

FAKE MEDICAL CERTIFICATE FAILS

April 2025

The applicant was dismissed by the respondent for submitting a fraudulent sick note. The issuing doctor denied authoring the certificate, and the CCMA found the applicant's version unconvincing. Allegations of bias during the disciplinary hearing were unsubstantiated. The dismissal was held substantively and procedurally fair, as dishonesty irreparably breached the trust relationship.

National Union of Metalworkers of South Africa obo Tlhone / Harmony Gold Mining Company Ltd

Case summary

Ms Refilwe Tlhone, the applicant, was employed as an Engineering Assistant by Harmony Gold Mining Company Ltd, the respondent, from 4 October 2019 until her dismissal on 12 September 2023.

The disciplinary enquiry that led to her dismissal centred on allegations of dishonesty, specifically, the submission of a fraudulent medical certificate purporting to have been issued by Dr Christina Keller for the period of 5 to 7 May 2023. The respondent discovered several irregularities in the medical certificate. Upon investigation, Dr Keller denied issuing the certificate or seeing the applicant on the relevant date, and she confirmed that the certificate did not originate from her practice.

The applicant referred the matter to the CCMA, claiming that her dismissal was both substantially and procedurally unfair. The applicant claimed that she had gone to Dr Keller's practice on 5 May 2023 due to flu symptoms and had also needed to attend a funeral. She stated that the receptionist, not the doctor, provided her with the sick note. She maintained that she believed the note to be valid and had no intention to defraud the employer. However, under cross-examination, the applicant struggled to provide coherent details about how the certificate was obtained, who handed it to her, and what transpired at the medical practice on the day in question. The receptionist and other staff from the practice denied issuing the certificate or interacting with the applicant at the time. The employer's witnesses, including Dr Keller and her staff member Ms Lenake, presented consistent and credible testimony that the certificate was not issued by the practice.

The applicant further alleged procedural unfairness during the disciplinary process, claiming bias on the part of the chairperson and interference by the HR representative, who allegedly had a personal connection to the father of the applicant's child. However, no objections were raised at the time of the hearing, and there was no evidence of actual prejudice or improper conduct. The Commissioner found that the allegation of bias lacked merit and did not meet the threshold for a reasonable apprehension of bias.

In evaluating the substantive fairness of the dismissal, the commissioner found that the rule prohibiting dishonesty was well established, reasonable, and known to the applicant. The applicant had submitted legitimate medical certificates in the past and had completed training that emphasised the importance of honesty in documentation. The commissioner held that the employer had discharged its onus to prove that the applicant breached this rule by submitting a fraudulent certificate.

The commissioner drew a distinction between this matter and *Woolworths (Pty) Ltd v CCMA and Others [2024] ZALAC 29*, where the Labour Appeal Court held that a dismissal for a non-compliant certificate signed by a nurse was substantively unfair. In contrast, in this case, Dr Keller expressly denied issuing the certificate, and there was no supporting evidence from the applicant to validate her version. The commissioner found that the applicant either knew or ought to have known that the certificate was fraudulent and that her version was vague, unconvincing, and unsupported by credible evidence.

Regarding the appropriateness of the sanction of dismissal, the commissioner referred to *Devel Switchboards (Pty) Limited v MEIBC and Others [2015] ZALCJHB 254*, where the Labour Court held that an employment relationship broken down as a result of an act of dishonesty can never be restored by whatever amount of mitigation. The rationale for this principle is twofold: first, an employer cannot reasonably be expected to retain employees who engage in dishonest conduct, and second, such

dismissals send a clear and unequivocal message that dishonesty will not be tolerated in the workplace. In this case, the applicant's actions were found to have undermined the trust relationship, and the commissioner concluded that dismissal was the appropriate sanction.

Accordingly, the commissioner found the dismissal substantively and procedurally fair, and the applicant's referral was dismissed.

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