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Fired workers still not reinstated after court orders municipality to do so

VUYOLWETHU SANGOTSHA

The Enoch Mgiijima local municipality is refusing to reinstate seven workers it fired in January 2023 after they allegedly took unauthorised absence from work in December 2022.

The SA Local Government Bargaining Council in late 2023 ordered the municipality to reinstate the workers.

The cleaners and refuse collectors, who are members of the Independent Municipal and Allied Trade Union (Imatu), were

reportedly not subjected to a disciplinary hearing before their axing.

"The applicants [fired employees] are challenging the procedural and substance fairness of their dismissal and are all seeking reinstatement," pan-

elist Maolisi Nozigqwaba said in his ruling.

"On substantive fairness, they say they were just dismissed without being told of any reason.

"They later learnt their dismissal was due to not showing

up for work on some days in December 2022.

"On procedure, the applicants are taking issue over the fact that they were dismissed on the spot without being called to a disciplinary hearing first."

Nozigqwaba weighed in on the appropriateness of the dismissal.

"I hold the view that their misconduct was committed at the critical time of the festive season, and was serious enough to have attracted much harsher sanction," he said.

"What, however, made the sanction unfair is [that] the respondent [municipality] selectively dealt with the offending employees.

On substantive fairness, they say they were just dismissed without being told of any reason

"Credible evidence has been led that there are three employees who committed the same offence committed by the applicants.

"They absented themselves in the same period in December 2022, and were rendering the same functions.

"These employees are still in the respondents' employ, some

eight months after the applicants were dismissed, and the justification for not dismissing them is that they are in the respondents' employ in terms of EPWP [Expanded Public Works Programme] contracts.

"There is no law which precludes the disciplining and dismissal of EPWP employees before the lapse of their term of contracts."

Nozigqwaba said the municipality had not provided any justifiable reasons for the differentiation and that the other three employees should also have been dismissed.

"It chose not to.

"And by so doing, a perception was created that it treated

them favourably," he said.

After cross-examination, the bargaining council eventually ruled that the dismissal was "procedurally and substantially unfair" and instructed the municipality to reinstate the workers and backpay them more than R50,000 each for the eight months.

But, according to one of the fired employees, who spoke to the Dispatch this week on behalf of the axed group, the municipality had refused to implement the arbitration award.

"That's what puzzles us because since last year when the award came out, we were told by our leadership from Imatu, who represented us on the matter, to report for duty but when we got there, the supervisor told us that he hasn't been informed by his superiors," the source said.

The source said the union approached the Commission for Conciliation, Mediation and Arbitration (CCMA) in December in a bid to ensure the municipality enforced the ruling.

According to the worker, a municipal representative claimed Enoch Mgiijima had taken the matter for review, but the CCMA dismissed the application after the municipality could not furnish proof that it had done so.

The union then approached the sheriff, while also engaging with the municipality to resolve the matter.

"We have been promised that we will be paid this month [February] what is due to us and there is still a possibility of being reinstated," the source said.

Municipal spokesperson Lonwabo Kowa indicated last week that the battle was far from over.

"The matter has not been finalised yet.

"But the municipality cannot give out information on an issue that is still sub judice," he said.

Imatu regional chair Shagan Windvogel had not responded to the Dispatch's questions by print deadline on Monday evening.

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