WHAT IS POOR WORK PERFORMANCE? A CASE OF MISSED SALES TARGETS

“…the employer has a duty to investigate all possible alternatives short of dismissal, and this duty accords with the onus of proving the fairness of the dismissal” (extract from judgment below)

An employee who fails to perform adequately at work is by definition not fulfilling his or her side of the employment bargain, but that doesn’t mean that dismissal is necessarily an appropriate remedy.

Guidelines for dismissal

The onus is on you as employer to prove that the dismissal was fair, and the “Code of Good Practice on Dismissals” provides these guidelines –

“Any person determining whether a dismissal for poor work performance is unfair should consider –

Whether or not the employee failed to meet a performance standard; and

If the employee did not meet a required performance standard whether or not –

The employee was aware, or could reasonably be expected to have been aware, of the required performance standard;

The employee was given a fair opportunity to meet the required performance standard; and

Dismissal was an appropriate sanction for not meeting the required performance standard.”

A good example of how that works in practice comes from a recent Labour Law judgment…

The sales reps fired for missing their targets

* A group of sales representatives failed to meet their (newly-introduced) sales performance targets.

* They were given letters warning of poor work performance, followed a month later by a final ultimatum giving them the opportunity to make written representations with reasons for failing to meet their targets.

* They did so, referring to a list of challenges they said they were faced with, but the employer found their explanations unacceptable and they were served with notices to attend performance enquiries which resulted in their dismissals.

The CCMA (Commission for Conciliation, Mediation and Arbitration) found the dismissals to have been substantively unfair (although procedurally fair) and ordered the employer to reinstate the employees with full back pay.

On review in the Labour Court the employer argued that the performance targets were reasonable and achievable (other employees were achieving them) and that it had to introduce the targets in order to “improve cash flow for survival.”

The Court in the end result confirmed the reinstatement order, finding that –

* The employer failed to show that the employees were given sufficient training, guidance, support, counselling and reasonable time to improve their performance.

* The employees had genuine concerns that were outside their control and could have been managed with the employer’s assistance.

* The employer had failed to explore alternative measures short of dismissal, like training.

* The employer had accordingly failed to show that dismissal was an appropriate sanction.