

SEENA 2008 - 2018



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VOORWOORD/PREFACE

2018 is in full swing and most businesses are gearing up for the financial year end.

Here at Seena we are happy to report that our Payroll product has taken off with a bang in 2018. You will find more information on this new service offered by Seena on page 5.

Met die goeie reën wat reeds in die binneland en Noorde geval het heers daar 'n ongewone optimisme in ons land. Alhoewel ons steeds op 'n daaglikse basis met afleggings te make het, voel dit tog asof die gety besig is om te draai en glo ons dat 2018 beter ekonomiese voortuisigte vir ons almal inhou.

Alhoewel Seena reeds in 2007 met bemarking begin het, het ons amptelik in Maart 2008 ons deure geopen as Seesa Labour Namibia. Ons is trots om te sê dat ons vanjaar tien jaar oud is. Ons is baie dankbaar teenoor elke besigheid wat in hierdie tyd van ons dienste gebruik gemaak het. Ons het baie lojale kliënte wat reeds sedert 2007 by Seena opgeteken is en steeds met ons besigheid doen. Aan julle wil ons 'n spesiale woord van dank rig.

Ons hoop u ervaar Seena soos 'n goeie rooiwijn, hoe ouer hoe beter.



JJ Barkhuizen
MANAGING DIRECTOR



THE INCONSISTENT APPLICATION OF DISCIPLINE SPELLS TROUBLE

When it comes to applying discipline in the workplace, consistency is key. The parity principle dictates that the same, or largely similar, cases of misconduct should be dealt with in the same fashion. Where the punishment which is imposed differs, there should be a clear justification for making a distinction between employees and for treating them differently.

Our law distinguishes between:

- Historical inconsistency: Where, as a matter of past practice, a certain type of offence carried a certain form of punishment; and
- Contemporaneous inconsistency: Where two or more employees who have committed the same, or largely similar, acts of misconduct have been subjected to forms of punishment that differ in severity.

Where deviations in the application of discipline is unjustified it may amount to an unfair labour practice (where the sanction meted out falls short of a dismissal) or it may result in a dismissal being ruled unfair (where such dismissal is either historically or contemporaneously inconsistent). Whether or not a deviation is justified is a question of fact and should be determined on the merits of each case.

In the matter of *Standard Bank Namibia Ltd v !Gaseb*¹ the court had to determine whether or not the inconsistent application of discipline was justified. The case landed before the court after the Bank appealed an adverse arbitration ruling. On arbitration the Arbitrator ruled that for fairness to prevail, similar forms of punishment should be meted out for similar forms of misconduct to all offenders. The inconsistent application of discipline by the bank was ruled to be unfair and as a result the bank was ordered to reinstate the dismissed employee and to pay the employee 11 months' salary for income lost. It is against this ruling that the Bank filed an Appeal to the Labour Court.

The facts of the case can briefly be summarized as follows:

Mr. Gaseb (the employee) was employed as a team leader of the Bank's call center. At the center the employee, and his seven subordinates, worked shifts and were to be paid for time worked. Daily

¹ *Standard Bank Namibia Ltd v !Gaseb* (LCA 60/2015)[2017] NALCMD 1 (27 January 2017).

timesheets were however not diligently completed and in fact were only completed once per month. After an incident where one member of the call centre was locked out of the premises, the Bank reviewed CCTV footage and reconciled the footage with the daily timesheets. It was this comparison that brought to light discrepancies in the timesheets with the actual hours in attendance. It is common cause that the Team Leader, along with his 7 subordinate employees, falsified their timesheets by claiming attendance for a number of days which they were either not in attendance, left early or arrived late for work. Mr. !Gaseb, along with his subordinate employees, were subjected to disciplinary proceedings and on conclusion thereof only Mr. !Gaseb and 2 other employees were dismissed. The remaining four subordinate employees were only given written warnings for their conduct. It is this differentiation between the Team Leader and his subordinate employees, that was ruled to be unfair by the Arbitrator and against which ruling the bank now sought relief from the Labour Court.

Before evaluating the arguments for and against the differentiation, it is important to understand who carries the burden of proving the inconsistent application of discipline and to understand what would constitute an acceptable defence, or justification, for such differentiation.

According to our law it is the Employee who will have to mount a proper challenge, with the onus resting on him/her to prove, not only the existence of the differentiation, but also that it was unfair. This should be done by leading evidence of the same, or largely similar incidents, which have attracted less severe forms of punishment, the aim of which is to show that the Employer has been selective in its application of punishment. For the employer to overcome the inconsistency challenge they must be able to show that there was a valid reason for differentiating between employees. This can be done by leading evidence of considerations such as the employees past disciplinary record, differences in conduct or culpability, remorse and personal circumstances.

In the Standard Bank case the Employee's legal counsel argued that it is, as a general rule, unfair to treat employees who committed the same misconduct differently. It was argued that consistency was an element of disciplinary fairness and that every employee should be measured by the same standards. Acting Judge Van Wyk however did not buy into these arguments. The Judge ruled the Arbitrator's ruling to be "so vitiated by lack of reason as to be tantamount to no finding at all". In arriving at its ruling the court places special emphasis on the following:

- The Employee was a team leader of an important department of the bank;
- In execution of his function as team leader, the employee had five instances of absenteeism, which he was concealing from management; and
- His absenteeism only came to light when management reviewed the CCTV footage;

In arriving at a conclusion the learned judge had the following to say:

“If the call centre team leader is concealing five counts of unauthorized absenteeism until such time that his fortune runs out, there is certainly a reason for concern and a basis to single him out. After all, the other employees were not hiding their absenteeism from their supervisor. He was their supervisor. He was with them in the call centre and instead of reporting the absenteeism; he was joining his team in such conduct.”

As a consequence the finding of the Arbitrator was ruled to be unreasonable and incorrect in law. The Judge found that it is abundantly clear that the employer was justified in taking a firmer approach with the Team Leader.

Although the ruling in this instance was in favour of the Bank, employers should be mindful of the fact that they are required to be consistent in the application of discipline. Deviations from a rule or standard should be the exception and not the norm and should always be carefully considered.

Compiled by: Nicky Smit

NEW AND IMPROVED WEBSITE

Please take the time to visit our website at www.seenalegal.com.

In order to provide our clients with a convenient, central location, where they can access legislation and collective/minimum wage agreements of relevance to Namibian business owners, we have created convenient links where these documents can be easily downloaded. Simply visit our site, click on the downloads menu and select your download.

We will update this section regularly and will do our best to keep it current.



LAUNCHING OUR LATEST PRODUCT

SEENA is proud to announce the launch of our latest product: SEENA Payroll. As from September 2017, SEENA acts in the capacity of Payroll Provider on behalf of our Payroll clients, giving our clients the freedom to do what they love most - run their business.

Payroll processing is a very important function of any business and necessitates a proper understanding of legislation, regulations and a highly organised system that can be relied upon to pay each employee the right amount of money every week, fortnight or month. Payroll processing can be:

1. Time consuming, especially if data input is done manually;
2. Confusing, if the processor is unaware of the relevant labour and tax legislation, regulations and deadlines; and
3. Prone to errors especially when dealing with a lot of employees in a short amount of time while under immense pressure.

SEENA offers prospective Payroll clients the opportunity to sign up for this service whereby all clocking, leave and salary information is collected from the client and entered into our payroll system, after which our clients are provided with:

- Professional payslips drafted in line with the Labour Act, 11 of 2007;
- Monthly payroll reports;
- Annual-, sick-, maternity and compassionate leave reports;
- Social Security and PAYE recons; &
- IRP 5's on an annual basis.

Outsourcing payroll will save you time and prevent costly errors. SEENA renders a specialist service ensuring a high degree of professionalism, confidentiality, accuracy and reliability.

If you are interested in our Payroll product, kindly contact us at 064 416 100 or email payroll@seenalegal.com.



PERSONAL ASSISTANT TRAINING **COURSE OUTLINE:**

INTRODUCTION:

In the running of our business we at SEENA soon became aware of the fact that one of the most important elements contributing to the profit and success of a business was the role of key staff at operational level.

Traditionally, PA's typed up the correspondence, answered the phone, and made the boss' coffee. Today, there is much more to being a Personal Assistant (PA) than just doing administrative work. Today's PA's are highly motivated, skilled assistants who support their managers in a myriad of ways.

A PA will essentially be the 'right-hand' of their manager, and will normally have a considerable workload. This is even more likely if the PA supports a 'management team', or a number of senior executives where good time management becomes one of the key essential skills. Today, PA's need to be sharp, confident and personable, dedicated, focused and able to multi-task, prioritise and complete tasks within a required time frame. This means that PA's need to be able to work well without supervision and have a number of strengths.

Considering the abovementioned, SEENA set forth to develop a Personal Assistant Training course aimed at firstly introducing these individuals to the essential skills, thereby providing them with a strategic insight and understanding of their core duties, and secondly empowering them with a number of practical skills which can be used daily, on an operational level, to ensure optimal performance.

COURSE CONTENT:

During this course the attendee will obtain a better understanding of his/her role and purpose in their Employer's business, they will be empowered with new competences and in many cases, existing skills and knowledge will be refreshed. The subjects we explore during this course are as follows:

- The duties of a PA;
- Qualities which make a 'good' personal assistant;
- Understanding Managers;
- Understanding the business structure;
- Office equipment;
- Filing and other PA skills;
- Communication skills (verbal and written);
- Time management & smart goal setting;
- Project management & planning meetings;
- Finances;
- Personal branding;
- Motivation/self-motivation.

Should you be interested in attending one of our courses or sending a delegate on your behalf, please do not hesitate to contact us for a booking.

Our details are as follows:

Contact Person: Sonja van der Merwe
Telephone: 061 309 260
Fax: 061 309 266
E-mail: training@seenalegal.com

Cost: Non-Clients - N\$ 2 150.00 (Incl. Vat.)
Seena Clients - N\$ 1 850.00 (Incl. Vat.)

Duration: 09:00-16:30 (Light Lunch & Attendance Certificate included)

Remember that we have limited seating - first come first served. Your seat will only be confirmed once payment was received.

Contact Us

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