



Making an Impact

Handout 19

Case B

Old Mutual to pay compensation for racial slur

Life assesor Old Mutual was on Thursday ordered to pay a yet-to-be-determined amount of compensation to a black employee labelled a "kaffir" by a colleague.

"At the heart of this matter lies a view, shared by far too many people, that the word 'kaffir' is not as hurtful as some others [Africans in particular] would have it," Labour Court Judge Elna Revelas said in a ruling handed down in Cape Town.

Old Mutual had contested a claim by the employee, Xolile Finca, and the South African Transport and Allied Workers' Union, that it failed to take proper action against Jenny Burger, the woman responsible for the slur.

The complaint stemmed from an incident in 2003 in which Burger allegedly complained to a supervisor when desks in their open plan office in Cape Town were being rearranged: "Why are you putting me next to the kaffirs?"

Burger, who was initially given only a verbal warning, was dismissed months later, but then reinstated on appeal.

It seemed "quite clear" at one point in the saga that Old Mutual was not going to take up the cudgels on behalf of a black employee who was the victim of a racist insult, Revelas found.

"Further, the attitude adopted by management then sent a message that employees who insulted their fellow employees in this way may expect a rap over the knuckles, and then only when dissatisfaction was expressed or a trade union becomes involved."

Finca was justifiably angry and hurt. "He deserved far better treatment than he had received, by way of addressing his problems", she said.

"Instead, he observed how the perpetrator was protected over many months, only to be reinstated in the end. In my view, the first respondent's failure to protect Mr Finca amounted to direct discrimination.

"I gained the strong impression in this matter that the incident was regarded by some as a storm in a tea cup which would soon blow over, as long as people did not make too much of a fuss about it.

Revelas found that Burger was not the only guilty party in the incident, but that her supervisor Barbara van Zyl and managers Karl Parks and Paul Rist "and everyone who protected her" had a share in the discrimination.

Though she declined for technical reasons to make an order that would effectively mean Burger's dismissal, Revelas instructed Old Mutual to deal with Burger's situation "in a firm manner that would reflect its clear intention to get rid of racism in the workplace".

She noted undisputed evidence that Old Mutual had done much by way of training and other means to eradicate racism, and cited examples of Old Mutual managers who were sensitive and had dealt with the Finca issue "admirably".

"The matter was not so much concerned with policy on racism, as it was concerned with one specific breach of that policy.

"In my view, that breach will be adequately addressed by ordering the first respondent [Old Mutual] to pay compensation to the aggrieved person who suffered under the breach."

By agreement between the parties, the amount of compensation would be decided in different proceedings. Revelas ordered Old Mutual to pay the costs of the case.

Expressing his pleasure at the ruling, Finca said: "I knew that getting the backing from the Constitution of this country, I will win this case. I'm happy that the judge showed the South African public that it is an insult, it is unconstitutional, to allow a person to call you a kaffir, it is unconstitutional to demean another person.

"It is not my victory, although I'm the one who pursued this case in court. I was doing it for other people to see we don't have to keep quiet as if nothing has happened."

There was no way that, after winning their struggle for liberation, black people could be told "you didn't win, you are still a kaffir. I didn't want to accept that".

The post traumatic stress, psoriasis, and depression he had experienced since the incident would have to be taken into consideration in determining compensation, he said.

"I was on the verge of committing a mass killing. I was on the verge of taking my own life," he said. Old Mutual was still considering what steps to take next, but would respond to the Labour Court within the required period, it said after the ruling.

"In the meantime, we believe that we have learned some important lessons from the case," said spokesperson Stephen Bowey.

"We have used the incident to emphasise again, to all employees, that any form of racism is unacceptable and will not be tolerated," he said.

"We have tightened our disciplinary procedures to ensure that anyone guilty of racism will be dismissed.

"We have appointed an independent expert who is conducting an assessment of our policies procedures and practices in dealing with transformation, diversity, and racism.

"We believe we are a stronger company as a result, and that the lessons learned will be of benefit to all companies in South Africa today." – Sapa