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(no subject)

1 message

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To: Shireen Davids

Mr Donwald Pressly, hereinafter referred to as "the employee" faced two counts of misconduct to wit:

Failing to avoid political interest or activity giving rise to a real or potential conflict of interest, and failing to disclose timely such conflict in breach of Company conditions of service, procedures and/or directives and

Disclosure of confidential, sensitive and internal company information in breach of company policy.

The employee pleaded not guilty to both counts.

At the start of the hearing, the employee, through his representative, asked for the recusal of the chairperson. The grounds relied upon were that the chairperson was a company employee at a time when there was "a great deal of anxiety" in the company, possibilities of retrenchments and that the chairperson was a "young, relatively ambitious" person.

The employee's representative asked that a chairperson be someone from outside the company to guarantee "absolute independence from the company".

The employee's representative stressed that this was not in any way to slight the chairperson's integrity.

The employee further requested that the record reflect their displeasure at the decision to not allow his preferred union, Solidarity, to represent him and

That the length of time between the charges being formulated and him receiving the charge sheet, specifically that he had "less than a week" to prepare for the hearing had been insufficient.

At a later stage of the hearing, the employee asked that it be recorded that the provisions of the suspension notice preventing him from accessing his workplace had further harmed his ability to prepare for the hearing.

The chairperson declined the application for recusal on the basis that the employee had not made a convincing case for this.

The chairperson pointed that all employees of the company regardless of rank or position operated under the same economic and business conditions as journalists. If an exception for the departure from the established rules and regulations were to be relaxed for journalists on the basis of the trading conditions, then they would have to be relaxed for all other employees regardless of their rank, position of offence they were charged with.

The chairperson further referred the parties to an earlier ruling and reasons for same when the application to be represented by Solidarity, a trade union that does not enjoy recognition agreement with the company, was dismissed.

With regards to the employee's complaint that his being prevented from accessing the office had prejudiced him, the chairperson pointed out that paragraph 2.2 of the suspension notice read: [the employee was not permitted to attend the workplace] contact any Company or Group employee, service providers or any other persons associated [with] the company and /or the group without *my* (emphasis mine) prior consent].

The employee suggested that his attorney had written a letter to Business Report editor requesting permission to access his office but no response was received, He could not provide the e-mail supporting this request.

The employee said no further or other request for consent had been made in terms of 2.2 of the suspension notice.

The Substantive Issues

As stated above, the employee is alleged to have at an unknown date in late October 2013, participated in the electoral college process of the Democratic Alliance with the aim of being put on the party's list of potential Members of Parliament after the May 7 2014 General Elections.

The company averred that this made him guilty of a wilful and/or grossly negligently failing to avoid active involvement in public affairs.

Particularly political interest and activity that gave rise to a real or potential conflict of interest, which amounts to a breach of the Company's Editorial Code of Conduct and Code of Ethics (clause 7 thereof) and which may also amount to a breach of the South African Press Code.

For the purpose of this ruling, reference to the South African Press Code will not be entertained because the employee has not been charged in terms of this code.

The company argued that by his actions the employee amounted to a gross and/or grossly negligent failure to disclose timely to his editor his (the employee's) political interests and activity which amounted to a breach of the Company's Editorial Code of Conduct and of the Code of Ethics.

In a nutshell, the Company argued that by choosing to avail himself and participate in party political processes, the employee had in fact and/or potentially created an impression to the paper's various

audiences that he had a political party bias.

This was all the more serious in the light of the employee being the paper's Cape Bureau Chief who covered Parliament and the political economy beats for the paper.

The company viewed the employee's choices as causing a real and/or potential conflict of interest.

The employee's evidence in chief

The employee admitted that he had taken part in the electoral college process with the aims as stated on the charge sheet.

He denied though that the intention was to wilfully withhold information from his editor. He likened the process to a job application where the employee hardly ever alerts their present employers that they are looking for employment elsewhere.

The employee said he had intended to let the editor know once he had received a favourable response from the electoral college, as a person who had sought employment elsewhere would once they had been successful in their job application would.

Using the same analogy, the employee said that in the same way that an unsuccessful applicant did not inform their present employers of the fate of their application, he too did not see it necessary to inform his editor about the failure to make it to the DA's proposed list for MPs to the fourth Parliament.

The employee further stated that his political leanings and own family history in the DA and its ideological ancestors were a matter of public knowledge and had been disclosed to his employers at the time of his employment eight years ago.

Despite this, he had never been accused of bias in his reporting. He did accept though that in his columns, he had been a strident critic of the governing party (the ANC).

Judgment

It is clear from the evidenced adduced and indeed from the employee's own testimony that a violation of the code occurred.

Since there is no clear hierarchy of these offences in the disciplinary code, it is not useful for the employee to have argued that this was "minor infraction". The use of the phrase "minor infractions" occurred several times during the hearing.

By admitting to the "minor" infraction, the employee in effect departed from the plea he has entered at the start of the proceedings and pleads guilty.

The only difference is that he contests the company's view of the seriousness of the charge, hence reference to it being a "minor infraction" and "a difference of opinion" as to when to tell the editor about the intention to pursue a political career as he himself has admitted.

Furthermore, the employee testified that he had recommended former Daily Despatch editor Brendan Boyle be employed by the paper following Boyle's employment being terminated by his then employers on the grounds that he had too had sought to be on the DA's parliamentary list.

Around the same time as Boyle's very public termination of his employment contract, there was keen media interest and speculation that other journalists, including former Citizen newspaper editor Martin Williams has also sought to be on the same list as Mr Pressly and Mr Boyle.

It seems to me that at this point if at no other, the employee ought to have entertained the possibility of a working journalist's name appearing on a party political list could have some negative outcomes or at best, be regarded as controversial in some quarters.

A reasonable person without anything to hide or withhold, would have disclosed that they too were in the same situation as Boyle, Williams and sought to understand where their own employers stood on a matter such as that.

Mr Pressly is a seasoned journalist with enormous responsibilities as the face of Business Report in Cape Town and in Parliament. He is not a simple man who would not be aware that a media row had erupted as a result of journalists being on a party political list.

If the employee had no intention to withhold information from his editor, the employee would have at this stage started to appreciate what he had got himself into.

It is at this stage that the very least sought he could have done was to seek to confirm what his own employers' position towards being on political party's electoral list would be.

The fact that the employee did not do so at this stage and indeed at no other stage, suggests that he has the intention of grossly and negligently failing to disclose timely to his editor his (the employee's) political interests and activity.

This failure was intentional and amounted to a breach of the Company's Editorial Code of Conduct and of the Code of Ethics.

The argument that this was no different to an application for employment is rejected as false and disingenuous. There are no moral or ethical considerations to be had when one applies for employment processes elsewhere.

In a fluid job market, it is expected and normal that people will change their employers several times in the course of their employment careers.

The employee's continued reference in the course of the hearing that politically induced damage to the paper would have been caused by the proprietor's publicly declared allegiances to the governing party suggest that the employee recognizes that declared political allegiances can cause reputational harm to a newspaper.

The Company chairperson is firstly not a journalist and equally importantly, not the subject of this hearing.

Furthermore...

Between appearing before the electoral college and its outcome, The employee was in effect in auditions for a career as a Member of Parliament for the Democratic Alliance.

This means that knowing that the electoral college was processing his application, he could in theory use the newspaper platform to advance his candidature.

In other words, his news coverage or column writing could be written in a manner that meets the approval of the college decision-makers.

It might very well be that this did not happen.

The charge however is that of real or potential conflict of interest on the employee's part.

I reject the notion that the employee was charged with being a member of a political party or of holding political views, as disingenuous and as a red herring.

It is universally accepted that many journalists become journalists precisely because of strong political and socio-economic views they hold. If that is the case with Mr Pressly it would be nothing new.

Mr Pressly is not charged with membership of a political party or of what might be broadly referred to as reporting in a biased or unfair manner against one or other political party.

He is charged with very specific offences – as stated on the charge sheet and earlier in this ruling.

As I have stated before, he has in effect admitted to same, albeit contesting their severity.

In deciding on the guilt or not of the employee, we must therefore confine ourselves to the charges Mr Pressly faces, which are that he intentionally withheld information from his editor that, concurrent with his term of employment, sought to be on a list of a political party and secondly, by so doing intentionally, grossly and negligently breached the Company's Editorial Code of Conduct and of the Code of Ethics.

I find that the Company has successfully discharged its onus of proving that the employee failed to avoid political interest or activity giving rise to a real or potential conflict of interest, and failing to disclose timely such conflict in breach of Company conditions of service, procedures and/or directives.

The employee is found guilty on the charge of failing to avoid political interest or activity giving rise to a real or potential conflict of interest, and failing to disclose timely such conflict in breach of Company conditions of service, procedures and/or directives.

The second charge, Disclosure of confidential, sensitive and internal company information in breach of company policy, relates to tweet Mr Pressly allegedly made.

In the tweet, the employee broadcast that Terry Bell's long standing column had been "axed".

As indicated above, Mr Pressly pleaded not guilty to this charge as well.

He did admit to sending out the tweet.

He deleted the tweet immediately upon being admonished by his line manager Peter de Ionno.

By then the tweet had been retweeted by Business Report's online editor and was a matter of public knowledge.

The employee conceded at various points of the hearing that had he better acquainted himself with the social media policy, he would not have authored the tweet.

It is not necessary to go into the company's or the employee's cases in detail because all parties agree that a tweet was sent out and also agree on the wording of the tweet.

It is clear from the evidence and from the employee's admission that he indeed sent the tweet.

The employee's decision to immediately delete the tweet indicates a recognition of wrongdoing on his part.

I do not accept that he did this purely because Mr Delonno said so.

I find it difficult to accept that a senior journalist of Mr Pressly's experience would not even ask why Mr Delonno wanted him to delete the tweet.

The fact that there was a three week period between the tweet and the public announcement that the Mr Bell's column had been axed shows that the employee's tweet was vindicated as truthful.

The company has argued that at issue was not whether the tweet carried a truth. It was whether the employee had broadcast sensitive company information without permission.

Mr Pressly himself admits to this. He also admitted to assuming that the news of the termination of the column was a fait accompli.

I find the employee to have been in breach of the company's social media code that asks of journalists in particular to use the same care as they would in compiling articles for publication.

The employee broadcast a rumour without verifying the accuracy of his information even though, as a colleague and a senior staff member at Business Report, he had access to those who could verify the truthfulness of the rumour he had heard.

It must however be borne in mind that the charges faced by the employee are that of disclosing confidential, sensitive and internal information to outside parties.

The employee is not charged with spreading rumours, even though those rumours ultimately proved to be founded on facts. This is not inconsequential.

It is in the nature of journalists to find themselves with knowledge that the owners of would have preferred had not been revealed. It is in the nature of journalism that journalists would seek to be the first with the news.

To make these potentially punishable acts would have the undesired chilling effect on reporters. It would make the very practice of journalists unnecessarily hazardous. This is especially not desirable in a newspaper company.

I am not satisfied that the company proved that the employee knew of the confidentiality and sensitivity of the information he broadcast.

The absence of prior knowledge must mean the absence of the intent to harm the company.

The company has not shown how and when the employee had become privy to the information and plans regarding Mr Bell's column.

It has also not shown how, other than hurting Mr Bell's feelings, the broadcast had affected the company's reputation or fortunes.

To be guilty of the offence, the company needed to show that Mr Pressly had been allowed into a pact of confidentiality but has later elected to break the agreed expectation of confidence. The company has not shown this.

It could be argued that judged by the standards used in the course of journalistic work, the employee did a shoddy job. As shoddy as it might have been, it is not an offence he faces here.

I am not persuaded that the company has discharged the onus on the second charge and he is found not guilty.