

Dealing with mental health in the work place – the Jansen case

Whilst society in general is moving towards being more open regarding mental health, this is not always the case in the work place. There are many Employees who may suffer from mental illnesses but due to intangible symptoms, are not easily recognized. Once this condition does become known to the Employer, they must appreciate the seriousness of the condition and respond appropriately. The case of *Jansen v Legal Aid South Africa*¹ illustrates the harm an Employer may suffer should they fail to do so.

Jansen v Legal Aid South Africa

In this case, the Applicant, had been employed as a Paralegal at Legal Aid South Africa, from 2007 until 2014 when he was summarily dismissed. During 2010, the Applicant was diagnosed with major depression and received several Medical Certificates confirming his diagnosis. He disclosed his condition to the Employer and was enrolled in the Employer's wellness program.

During 2012, the Applicant was going through a divorce. This put a strain on his mental health and his condition deteriorated. This was further exacerbated when his Line Manager represented his wife in the divorce proceedings. A fact he only became aware of at the Line Manager's appearance in the Oudtshoorn Divorce Court.

Jansen repeatedly informed his Employer of his poor emotional and mental condition which was worsening. A Clinical Psychologist advised the Employer that this issue required urgent attention. The Employer ignored these advices about Jansen's deteriorating condition. During this period, other disputes had arisen between Jansen and the Employer relating to misconduct which aggravated his mental condition.

¹ *Jansen v Legal Aid South Africa* (JA121/2014) [2018] ZALCCT 17; (2018) 39 ILJ 2024 (LC) (16 May 2018)

On 7 November 2013 and whilst Jansen was on sick leave, his Line Manager attended to his residence and issued him with a charge sheet for misconduct. Notably, this was an enquiry into misconduct and not incapacity.

At the disciplinary proceedings, Jansen raised the defense that he suffered from a mental condition. The Employer declined to consider this, and the Chairperson failed to acknowledge the Reports and Medical Certificates submitted by Medical Practitioners in support of this contention. Jansen was found guilty of the charges against him and summarily dismissed.

The termination of his employment together with the additional strain of financial loss of income further exacerbated Jansen's mental health and his personal circumstances deteriorated even further. Jansen then proceeded to institute a claim against his erstwhile Employer for, amongst other things, an automatically unfair dismissal in the Labour Court in Cape Town.

The Labour Court held that at all relevant times the Employer was aware that Jansen was suffering from a mental condition and failed to consider the Applicant's mental state when he perpetrated the misconduct. The Labour Court held that the true reason for the Jansen dismissal was in fact due to his mental condition and not his alleged misconduct. The Labour Court found that the Employer was required to take steps to reasonably accommodate Jansen. It was held that what the Employer was required to do was to institute an incapacity enquiry instead of conducting a disciplinary enquiry for misconduct.

The Labour Court awarded Jansen retrospective reinstatement which resulted in him receiving five years of back pay. Furthermore, he also received six months remuneration as a form of compensation for the distress suffered by him caused by the Employer's actions.

Conclusion

This case serves as a reminder for Employers that they should take the mental health of their Employees seriously. Employers should also be mindful of the stigma associated with mental illness, including depression. In many instances, Employees are reluctant to disclose their condition. Employers are encouraged to create a culture of openness and understanding that fosters a safe space for disclosure whereby Employees are reassured that they will not suffer negative consequences but instead will be supported and assisted. Employers should consider having innovative policies and processes in place in how they will address such conditions and as to how they should adopt a holistic approach.

Where an Employee has disclosed a mental illness and submitted Medical Certificates confirming same, their condition must be taken into consideration should any disputes arise. Employers must make sure they conduct the correct enquiry should issues arise that require disciplinary action. Contact SchoemanLaw Inc for expert labour advice.