

Dismissal over chocolates...

Pick 'n Pay Retailers (Pty) Ltd versus Maluleka (LAC)

Michelle Naidoo

M.N Attorneys & Panellist of Aequitate Dispute Resolution Services

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After 24 years of service, Ms Malukela (the employee) was dismissed over three boxes of chocolates.

The employee was employed at Pick 'n Pay as an E-service Manager. The position required the employee to operate a till and to train other cashiers on company policies and procedures, including those relating to returns, exchanges, and gifts.

An elderly customer did some grocery shopping at the store and then gifted her purchases of three boxes of milk chocolates valued at R103,98 to Ms Maluleka and another employee, Mr Maphanga, a general merchandise supervisor.

Ms Maluleka processed a refund of the chocolates by completing the return/refund book in which she identified Mr Maphanga as the customer. She also processed the refund on her till without authorisation by the Store Manager.

Later that afternoon, Ms Maluleka requested the Store Manager to process the refund. The Store Manager refused to do so because company policy had already been breached. Faced with this dilemma, Ms Maluleke cancelled the refund slip and thereafter rang back the chocolates thereby reversing the transaction.

Ms Maluleka was charged with four counts of misconduct, breach of company rules, attempt to defraud the company, contravening company procedure by performing a return on her till without authorization and changing till procedures in that she performed a fraudulent transaction on her till.

In her defence, Ms Maluleke testified that her intention was not to siphon money from Pick 'n Pay's coffers but merely planned to exchange the boxes of chocolates for tissue papers whereas Mr Maphanga wanted to swap his gift for a sack of Maize Meal.

In the Arbitration Award, the Commissioner found that Ms Maluleke did not deny the allegations that were made against her but advanced a defence that it had been practice within the store to do the things she described. The Commissioner rejected her evidence as highly improbable and unreliable. In the Commissioner's view, the conclusion was inescapable that Pick 'n Pay discharged the onus of proving that the dismissal was for a fair reason and that the gravity of the offences merited the termination of her services.

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The Labour Court reviewed and set aside the Arbitration Award and remitted the matter to the CCMA for arbitration de novo. The Labour Court primarily focused its attention on Ms Maluleka's 24 years of service and her unblemished record to show that her dismissal was unfair. This notwithstanding the misconduct not to have been sufficiently serious not to warrant a mere warning, but some correction.

In *Pick 'N Pay Retailers (Pty) Ltd v JAMAFO obo Maluleke and others* [\[2020\] JOL 48541 \(LAC\)](#) the Labour Appeal Court overturned the Labour Court's decision and held that "nothing merited the Labour Court's interference with the arbitration award". The Labour Appeal Court upheld the appeal thereby confirming the Arbitrator's findings and award.

This case is a good example of the importance of a proper evaluation of gravity of a misconduct in assessing whether dismissal is an appropriate sanction. It further, reinforces the principle established in the Labour Appeal Court case of *Toyota South Africa Motors (Pty) Ltd v Radebe & others* [\[2000\] 3 BLLR 243 \(LAC\)](#) at para [15] that:

"Although a long period of service of an employee will usually be a mitigating factor where such employee is guilty of misconduct, the point must be made that there are certain acts of misconduct which are of such serious nature that no length of service can save an employee who is guilty of them from dismissal."



Michelle Naidoo

201 Beacon Rock, 21 Lighthouse Road
Umhlanga, 4320
Cell: 084 700 5205
Fax: 086 680 5618

michelle@mnlabourlaw.co.za

www.mnlabourlaw.co.za

