

Fear of snakes: A reason to refuse to work?

Wilful and persistent refusal to carry out an instruction often results in summary dismissal. It becomes trickier if the employee has a good reason not to follow the instruction, for example, where the employee's safety may be at stake. The question is whether the instruction is lawful and whether the employee's refusal is reasonable.

An interesting set of facts emerged in the case of **NUMSA obo Magagula vs. Aveng Trident Steel (Pty) Ltd (2105)**. The employee was a crane operator. All went well until a snake was found in the workplace. The snake was killed and a traditional healer placed it in a bag. Although the employee still came to work and sat in the gantry every day, he refused to work. According to the employee, he felt "uncomfortable" and in his view it was unsafe to work. The way he put it was that "he is afraid of snakes and if he sees a snake, he runs". The appearance of snakes was not an uncommon phenomenon in the workplace. The company went to the trouble of calling in a snake expert and communicated with employees on how to respond to snakes. Various attempts were made to persuade the employee to work. He was even offered the opportunity to work in an overhead crane. Despite these attempts the employee still refused to work. After a few months he was dismissed. The question that arose is whether the employee was suffering from a "snake phobia". Did the employer go about dealing with the matter in the right way?

The commissioner looked into the medical definition of a "phobia", which is described as "*a persistent, irrational and invariably pathological dread of some specific situation or stimulus, which results in a desire to avoid it*". However, the employee did not provide any evidence that he had sought help from a professional to address this issue. It also did not help his case that, a few days after his initial refusal to work, he agreed on one occasion to work overtime. He therefore could not show that he was, in fact, suffering from a phobia. Based on the evidence, the commissioner concluded this was not a medical condition and that the employee had been guilty of misconduct; i.e. persistently refusing to work. The dismissal was found to be fair.

But what if the employee had indeed suffered from a phobia? In that case a dismissal based on misconduct would not have been the way to go. This does not mean that the company would have been without a remedy. A different approach would have been called for, though. A phobia is a psychological condition. It can be regarded as a form of medical incapacity. In such a case one should follow the guidelines in Schedule 8 of the Labour Relations Act that apply to employees that are incapacitated due to ill health or injury. It involves different procedures. If the employee in the case in question had genuinely suffered from a snake phobia, it could eventually have resulted in him being dismissed due to medical incapacity.

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Employers are sometimes faced with unusual situations, and there are limits to what employers are expected to tolerate. In the case referred to above, the employer happened to get it right by dismissing the employee for misconduct. However, it is important to make a proper evaluation of the facts in a given situation before deciding on the appropriate course of action.

Article provided by Jan Truter from Labourwise

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