

DISHONEST CONDUCT

Sibanye fires scores for faking sick notes

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Sibanye-Stillwater, one of the largest private sector employers in SA, has shown 59 employees the door after finding them guilty of forging sick notes, in what the company said was dishonest conduct it cannot tolerate from its employees.

The decision to fire the employees at its Rustenburg platinum operations led to a dispute between the company and the Association of Mineworkers and Construction Union (Amcu), which claimed the employees were dismissed unfairly.

Sibanye fired the employees after a hearing, which found them guilty of submitting fake sick notes to take time off work.

However, Amcu dragged Sibanye to the Commission for Conciliation, Mediation and Arbitration (CCMA) which ruled against the employees.

The union then approached the labour court to set aside the award by the CCMA, arguing that the commissioner failed to consider mitigation and aggravation factors, the inconsistency of discipline and the severity of the dismissal sanction.

Another leg of Amcu's argument was that the commission-

er adopted a "one size fits all" approach and failed to consider the individual circumstances of each of its members.

The arguments led by the Amcu persuaded the labour court, which ruled that the commissioner had failed to consider mitigating factors, and remitted the matter to the CCMA for a hearing on the issue of sanction.

The labour court's decision was set aside on Friday by the labour appeal court, handing Sibanye a victory in the dispute.

The labour appeal court found from the pre-arbitration minutes concluded by the parties that it was clear that the only issue in dispute between the parties in relation to the substantive fairness of the employees' dismissals to be considered by the commissioner was whether the misconduct had been committed or not.

The full bench of the labour appeal court found that the commissioner - having found that serious misconduct had been committed by the employees - could be faulted for focusing his inquiry on this limited issue, which the parties had agreed was to be determined at arbitration.

In its judgment it said: "This was so in that the facts showed that the employees had submit-



Labour defeat: The labour appeal court has ruled in favour of company after trade union Amcu claimed employees were dismissed unfairly. /Sowetan

ted fraudulent sick notes and received pay for days they did not work as a result. Their sick notes were purportedly issued by Platinum Health but stamped at the RPM Hospital. The investigation revealed that the employees did not visit Platinum Health as recorded in the medical cer-

tificates. The certificates were signed by the same unknown person without her/his initials or surname and none of them had a serial number. The employees submitted the certificates with one motive, namely to deceive the appellant in circumstances in which the appellant

has a zero-tolerance approach in as far as dishonesty and fraud. The misconduct committed by the employees was of a serious nature and was grossly dishonest. Such conduct patently undermined the trust relationship between the parties."

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59
the number of Sibanye-Stillwater workers who got the boot after forging sick notes

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The labour appeal court found there was only one issue in dispute: whether misconduct was committed or not