

# Breaching of timekeeping rule led to unfair dismissal

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The recent judgment of *Jordex Agencies v Gugubele N.O* [2015] ZALC JHB 87 involved the dismissal of an employee, Joan Msimango (employee), who left the workplace early in order to catch the last bus home. The employer, Jordex Agencies (employer), dismissed the employee because the employee's early departure contravened its timekeeping rule.



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The employer had recently changed its working hours from 7:30am to 4:30pm, to 8am to 5pm. The reason for the change was to accommodate certain categories of staff, namely the couriers who often returned to the workplace after 4:30pm to drop off goods. Employees were required to strictly adhere to the new working hours.

The employee was a cleaner and had, for the previous four years prior to the change, left earlier than other employees in order to catch her bus home.

## Unreasonable rule

At arbitration, the commissioner found that the rule, being the strict adherence to the new working hours, was unreasonable. After considering the facts of the matter, the commissioner was not convinced that the employee decided to leave work early unexpectedly.

Moreover, the commissioner was not convinced that accommodating the employee would detriment the employer's operations or work progress. The commissioner accordingly concluded that the dismissal was substantively and procedurally unfair and ordered the reinstatement of the employee.

The employer instituted review proceedings in the Labour Court to review and set aside the arbitration award. In its review application, the employer submitted that it could not tailor-make its employees' work times to their individual needs and the employer required the whole workforce to work the same hours.

The employer's main point of contention was against the commissioner's finding that a change of working hours, without accommodating the employee's particular circumstances, was unreasonable. The employer based its argument on *SAPU and Another v National Commissioner of the South African Police Service and Another* [2006] 1 BLLR 42 (LC), where it was held that an employer is entitled to regulate its own work practices.

## **Needs of employees**

However, the court also pointed out that this freedom is not unfettered, stating that an employer's power to regulate work practices is not without boundaries. The court went on to explain that a commissioner should pay due regard to the specific needs and circumstances of employees, including family obligations and transport arrangements.

In applying the above parameters to the facts at hand, the court concluded that the employer's service delivery was not affected by the employee's early departure. Further, the employer failed to take into account the employees' personal circumstances and transport arrangements, therefore forcing the employee to breach the rule. In consideration of this, the court held that the commissioner's decision could not be faulted as being unreasonable because it was one that a reasonable decision maker would have made on the evidence before her. Consequently, the review application did not succeed.

Employers are well-advised to properly consider the circumstances which may warrant breaches of their workplace rules. Being cognisant of such situations will serve to curb subsequent challenges to the reasonableness of the rules themselves.

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