

Nando's gets the stick for firing a man who tasted its carrots

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Almost four years after being fired for eating two slices of carrot, the Durban Labour Court has ruled that an employee at Nando's Scottsville must be reinstated.



Source: [Fxabay](#)

During his disciplinary hearing in July 2018, and at a subsequent hearing at the Commission for Consolidation, Mediation and Arbitration (CCMA), Ntokozo Gwala had insisted he was just “testing” the cooked carrots because they appeared to still be frozen.

Gwala was fired for “dishonesty” following a disciplinary hearing. CCMA Commissioner Nicci Whitear-Nel found that this was substantively unfair, and ordered his reinstatement.

But Nando's was aggrieved, and sought to review and set aside this decision in an application heard by Acting Durban Labour Court Judge Durban Kelsey Allen-Yama.

The judge has now agreed with the CCMA finding, and ordered Nando's to give Gwala his job back.



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Charge of gross misconduct

Gwala, who had been employed at the company since April 2014, was a “front griller” when he took two slices of carrots from the bain marie and tasted them.

Because Gwala was an employee representative involved in another unrelated grievance issue, the company stalled the disciplinary process against him until July that year.

He was charged with gross misconduct: “unauthorised consumption of company stock”, a charge which, the company said, inherently involved dishonesty with the penalty being dismissal.

The CCMA commissioner, however, ruled that there was no dishonesty a finding Judge Allen-Yama has now confirmed. She said while Gwala had eaten the carrots and had broken the rules, he had simply tasted them to determine if they were suitable to be served.

At the inquiry and CCMA Gwala had said he did not know he could be fired for this.

“In the review proceedings, the company argued that the mere consumption of stock without authorisation demonstrated an intention on the part of the employee to deprive it of its property and accordingly the element of dishonesty is inherently present,” the judge said.

However, in a previous case, managers, apparently confused over the company rules regarding the size of cooldrink they could have with their lunch, had not been disciplined or fired.

“This was because the company accepted that it resulted from a type of misunderstanding and it negated the possibility of dishonesty,” Judge Allen-Yama said. “ It was not now open to Nando’s to argue the contrary in Mr Gwala’s case.”



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The judge said while it was correct that Gwala had not notified a manager about the possible problem with the carrots, his unchallenged evidence was that he had drawn the “icy carrot” issue to the attention of a colleague, who had also felt the temperature of the carrots with his own hand.

She said further that the “Grilled Roast Vegetable: procedure manual” was silent on whether the tasting of vegetables was prohibited or permitted.

Also, in his opening statement Gwala had said it was common practice to taste the pap and the rice.

While Gwala had breached a workplace rule, he had not been dishonest.

Stock losses

The company argued in the labour court that even if there was no dishonesty, the trust relationship had broken down and

Gwala should not be reinstated “because he was aware of the rule” and because the company had a serious issue with stock losses.

The judge said while the company had sought to adopt a zero-tolerance approach to its rules, the reason for breaches should not be ignored: “Gwala did not perceive himself as having breached the rule. He appears to have understood that it was relevant only to the consumption of food for personal pleasure ... his motive was not to serve his own needs but to ensure the quality of the product was not compromised.

“There is no objective evidence that the relationship has been irretrievably damaged.”

The judge noted that the employee was permitted to work for more than three months (to allow the other grievances to be resolved) before he was suspended, disciplined and finally fired.

With regards to the issue of costs, she said to award costs in favour of Gwala would potentially hamper the re-establishment of a harmonious working relationship between the two parties and she ordered each party to pay its own.

Read the [full judgment here](#).

Read the original article [on GroundUp](#).

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