The question of a Sanction did not arise;
 - The application of the principles relating to dishonesty did not arise; and
 - the law as we know it remained the same.

Mkhatshwa AJ

[34] At the time of the disciplinary hearing, it was apparent that the proverbial horse had bolted. Taking a picture comparing the roll that the Third Respondent allegedly brought from home (for purposes of the hearing, it would appear) next to the roll of the Applicant does not provide proof of any offence having been committed by the Third Respondent on 21 October 2022.

[35] It is simply unbelievable that the Third Respondent was then allowed to place.



the suspected stolen roll, which, according to his version, he had brought from home, back in his bag on 21 October 2022, and he was allowed to leave with it. This is captured on video, and this evidence is common cause. It is the explanation by Arendse, the Employer's other witness, that is incredible. He stated that he did not pay attention as the security office was very busy at the time. This is just unfathomable.

[37] The above shows firstly that the Applicant's case was botched from the moment of the investigation. The photographs of the suspected stolen roll, together with a photograph of the Applicant's toilet roll, would have almost invariably proven the guilt or otherwise of the Third Respondent. Conveniently or by some stroke of 'misfortune', Rall and the rest of the contingent of the Applicant's staff did not deem it necessary to ensure that those comparative pictures were taken for posterity.

[38] Having failed on the above score, a failure that is frankly inexcusable, there was a second opportunity to preserve the evidence necessary to prove the guilt or otherwise of the Third Respondent; instead, the Third Respondent was allowed to leave the premises with the suspected stolen roll. The real and best evidence was lost by the Applicant at this juncture. The Third Respondent was not stealing the roll; implicitly, he had permission to leave with the roll because, once again, all those present did not deem it necessary to confiscate the 'exhibit'.

[44] In light of the manner in which the investigation of the alleged offence was handled as illustrated above, there is only one conclusion that can be reached. And that is that the Third Respondent did not contravene a rule or standard regulating conduct in, or of relevance to, the workplace. The Applicant failed to prove on a balance of probabilities that the Third Respondent committed:

‘Theft or unauthorized possession of Company Property: in that on the 21st of October 2022, security found a roll of toilet paper in your possession after your shift had ended. The toilet paper was the same brand as what the company are using.

Dishonesty: In that you attempted to remove company property without authorization and permission.’

CONCLUSION

[45] As indicated above, once the Second Respondent found that the Applicant failed to discharge the onus to prove that the Third Respondent was guilty of the allegations against him, that should have been the end of the enquiry as she identified it in the Award. Accordingly, whether dismissal was an appropriate sanction, as a separate enquiry, does not arise where the guilt of the Third Respondent has not been proved on a balance of probabilities nor inferred from the Applicant's conduct."

EXISTING PRINCIPLES RESTATED

MACHI AND CHEP SA (PTY) LTD AND OTHERS (DA22/2023) [2026] ZALAC 3 (19 JANUARY 2026)

“[28] On the question of sanction, the Commissioner and the court *a quo* were correct. The appellant held a senior and sensitive position in the HR department, a function where the incumbent is a custodian of company policy, ethics, and trust. Her conduct of using company time under the guise of illness to perform work for a third party, while holding herself out as a director of that entity, demonstrated a profound lack of judgment and integrity. This is precisely the kind of conduct that irreparably damages the trust relationship. As held in *Autozone v Dispute Resolution Centre of Motor Industry and Others* that:

‘where the offence in question reveals a stratagem of dishonesty or deceit, it can be accepted that the employer probably will lose trust in the employee.’

[29] While the first respondent's disciplinary code may list 'private work during office hours' as an offence typically warranting a final warning, such codes are guidelines, not straitjackets. The seriousness of the misconduct must be assessed in context. In this context, the act was not a mere technical breach but a fundamental betrayal of trust, aggravated by the seniority of the appellant's role. The sanction of dismissal was therefore within the band of reasonableness."(Emphasis added)



THANK YOU