

When mental health is not enough to excuse poor work performance - LAC rules

Poor work performance cases can become difficult for employers to navigate in circumstances where mental health challenges may be a contributing factor. More often than not, employers are hesitant to consider dismissing employees for poor performance in such instances out of fear of being sued and/or labelled as insensitive to employee well-being.

By [Sian Gaffney and Alexandra Hoek](#) 25 Jul 2025



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These cases require an employer to conduct a thorough assessment of the matter to determine the root cause of the poor performance and strike a delicate balance between addressing these concerns while remaining sensitive and supportive of an employee's mental well-being.

The Labour Court, in the recent judgment of *Abels v University of Stellenbosch and Others [2025]* (4 Jul 2025), had to determine the fairness of a dismissal of an employee for poor work performance in circumstances where the employee was diagnosed with depression, and whether the employer managed to strike this balance in the steps it took to dismiss him.

Background

Abels (employee) was employed by Stellenbosch University as a faculty administrator, which is considered a senior position. He was dismissed by the university for poor work performance. Prior to his dismissal, the university conducted a thorough performance management process, which included providing the employee with ongoing support, documented performance discussions and the implementation of a performance improvement plan (PIP). The employee referred an unfair dismissal claim to the Commission for Conciliation, Mediation and Arbitration (CCMA).



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During the arbitration proceedings, the employee admitted that he had performance concerns but challenged the substantive and procedural fairness of his dismissal on the basis that his poor performance was caused by his depression. In this regard, he alleged that the university had dismissed him for reasons based on his ill health and not due to poor performance, rendering the dismissal unfair. He also alleged that the university failed to adequately accommodate his mental health condition or follow an ill health process.

The commissioner's findings

The Commissioner was not satisfied that the true reason for the employee's dismissal was his mental health. The Commissioner considered the judgment in *Legal Aid SA v Jansen* where the Labour Appeal Court (LAC) held that, in cases such as these, the onus rests on the employee to demonstrate a direct causal link between his mental illness and inability to perform. The Commissioner held that there was sufficient evidence of poor performance by the employee over a prolonged period, which he never disputed, and that such poor performance had started long before the employee's depression diagnosis.

Further, the Commissioner found that the university had considered the employee's mental health challenges and made many attempts to accommodate the employee, including considering alternatives and providing support and as such, followed a fair process.

The Commissioner also relied on the LAC decision of *Somyo v Ross Poultry Breeders (Pty) Ltd*, which dealt with the principle that the 'normal' procedure regarding poor work performance may in certain instances be dispensed with in the case of senior employees. The Commissioner found that the employee occupied a senior position and was therefore aware of his duties and the performance standards required of him.

Labour Court's findings on review

The employee took the arbitration award on review to the Labour Court. In considering the award, the Labour Court found that the Commissioner had not erred on the facts or law and that the employee had failed to prove that the Commissioner's decision was unreasonable based on the evidence before him.



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The Commissioner duly considered whether the primary reason for the employee's dismissal was poor performance or his mental illness. In this regard, the employee failed to present compelling evidence that his depression affected his cognitive ability and that he was dismissed as a result of his illness. In the circumstances, his continued poor performance was a valid reason for dismissal.

Key takeaways

The key takeaways of this case are as follows:

- While employers are required to take steps to reasonably accommodate employees who suffer from mental illness in the workplace, especially where such illness may be linked to their poor performance the onus remains on the employee to provide sufficient evidence to prove that their mental illness was the primary cause of their poor performance and that the employer failed to reasonably accommodate them.
- It is important for employers to establish the true reason for performance concerns by employees, and have a clear, evidence-based approach to managing poor performance, particularly where there is a potential link to mental illness. This requires a delicate balance between addressing the performance concerns and remaining sensitive and supportive in relation to the employee's mental well-being.
- This case also reaffirms the principle that the threshold for procedural fairness (including counselling, training, guidance, warnings, etc.) may be lower for senior employees who are aware of, or ought to be aware of, their performance expectations.

ABOUT THE AUTHOR

Sian Gaffney, Senior Associate and Alexandra Hoek, Candidate Legal Practitioner, Bowmans South Africa

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