



PGDIP IN MANAGEMENT

GROUP ASSIGNMENT

Report on the Sexual Harassment Court Order

Case no: JR 2134/18

Johnson and Johnson pty (Ltd)

Applicant

and

KATLEGO PHILLIP

First Respondent

**NATIONAL BARGAINING COUNCIL OF THE
CHEMICAL INDUSTRY**

Second Respondent

COMMISSIONER JOHNNY BECKER

Third Respondent

Heard: 25 May 2018

Delivered: 14 JUNE 2018

Initails	Surname	Student No.
IM	MOFOKENG	24574708
G	MAIWASHE	29901332
M	MOGASHOA	26275155
V	MAPANZURE	38108399

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Sexual harassment

JUDGEMENT

Introduction

[1] The complainant filed the above-mentioned lawsuit under section 145 of the Labour Relations Act (LRA) to review and set aside an arbitration award granted by the third respondent (Commissioner) on June 10, 2018, under the case number GPCHEM 165-17/18 and with the help of the second respondent (NBCCI). The commissioner found the firing in his favor.

[2] The claimant requests that the honor be replaced by an order declaring Katlego Phillip's dismissal to be technically fair; otherwise, the case should be remanded to the NBCCI to be heard de novo by a commissioner other than the third respondent.

[3] The important request is whether the commissioner's decision is one that a realistic decision-maker could not reach.

Background

[4] The Production Division is the name given to this applicant's division. At its Eastern Cape Depot, this division produces vaccines. Ecolab pest control is used by the applicant to provide cleaning services.

[5] In January 2008, the applicant (Johnson Johnson) hired Katlego Phillip as a Production assistance operator at the Eastern Cape depot. Ms Sylvia Daniels was hired by Ecolab Pest Control in March 2014 to provide cleaning services to the applicants (Johnson Johnson).

[6] Ecolab notified the applicant's management in December 2015 that it had received a sexual harassment report from its workers stationed at the Johnson and Johnson Eastern Cape Depot. The allegations were specific in that applicants' employees working at Eastern Cape Depot were sexually assaulting some of the company's employees.

[7] Following up on Ecolab Pest Control's allegations, internal auditors from Johnson and Johnson pty (Ltd) were tasked with conducting an investigation, which they did. Several Ecolab employees were interviewed as part of the investigation, with Katlego Phillip being the only one named as a suspect. Katlego Phillip was discovered during an examination

[8] Johnson and Johnson pty (Ltd) has sent four of its employees on paid leave suspension, including Katlego Phillip. After the applicants were satisfied that there

was sufficient evidence against Katlego Phillips, they held a hearing for him. At the hearing, Katlego Phillips was found guilty and was sentenced to probation on June 25, 2015.

[9] Katlego Phillips was unhappy with his discharge, so he went to his labor union, GIWUSA, to file a grievance with the NBCCI and have them mediate on his behalf. During the conciliation, the union was unable to settle the conflict.

The Commissioner

[10] The question was whether the commissioner's dismissal of Katlego Phillip was procedurally fair.

[11] Ms Sylvia Daniles testified that she began providing her services at the Johnson and Johnson Eastern Cape Depot, and that the victim and Katlego have already had a warm friendship and would welcome and embrace each other. During the month of April 2015, their embraces became more casual, and she advised Katlego to stop embracing her because he was no longer happy. Sylvia Daniels, Ms..

[12] During cross examination, Ms Sylvia Daniels denied that she told Katlego to avoid kissing because she had a boyfriend. She also claimed that on one occasion, the accused publicly stated that he lusts her and wished to be romantic with her while approaching her in the hopes of getting a hug, but she pulled him away, showing that his manner is unwelcomed and unprofessional..

[13] The next day, Katlego tried to slap her around the buttocks; Ms Sylvia Daniels informed him that they were not an item and that he had no right to do so; Katlego responded, "I want you." Ms. Zanele tells the court that this made her feel less like a woman, and that as a result, she severed all ties with him from that point on.

[14] Sylvia Daniels, Ms. When she approached her team leader to file a sexual assault lawsuit, he told her to stay quiet because it could result in her being removed from the depot, and in the worst-case scenario, she could lose her work with the firm. Ecolab demanded a meeting with their workers after many employees reported being bullied but were unable to speak up for fear of losing their jobs.

Transgression Description

[15] Mr Katlego Phillips was found guilty, charged, and dismissed for related to sexual harassment against Ms Sylvia Daniels. As advised by Commission for Employment equity, in terms of section 54(1)(b) of the Employment Equity Act8, issued the Code of Good Practice: Sexual Harassment Cases (the Code) which was later replaced by the Amended Code of Good Practice: Sexual Harassment Cases. Its objective is to eliminate sexual harassment in the workplace and it provides appropriate procedures to deal with sexual harassment and prevent its recurrence.

[16] The above mentioned Code allows and encourages workplaces that are free of sexual harassment by development and implementation of such policies, where employees and employers treat each other with dignity and integrity, respecting one another's privacy and promotes equity.

[17] Complying with item 7 of the Code, the applicant considered Sexual Harassment Policy as it defines sexual harassment as "unwanted conduct of sexual nature." It states further that sexual attention becomes sexual harassment if:

- (a) The behaviour is persisted in, although a single incident of harassment can constitute harassment; and
- (b) It was made clear by the recipient that the behaviour was offensive.
- (c) The offender should have realised that such behaviour was unacceptable.

The role players and the facts of the case

[18] Mr Katlego Phillips

Katlego Phillip was appointed on January 2008 by Johnson Johnson (the applicant). He was appointed at their Eastern Cape depot as an assistance operator in their production space. Ms Daniels was then appointed 7 years later by a third-party subcontract company as a domestic worker at the applicant's offices. The cleaning company was alerted in December that there are sexual misconduct allegation with its employees placed Johnson and Johnson offices. This was a serious problem to Ecolab since these complaints were directly linked to the Eastern Cape depot. With the Johnson Johnson management hearing this disturbing complaint by the Ecolab team they insisted in setting up an urgent enquiry in to the matter, and after ample interviews the inquiry concluded that the respondent was the one to be seen as the accused. This is where the allegation was put that the respondent sexually harassed Ms Daniels. The company further decided to place Mr Philips and his colleagues on paid leave suspension. Mr Philips was the subjected to a hearing since all the evidence faced to him. He was found guilty during the hearing which let to him being dismissed. Mr Philips went to seek external assistance in making his case but did not succeed.

[19] The Commissioner

The big question is whether the commissioner fairly dismissed Katlego Philips. According to Ms Daniels since she stated working a Johnson Johnson she and Mr Philip had a cordial relationship although it had been platonic. Even though they had minimum physical touch, Mr Philips seeking and being more intimate with his touching. With Ms Daniels being aware of her discomfort in this she asked Mr Philip to refrain from hugging her due to her not being comfortable anymore. Mr Philips kept insisting on the physical touch although Ms Daniels Kept stopping him. According to Ms she has signalled ample times to Mr Philips that she was not

interested in him and especially not in being touched inappropriately. During the cross examination Mr Philips it came that Mr Philips has made unacceptable comments towards Ms Daniels and Ms has told him a lot of times that this unacceptable. It also came up that Mr Philips has Smacked Ms Backside where she addressed that this was uncomfortable and that she felt violated by Mr Philips actions. After this incident she decided to cut all communication with Mr Philips. Mr Philips insisted to say that he was interested in her and wanted to be intimate with her. Ms Daniels Approached her team leader to lay a sexual harassment complaint, who then advised her otherwise that she should keep quiet as it may lead to her removal from that depot and worst case, she might lose her job with the company, sadly this was the culture and view of many people who are desperate to work however bad the environment could be, Ecolab requested a meeting with their employees, several employees reported that they were harassed but could not come forward due to fearing they would lose their jobs at the company, Ecolab then asked all employees to come forward if they any related issues. This was understandable for these women not to come forward since there is such a power and financial imbalance.

Mitigating factors

[20] During mitigation, Mr Radebe indicated that hugging Mrs Daniels was normal as it was an everyday activity or a way of greeting her. He then felt that Mrs Daniels was comfortable with the way he was hugging her and used his own discretion to interpret it as a fling.

The following personal circumstances of Mr Radebe will be taken into account:

[21] He is 39 years of age, married for 6 years with two children. He earns decent income of between R120 000 – R250 000 per annum. His current job is the only source of income and the wife is not working. He is taking care of two grandparents, wife and two boys. His son is 12 years of age, diagnosed with childhood schizophrenia, a condition that affects the way children younger than 13 deals with reality and they might have unusual thoughts. It is important to note that though Mr Phillips has been with the company for many years this is her first offence.

[22] Mr Radebe showed remorse in him pleading guilty and apologising through company management to both Mrs Sylvia Daniels and Mr Edward Daniels (Mrs Sylvia's Husband).

According to the testimony from Dr Van Zyl, Mr Radebe suffers from hypomania, periods of over-excited behaviour that can have a significant impact on his daily life. The defendant condition highly contributed to the series of events mentioned by the complainant above.

Conclusion

[23] Taking into consideration information provided above, the defendant failed to convince the Arbitrator that the employer's dismissal was unfair. The Arbitrator was able to engage fairly in matters that guided his decision making. Similar case of sexual harassment in 2010 was cited and the decision to dismiss Mr Phillips by the employer was considered fair.

Costs

[24] With regards to party to party costs and taking into account legal requirements, there will be no order as to costs.

Sexual harassment

Reference list:

OFFICE OF THE PRESIDENT (SOUTH AFRICA). 2021.

https://www.gov.za/sites/default/files/gcis_document/201409/act66-1995labourrelations.pdf

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