

A photograph of a white lighthouse with a red lantern room, situated on a dark, rocky cliff. The scene is captured during sunset or sunrise, with a warm orange glow on the lighthouse and a clear blue sky above. The lighthouse has a small window and a light fixture on its side.

Employers are required to provide evidence as to the breakdown of the trust relationship

In Edcon Ltd v Pillemer NO & Others the Supreme Court of Appeal (SCA) held that it is no longer enough for an employer to state that the employment relationship has broken down, to avoid reinstatement.

Historically, trust was first viewed as a tacit contractual term (Central News Agency v Commercial Catering & Allied Workers Union of SA & another) where the employer terminated the employment relationship on the basis that the employee breached the basic tacit term of its employment contract, namely, not to steal from the employer.

Later, trust included a consideration of the employment relationship as a whole. In Anglo American Farms t/a Boschendal Restaurant v Komjwayo the test laid down was “... whether or not the respondent’s actions had the effect of rendering the continuation of the relationship of employment intolerable.”

More recently, the above contractual perspective was revisited in Toyota Motors v Radebe & others where the court stated that theft and fraud constitute a breach of the employment relationship.

Thereafter, the Labour Appeal Court adopted an operationally-focused perspective in Mutual Construction Company Tvl (Pty) Ltd v Ntombela NO & others linking the issue of sanction and the seriousness of the misconduct to the operational necessities of the employer it cited what had been said in De Beers Consolidated Mines Ltd v CCMA & Others that dismissal is not an expression of moral outrage, nor it is an act of vengeance. It is a sensible operational response to risk management in the particular organisation.

Employers should take note of the above and remember that, should there come a time when they have to dismiss an employee based on the breakdown of trust for whatever reason, they need to provide concrete evidence of the breakdown. To know how to go about producing the correct evidence contact **Moni Attorneys Incorporated** for assistance.