

"Life is like a box of chocolates" - you never know when you are going to get (fairly) dismissed

By [Dr. Johannes Jacobus van der Walt](#)

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This is the jurisprudentially inspired story of Yoliswa Euphemia Maluleke who was dismissed by her erstwhile employer, Pick & Pay Retailers (Pty) Ltd, after 24 years of service on the grounds of having committed various nefarious acts in respect of three boxes of milk chocolates gifted to her and another employee (Mr. B) by an elderly and longstanding customer of Pick & Pay, one Alleta Magrieta Erasmus.



Photo by Lukas from [Pexels](#)

The question discuss herein (which the Labour Appeal Court [LAC] had to answer recently) is whether the sanction of dismissing (or then the decision to dismiss) Maluleke – who has been employed for 24 years with no prior record of misconduct – is one that a reasonable decision-maker could reach.

To answer this question, we must first immerse ourselves in context, since context always colours meaning. On 2 June 1992, Maluleke commenced employment, and on 1 November 2010 she was promoted, becoming an E-Service Manager, which required her to operate a till as well as *train other employees on company policies and procedures relating to refunds, returns, and gifts* [own emphasis]. On 7 January 2014, Alleta Erasmus gifted the chocolates, which she procured from Pick & Pay for an amount of R103.98, to Maluleke and Mr. B out of pure liberality and disinterested benevolence.

Instead of enjoying the chocolates, Maluleke and Mr. B decided to 'return' the chocolates. Their plan, although simple, was rather duplicitous. They attempted to identify Mr. B as the 'customer' who 'returned' the chocolates with the intention of securing a refund of the purchase price. After completing the requisite paper work, Maluleke asked the store manager to authorise the 'refund', who proceeded to enquire who the customer was. Maluleke identified Mr. B as the 'customer', which led the store manager to refuse authorisation.

Following an investigation, Maluleke was asked to appear at a disciplinary inquiry into her misconduct entailing alleged commission of fraud in that she fraudulently attempted to return a gift that she received from a customer. It was found that Maluleke did fraudulently attempt to return the chocolates gifted to her, which conduct is dishonest and deceitful. Maluleke was subsequently dismissed for misconduct. Without traversing the entire litigation history, the Labour Court disagreed with the sanction of dismissal on the basis that Maluleke was employed for 24 years with no prior record of misconduct.

We have arrived at the question posed at the outset, whether the sanction of dismissing (or then the decision to dismiss) Maluleke – who has been employed for 24 years with no prior record of misconduct – is one that a reasonable decision-maker could reach. This question must be answered in the context of the circumstances of the matter.

The LAC concluded ‘yes’, the decision to dismiss Maluleke in these circumstances is one that a reasonable decision-maker could reach, especially considering the fact that she was in a position of trust and authority. She had to train other employees on company policies relating to refunds, returns, and gifts. Maluleke’s conduct of attempting to circumvent those self-same policies through fraudulent conduct for personal gain is antithetical of what comes as axiomatic as regard the manner in which she – an employee with 24 years of experience and vested with the responsibility to train others as to how to deal with gifts and returns honestly – had to conduct herself.

Finally, the principle distilled from this jurisprudentially inspired story is:

“ Although a long period of service ... will usually be a mitigating factor where ... [an] employee is guilty of misconduct, ... there are certain acts of misconduct ... [that] are of such a serious nature that no length of service can save an employee who is guilty of them from dismissal. ... [O]ne such clear act of misconduct is gross dishonesty. ”

To my mind, other examples include murder or rape by a police officer on duty, both in respect of which dismissal as a sanction would be apodictic. Be that as it may, one ought not to be distracted by an act of gifting ‘mere chocolates’ through disinterested benevolence and an employee’s service record spanning over two decades, lest nefariousness be ignored instilling degradation of (the high regard and value of) honesty and integrity; both of which have become scarce in recent times.

This article is a discussion of a judgment handed down by the LAC on 07 September 2020; citation being Pick ‘n Pay Retailers (Pty) Ltd v Maluleke and Others (JA26/2019) [2020] ZALAC 39 (7 September 2020). The facts are simplified and relevant legal principles are selectively discussed.

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