



20 female employees searched before leaving work. Nothing was found on any of them. However, 12 polonies found in the female toilet area. When questioned, each tried to blame the other. The actual culprit could not be identified. *Since it could not catch the wrongdoer, the employer resorted to the ultimate solution. It fired all the females, in terms of derivative misconduct!!!*

What is derivative misconduct?

Two requirements must be satisfied before this form of misconduct can be relied on:

First, the employees must have been aware of the wrongdoing; and

Second, they must have failed to take steps to help the employer identify the culprit.

Please note that neither of the above requirements can be satisfied by mere suspicion—the employer had to prove, albeit on a balance of probabilities, that *each* employee knew that the polonies were in the restroom and that *each* woman could have come forward and identified the would-be thief, but had not.

Outcome:

The commissioner noted that in this case, all the employer had done was to dismiss the female employee contingent on a particular shift, on the assumption that the wrongdoer was amongst them. That, said the commissioner, was to apply “collective guilt”. The company had accordingly failed to discharge the onus of proving that the dismissals were fair.

This is a true story its not baloney, see in **SACCAWU obo Matabako & others / Metro Great Oactive** (CCMA case no. FS1468-09 dated 12/06/2009, unreported (Commissioner P Venter)).