

# Zero tolerance for racial misconduct in the workplace

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A recent Labour Court judgment reaffirms the court's position to support employers that dismiss employees for racial misconduct, whether casual or brazen.



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Racially motivated misconduct continues to rear its head in the corridors and behind the closed doors of the workplace. Having regard to the obligations imposed on employers in the Employment Equity Act, employers bear the responsibility to "stamp out" such conduct to prevent and eliminate the occurrence of harassment, among others.

The recent judgment of *Mpungose v Nedbank Group Limited [2024]*, handed down by the Labour Court dealt with an employee who had been dismissed for several charges of gross misconduct. One charge of which the employee was found guilty of at a disciplinary hearing, was having resorted to racial stereotyping and/or unfairly discriminating against people on racial grounds by:

- saying that black people are lazier and are more incompetent than white people;
- saying that black people do not deliver;
- criticising the performance and/or leadership of the employer's black executives; and
- telling one of their colleagues that they could not "let this white boy" beat them.

In addition, the employee was charged with harassment, bullying and victimisation as it was alleged that she made several remarks that were offensive, humiliating and derogatory such as referring to employees as stupid and useless. It was even alleged that she informed one of the employees that he "should be a man" and stop being weak. The ironic part of this case is that the employee was the executive head of human resources for the bank at the time she made these utterances.

The employee referred her dismissal to the Commission for Conciliation, Mediation and Arbitration (CCMA) which found the employee guilty of the above allegations, and as such, the CCMA concluded that the employee's dismissal was substantively fair.



## Is dismissal for intimidation and accusations of racism fair?

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### Labour Court

Displeased with the outcome, the employee sought to review the CCMA's decision in the Labour Court. The Labour Court found that the arbitrator at the CCMA appropriately considered the evidence led at the CCMA in its totality and concluded that the employee's dismissal was substantively fair.

In arriving at its decision, the Labour Court considered the racial remarks and slurs and stated that "racial conduct in the workplace should be stamped out as it destroys the employment relationship". In making this point, the Labour Court referred to the Constitutional Court judgment of *SARS v CCMA [2017]*, where an employee used derogatory racial language towards their colleague. The Constitutional Court stated that:

*“ where such injurious disregard for human dignity and racial hatred is spewed by an employee against his colleagues in a workplace, that ordinarily renders the relationship between the employee and the employer intolerable. ”*

The breakdown of an employment relationship is inevitable where the workplace culture instilled by an employer does not tolerate racism or any other type of disrespect based on the protected grounds of discrimination. In such circumstances, this type of conduct will erode the trust between the employer and employee and may warrant dismissal.

While it is important for employers to address individual instances of racially motivated misconduct or any type of harassment, reacting to such occurrences alone is not enough. Employers also have a duty and responsibility to prevent these issues by creating a workplace culture free from any form of racial misconduct, bullying, harassment and victimisation.

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