Chemical, Energy, Paper, Printing, Wood and Allied Workers' Union obo Senokoane / Sasol Operation [2025] 9 BALR 928 (NBCCI)

Arbitration Law Reports

Division: National Bargaining Council For The Chemical Industry

Case No: CHEM85-24/25

Date: 20/06/2025

Before: J Mphaphuli, Commissioner

Keywords

Referral in terms of section 191(5)(a)(i) of the LRA

Dismissal — Misconduct — Racist language — Employee denigrating proposal of colleague with racist expression, not mitigated by fact that epithet used by African — Dismissal fair.

Editor's Summary

The applicant was dismissed for using a racial slur after interrupting a meeting and accusing a colleague of coming up with a "k*****" plan for avoiding damage to product while trucks were being loaded. He claimed that he had used the expression only once, and that dismissal was too harsh a penalty. The respondent maintained that the applicant had used the expression three times while angrily interrupting a meeting attended by senior managers and workers, all of whom had been left aghast. The applicant said he had been born during the apartheid era and that he was merely raising a safety concern, and claimed that he should have been reinstated with a warning.

The Arbitrator noted that the "k-word" is extremely offensive because it was used under apartheid to denigrate Africans. Punishing continued use of the term was one of the aims of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000. That the applicant was himself an African did not diminish its offensiveness. His conduct was a plain breach of every employee's obligation to treat colleagues with respect.

The referral was dismissed.

Award

Details of hearing and representation

[1] The hearing was conducted at Casa Mia, situated in Sasolburg. The hearing was conducted on 25 May 2025 and 6 June 2025 in terms of section 191 of the Labour Relations Act 66 of 1995.

[2] Mrs Palesa Moloi, Union official, appeared on behalf of the applicant. Mr Mothusi *Modisane*, Senior Legal Advisor, appeared on behalf of the respondent.

[3] Parties agreed to file closing arguments by 13 June 2025. The arguments were considered in arriving at the award.

[4] The proceedings were digitally recorded.

Issue in dispute

[5] I had to determine whether the applicant's dismissal was substantively fair or not and make an appropriate determination.

Background to the dispute

[6] The applicant commenced employment with the respondent in 1997. The applicant occupied the position of shift supervisor at the time of his dismissal. The applicant was dismissed on 12 August 2024. Dismissal was for a reason related to the applicant's conduct.

[7] The applicant desired reinstatement in the event of a favourable outcome.

Common cause issues

[8] The applicant admitted to the existence of the misconduct. The misconduct in question being the utterance of the words "k*ffir plan". The applicant's case was that he uttered the words only once as opposed to the respondent's case that he uttered the words three times.

[9] I only had to determine the fairness of the sanction as an appropriate penalty. The disciplinary code prescribed a final written warning for a single offence whereas repetition of the offence calls for dismissal.

Survey of evidence and argument

Respondent's case

[10] Mr David Kolisang, supervisor, in the service of the respondent gave evidence. He attended a meeting on 24 April 2024. The applicant was also in attendance at the meeting.

[11] Other attendees were Mr Pillay, departmental head, warehouse manager, Risk Manager and Mr Franklin Hans, Maintenance Manager. It was a safety stand down meeting where safety issues were the issues to be discussed.

[12] The subject matter at the time of the incident was a request for proposals relating to the loading of jumbo bags on trucks without causing damage to the product. The products were in the form of powder and the company has been experiencing damage leading to leaked product in jumbo bags.

[13] He raised his hand to make a proposal. His proposal was that the pallet loading should be done differently to avoid damage being caused to the jumbo bags including the product.

[14] The applicant interrupted him. The applicant said he should not come up with a k*ffir plan. He stopped talking and the applicant continued to interrupt him saying that his suggestion was a k*ffir plan repeatedly three times.

[15] He stopped talking after the applicant interrupted him for the third time. He felt very embarrassed.

[16] Mr Sarel Walt, Senior Manager Production, testified. He chaired the applicant's pre-dismissal hearing. The applicant was charged with the use of a racial slur.

[17] There were four witnesses who said that the applicant's utterances were repeated three times. The evidence was that the applicant uttered the words cited and then he stood up and the applicant was even more aggressive the third time.

[18] The applicant only approached the Vice President for a pardon after he was found guilty of the offence. The applicant did not show any remorse at the pre-dismissal enquiry.

[19] The misconduct was committed in a meeting attended by rank and file and executive members.

[20] The applicant in his defence in the disciplinary enquiry acted in a manner that was dishonest in that the applicant attempted to give the impression that the use of the word k*ffir was common in the workplace, alternatively that he used a different word namely kavoer.

[21] He found the applicant's conduct in direct contravention of the Sasol Code of Conduct. The applicant's conduct shocked all those who were in attendance in the meeting who represented multiple levels of employees and management.

[22] Mr Frank Kleynhans, Maintenance Manager gave evidence. He attended a Safety Stand down meeting on 24 April 2024 and so did the applicant. He recalled that Mr David Kolisang also attended. Senior members of management in the company also attended.

[23] He was a witness to what transpired in the meeting particularly the use of inappropriate language with the use of the word k*ffir plan. The applicant made the remark that he was tired of k*ffir plans, a phrase he repeated three times. This after David Kolisang suggested how to smooth up operations.

[24] The language shocked him and so were most of the people as demonstrated by gasping.

[25] He was dead sure that the applicant made the remark three times, getting louder each time from the second time.

[26] Mr Norman Diepenaar, Manager for Outband Sasol, Chemical Africa, testified in the respondent's case. The Chief Executive Officer of the company called for a stand down because of safety concerns. The safety session was held on 24 April 2024. There were several senior managers in attendance.

[27] Mr David Kolisang one of the supervisors voiced his opinion about how the loading safety concerns could be addressed. The applicant stood and called the suggestion a k*ffir plan and opposed the suggestion stating that he could not struggle with a k*ffir plan like this. The k*ffir plan phrase was raised three times by the applicant.

[28] This was not the spoken language in Sasol, and it came as a big surprise. He had never heard the language before. It was shocking and everybody was gasping in the room. The language was belittling to Mr Kolisang.

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[29] He charged the applicant with the use of a racial slur which he does not believe is a deviation from the phrase "k*ffir plan".

[30] The applicant also acted in a dishonest manner making different and untrue statements from Kavoer plan to Kokololo at different points.

[31] The applicant was very disruptive in the meeting and had seriously contravened Sasol Code of Ethics.

Applicant's case

[32] The applicant testified. He commenced employment in 1997. He was born in the apartheid era.

[33] He attended a stand down safety meeting on 24 April 2024. He stood up to raise his concern about the loading of jumbo bags as a safety concern. It was his experience that the bags on the pallets did not fit in the truck. The suggestion that Mr Kolisang came with did not convince him for which reason he called the plan a k*ffir plan. He only responded once, and he was sitting down.

[34] He has no recollection of anyone being shocked by his utterance.

[35] He did not plead guilty to the charge because he only uttered the phrase once and not three times as stated in the charge.

[36] He showed remorse in the disciplinary hearing and even apologised to the Vice President.

[37] The disciplinary penalty shocked him as the code prescribed a final written warning for the first offense. He denied having put the company's name into disrepute. He had no recollection of anybody speaking about the incident after the meeting.

[38] It was his view that the trust between himself and the respondent was not broken. His experience was that expressions like k*ffir were commonplace in the workplace and nobody gets offended.

Analysis of evidence and argument

[39] The case of the respondent was that the applicant's conduct violated its Code of Ethics and that the violation warranted dismissal.

[40] The respondent called four witnesses to testify in its case. The gist or the common thread in the witnesses' testimony was as follows.

[41] The applicant attended a meeting where safety issues were being discussed. Mr Kolisang was speaking on the subject following a request for suggestions or ideas, this with reference to the loading of jumbo bags on trucks.

[42] Mr Kolisang was speaking when the applicant without invitation suddenly jumped in. The applicant addressed himself to Mr Kolisang stating the words "I am tired of "k*ffir plans". Mr Kolisang's attempts to proceed with his idea to address the safety concerns were again interrupted by the applicant's interjections.

[43] The applicant continued with these interruptions three times.

[44] The language used by the applicant was foreign to the organisation and it came as a big shock, more so because there were senior members of

management in attendance at the meeting including the Chief Executive Officer.

[45] The chairperson of the pre-dismissal enquiry testified that he penalised the applicant with dismissal instead of the final written warning prescribed in the Code of Ethics because of the severity of the misconduct. The chairperson took into consideration the fact that the witness repeated the offending phrase "k*ffir plan" three times.

[46] Mr Kolisang who was on the receiving end of the offending language testified that he felt embarrassed.

[47] The charges against the applicant read:

47.1 You are hereby charged in terms of the Disciplinary Code for Sasol Employees:

47.2 Misconduct 4(a) Contravening the Sasol Code of Conduct.

47.3 In that on or about 24 April 2024 during a safety stand down meeting held at Polythene Helen Keller Conference room, you are alleged to have uttered a racial slur, specifically the word "k*ffir" three times when countering a suggestion which was put forward by a colleague regarding the loading of jumbo bags onto trucks.

47.4 NB: Your conduct in this regard is grossly improper and it is in contravention of the Sasol Code of Conduct. By having acted contrarily as contended above, you are alleged to have conducted yourself in a manner that undermines the employment trust relationship with the company and has the potential to bring the company's name into disrepute.

[48] The applicant was the only witness in his case. The applicant testified that he only uttered the words once. It was also the applicant's case that he did not mean to offend Mr Kolisang. According to the applicant it was the plan that he objected to, and he meant no harm to Mr Kolisang. As far as his knowledge went the use of the word "k*ffir" was commonplace in the workplace. The applicant's disciplinary record was clean.

[49] The existence of a dismissal was not in dispute. equally, the fairness of the pre- dismissal procedure was not brought into question. The only question to be determined was the appropriateness of the dismissal penalty.

[50] The gravity of the misconduct in the case of a single incident of misconduct is the measure for dismissal as a penalty. Also to be taken into consideration is a breakdown in the employment relationship. Clause 3(4) of Schedule 8 of the Act is instructive in this regard.

[51] The gravity of the misconduct was inferable in that it is a well-known phenomenon in this country that the use of the word "k*ffir" is extremely offensive and was used to demean, denigrate and humiliate Africans in the apartheid era.

[52] Punishing continuing use of the term was one of the concerns of the Promotion and Prevention of Unfair Discrimination Act. Use of the word "k*ffir" is the most serious form of verbal *injuria.*

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[53] The use of the phrase "k*ffir boetie" by White persons was used to describe a white person who fraternised with or emphasised with the cause of the Black community. The term was used as a general derogatory reference to Blacks. The same is the case with k*ffir plan which is intended to denigrate Africans. The fact that the applicant is also African does not take away the disrespect built in the phrase.

[54] The term k*ffir boetie was used by Whites against Blacks. In a similar vein the use of the phrase "k*ffir plan" was intended to despise and blend Black people as unintelligent, incapable of coming up with a solution to a problem and unimaginative.

[55] The utterance implied that the plan emanating from Mr Kolisang was equivalent to a "k*ffir" made plan for which reason it would not work. Only a "k*ffir" in the context of the applicant could design the plan that Mr Kolisang suggested.

[56] The applicant's utterance was a violation of a duty of mutual respect imposed by the Act.

[57] Clause 1(3) of the Code of Good Practice: Dismissals, states that the key principle in the Code is that employees and employers should treat one another with mutual respect. The applicant's breach of this principle read against the gravity of the misconduct made continued employment intolerable.

[58] The Labour Court had an opportunity to address provisions of Disciplinary Codes and implementation thereof in the matter of *Ngalaka v Scrab Marketing* (J242/99) ZALC131.

[59] The court found that penalties suggested in the code were guidelines rather than binding prescriptions. It was the court's conclusion that deviation from the code in permissible circumstances was not an unacceptable departure from the code.

[60] It stands to reason that the deviation from the final written warning from the Code in the current matter was underscored by the gravity of the misconduct and was not unacceptable.

Award

[61] The dismissal was substantively fair.

[62] I dismiss the alleged unfair dismissal application.

The following case was referred to in the above award:

Ngalaka v Scrab Marketing (J242/99) ZALC131 933