

"Sick" Sars employee spotted at EFF protest must be fired, judge rules

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Investigator seen on TV "singing and clapping his hands" at march.



A Sars employee who took part in an EFF protest while claiming to be on sick leave must be fired, the Labour Court has ruled. Archive photo: Ashraf Hendricks | GroundUp

- South African Revenue Service (Sars) investigator Benneth Mathebula was spotted on TV by his supervisor at an EFF march while he was booked off sick.
- He was fired but took his case to the Commission for Conciliation, Mediation and Arbitration which ordered he be reinstated.
- Labour Court Judge Graham Moshwana has set aside the CCMA decision.
- "If he was able to clap his hands and sing, it must follow that he would have been able to perform his contractual duties," said the judge.

A Sars employee, who was spotted "singing and clapping his hands" at an EFF protest march in 2020 when he was booked off sick, has been dismissed.

Johannesburg Labour Court Judge Graham Moshwana has [set aside](#) a previous ruling by a Commission for Conciliation, Mediation and Arbitration (CCMA) commissioner that the dismissal of junior investigator Benneth Mathebula was substantially unfair and that he must be reinstated and get back pay.

Judge Moshwana said: “When he faked illness he must have intended to mislead Sars,” and ruled that Mathebula’s dismissal was fair.

Evidence in the matter was that Mathebula sent a text message to his supervisor Pule Mantso on 7 September 2020, saying he was not feeling well. He sent another message the following day, saying the same thing.



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On 9 September, he consulted a doctor and was booked off from that day to 11 September “due to a medical condition”.

Whilst watching the news on television, Mantso spotted Mathebula participating in a protest march called by the EFF against retail group Clicks, on 7 September.

He was seen “singing and clapping his hands”.

Mantso confronted Mathebula in writing. In response Mathebula asked how it had come to Mantso’s attention and who had complained.

Mantso responded: “It came to my attention when I saw you on the 19:00 news, while I was expecting you to be off due to illness.”

Ultimately, Mathebula responded that he had taken medication on that day and had “become a bit better”. He said a friend had come to check on him and asked if he could accompany him to Sandton.

“I did not see anything wrong with that, actually I thought maybe it is good to go out and stretch a bit, as I was not bedridden ... So it is true that you might have seen me. Unfortunately the following day I got worse and I did let you know.”

In November, he was charged with dishonesty. In March 2021, he was found guilty and dismissed.

He referred an unfair dismissal dispute to the CCMA where Commissioner Faizel Mooi found in his favour.

Sars then approached the Labour Court to review and set aside Mooi’s ruling.

Judge Moshwana said it was common cause that Mathebula had participated in the protest on a day in which he “unashamedly and audaciously” indicated to Sars that he was not feeling well.



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While he was not well enough to go to work, he was well enough to participate in protest action.

“It must be so that when he represented to his supervisor that he was not feeling well... he was not being truthful,” the judge said.

“Had he indicated to his supervisor that he seeks to be excused from work to participate in protest action, he would not have been excused.”

The judge said Mathebula had only sought medical attention two days later and the doctor’s certificate “did not remotely suggest that the medical condition he diagnosed presented itself earlier than the examination date”.

It seemed Mathebula had taken advantage of the Sars policy that an employee who is off sick for two days or less does not have to produce a medical certificate, he said.

The judge said Commissioner Mooi had relied on speculative evidence that Mathebula had not intended to deceive his employer.

“The probabilities were overwhelming that he was not sick. If he was able to clap his hands and sing, it must follow that he would have been able to perform his contractual duties.”

“His first reaction when confronted was not one of an honest employee ... and his attempts to further explain himself were feeble.”

Judge Moshwana said the CCMA award did not pass Constitutional muster and set it aside.

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