

DISMISSALS ON ACCOUNT OF POOR WORK PERFORMANCE

Incompetence does not appear out of the blue. It is normally revealed over time and as such must be addressed in a manner that is distinct from other serious offences, if the ensuing sanction of dismissal is deemed to be procedurally fair.

Fairness, in this regard, demands that the employer may not terminate the employee's employment on account of poor work performance, unless the former has;

- Given the employee the appropriate evaluation, instruction, training, guidance or counselling; and
- After a reasonable time for improvement the employee continues to unsatisfactorily perform.

The employer is not precluded from dismissing the employee. However, reasonable measures to correct the behaviour must be undertaken before the sanction is imposed. In the case of incompetence, this entails counselling, retraining or redeployment, while in the case of disobedience the employee should be subjected to a gradual or progressive system of disciplinary sanctions.

The employer must inform the employee that his performance does not meet the required standards, give the employee reasonable opportunity to improve (and provide training where appropriate) and caution the employee about consequences of failure to improve.

It is worth noting that serious misconduct warranting a summary dismissal is defined in **Section 26(4)** of the **Employment Act in sub-paragraph (j)**, to include;

“Consistent work performance below average despite at least two written warnings”

The rationale is that sometimes employees are not aware of their full potential nor do they attain it without appropriate encouragement.

There are, however, exceptions in which the Industrial Court of Botswana has held that the requirements set out above may not apply.

- The first is the manager or senior employee whose knowledge and experience qualify him to judge for himself whether he or she is meeting the standards set by the employer.
- The second is where the degree of professional skill that must be met is so high that one failure to perform in accordance with those standards is enough to justify a dismissal.

In conclusion, therefore, while an employer should, as a general rule, in cases of poor work performance appraise or warn the employee before a dismissal ensues. There are exceptions in the case of senior employees or managers and where the degree of skill is so high that one slip in performance has disastrous consequences for the employer.

We recently obtained a judgment from the Industrial Court in favour of Barclays Bank on this issue. Be sure to be well represented!