



CAN ABSENTEEISM CAUSED BY WORK-RELATED STRESS BE A VALID GROUND FOR DISMISSAL?

May an employer terminate an employee for reasons of ill health or lack of performance if the employee suffers from stress and as a result is booked off work for an extended period, or is regularly absent from work? This issue arose in the CCMA matter *Bennett and Mondipak*. The commissioner, in line with the provisions of the Code of Good Practice: Dismissal and the Code on Managing Disability in the Workplace, held that the employer is obliged first to investigate the causes of the stress. It should try to determine whether the stress level experienced by the employee is normally associated with the type of job performed by the employee. If it is and the employee is unlikely to adjust to the requirements of the position, he or she faces dismissal for reasons of incapacity after compliance by the employer with a fair procedure. This will involve investigating the availability of alternative, less stressful jobs even if these might be at a lower level and package. However, if it is found that the stress is caused by extraneous factors beyond the employee's control but within the managerial authority of the employer, the latter is obliged to make reasonable efforts to remove them before concluding that the employee is unable to perform the work. As the arbitrator put it, there is a 'positive' obligation on the employer to fully investigate the issues that give rise to the employee's stress and fully explore whether it is able to adapt the circumstances with the aim of removing the extraneous factors causing increased levels of stress.

In Bennett's case the employee, who had moved through the ranks from shop steward to HR clerk, had a stress-related breakdown and was absent from work for extended periods as a result. Reports from two psychologists, one appointed by the employer, stated that the factors causing the stress were directly related to the lack of cooperation the employee had received from line managers in supplying information for him to fulfil his time and attendance record keeping function. His pleas for cooperation generally fell on deaf ears. This eventually resulted in Bennett being unable to do his job as required and he suffered a breakdown.

His employer held an inquiry and concluded that Bennett was not able to meet his job requirements and placed another person in the position on a temporary basis while Bennett was on sick leave. When it realised that the new appointee had no difficulty fulfilling the time and attendance function, the employer concluded that the problem lay with Bennett. It offered him alternative employment but he rejected this, maintaining that the employer should keep him in his position but address the extraneous factors that caused his stress.

The employer was unsympathetic to this argument and dismissed him. At arbitration, it was held that the employer had concluded too soon that the employee was unable to do his job and should first have investigated the extraneous causes of the problem and dealt with them. The arbitrator held that the fact that the replacement coped with the job was no reason for concluding that Bennett was incapable. Even the psychologist appointed by the employer to give an opinion, suggested that the employee would in all

probability have been able to perform as required if the employer had only addressed the problem.

Provided he was able to prove the requirements for it, Bennett would also have had the option of resigning and claiming constructive dismissal on the basis of his employer's failure to take reasonable steps to identify and address the factors that caused the stressful situation, despite it having been in its power to do so. Recent case law also suggest that, provided he was able to establish a causal connection between his breakdown and his work situation, a claim for compensation in terms of COIDA would also be available.