

Idle Gossip and Dismissal: A Breeding Ground for Workplace Litigation

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ABSTRACT This paper reflects on idle gossip in the workplace, which is part and parcel of the dysfunctional communication among individuals and groups. The paper analysed the hazard that gossip presents in the workplace. Gossip is often acknowledged as the primary instrument for communicating and spreading negativity. For this reason, managers and supervisors need to take active steps to control gossip. In doing so, disciplinary action and litigation in some instances are often the solution and outcomes and a harsh reality in absolving what may be regarded as human nature.

INTRODUCTION

The employment relation, according to Bryant (2008), involves the behaviour of two or more individuals, as well as the effects of the organisation's rules and culture, bureaucratic structures, and external influences and pressures (Bryant 2008: 1). It is also concerned with anticipating, addressing and diffusing workplace issues that may interfere with the organisation's business objectives. It also entails the resolution of disputes between and among management and employees. Sound industrial relations and effective social dialogue are a means of promoting better working conditions as well as peace and social justice within the workplace (ILO 2011: 1).

Conversely, negative social dialogue for example gossip, could disrupt this balance. This could lead to an increase in staff turnover, premature resignation, resulting in the loss of valuable employees. Furthermore, gossip could also undermine an individual, a group or organisation, break down trust between employees, and strain ethical values such as openness, transparency and honesty. Consequences such as these, decrease staff morale, motivation, and interpersonal respect (Gouveia 2005: 56).

Problem Statement

Many individuals may agree that gossiping is wrong and it should neither be encouraged, nor tolerated. The ethical constraint of gossip seems clear to most yet the allure of hearing private and intimate details (accurate or erroneous) of another is difficult to resist. It is this attraction to confidential information that often unwittingly

results in careless divulgence could place the initiator of information in a precarious position. Gossip within the workplace, as insignificant as it may appear, could become a breeding ground for disciplinary action, dismissal and workplace litigation.

Research Question

The following research questions will be considered:

- What are the varying views and consequence of gossip?
- Does gossip amount to misconduct?
- Is dismissal an appropriate sanction for this type of misconduct?

The Aim and Objectives of the Paper

The paper aims to critically analyse:

- The origin of the term gossip,
- Various views and context of gossip,
- Different types and consequences of gossip,
- Relationship between Idle gossip and dismissal,
- Misconduct and the grounds for dismissal, and
- Decisions based on gossip as an example of misconduct.

DESIGN/ METHODOLOGY/ APPROACH

The paper is a meta-analysis which relies on secondary sources of information. It is a qualitative study that is based on conceptual analysis. It considers gossip from an "emic" perspective (author's viewpoint). The analysis has included

a comparative review of literature relating to the circulation of gossip, dismissal, and misconduct within the workplace, the South African Labour Relations Act 66 of 1995 and various, other significant South African legislation. The consequence of circulating gossip in the workplace has been discussed by examining various pieces of legislation, in particular the sanction of dismissal. In addition to legislation, case law has been strategically incorporated to illustrate practical example of gossip in the workplace.

The Origin of the Word Gossip

The word gossip originates from Old English 'godsibb', from 'god' and 'sibb', the term for the godparents of one's child or the parents of one's godchild. In the 16th century, the word assumed the meaning of a person, most likely a woman, who delights in idle talk, a newsmonger, a tale-bearer (Simpson 1989). In the early 19th century, the term was extended from the talker to the conversation of such persons. The verb to gossip, meaning "*to be a gossip*", first appears in Shakespeare's works. However, much speculation surrounds the actual origin of the term. Historians claim that the term originates from the maternity room at the time of childbirth. Giving birth was considered as an event that strictly excluded men, a social event, in which a pregnant woman's female relatives and neighbours would gather to provide assistance and medical support. As with social gatherings of this nature women engaged in talk relating to their own experiences and the experiences of others. Historians therefore claim that the term gossip came to mean talk of others.

Gossip is a laid-back talk, or rumour about the personal or private affairs of others. It is one of the oldest and most common means of sharing facts, views and insults. This term is used derogatively by its reputation for the introduction of errors, variations and the exaggeration of the information transmitted; it also describes idle chat or a rumour of personal or insignificant nature. Gossip has been researched in terms of its evolutionary psychology origins (MacAndrew 2008). This has found gossip to be an important means by which people can monitor cooperative reputations and so maintain widespread indirect reciprocity (Sommerfeld 2007). Indirect reciprocity is defined by Dunbar (2004: 100) as "*I help you and somebody else helps me.*" Whilst

Gossip has also been identified by Dunbar, the evolutionary biologist, as aiding, social bonding in large groups (Dunbar 2004: 100). With the advent of social networks, gossip has now become widespread from one place in the world to another. Hence, what used to take weeks to filter through is now instant. Technology assisted gossip travels within organisations, and is often not confined to a single organisation. Employees who tend to communicate using technology and social media interact with one another beyond the confines of their office. The spread of office gossip travels with parties to the conversation thus spreading gossip from one organisation to another.

The term is sometimes used to specifically refer to the spreading of secretive evidence and misinformation, as through excited discussion of scandals. Newspapers often carry "*gossip columns*" which detail the social and personal lives of celebrities or privileged members of certain communities. The term paparazzi have become synonymous with intrusive photographers who pursue celebrities to capture revealing pictures or newsworthy story, particularly something shocking or scandalous. These highly skilled and intrusive individuals have established careers in search of gossip. The surmounting interest in popular culture and celebrity gossip is reflected through the interest in America's mass media. The attraction to news about others is irresistible? Researchers have turned to the study of gossip to investigate societies' need to talk about people in their absence.

Gossip, as tainted as the practice may be, serves a useful social function in bonding group members together. In the distant past, when humans lived in small settlements/holdings, meeting strangers was a rare occurrence. Gossip helped the loneliest survive and thrive when communications was at its rarest. Modern-day infatuation with celebrities reveals the ancient evolutionary psychology of gossip. Anyone whom we see that often and know that well becomes socially important to us. Gossip can according to MacAndrew (2008) reinforce or punish the lack of morality and accountability reveal passive aggression, isolating and harming others serve as a process of social grooming build and maintain a sense of community with shared interests, information and values (Abercrombie 2004: 122). There are however, various views on gossip.

Views on Gossip

Some view gossip as trivial, hurtful and disrespectful bordering on poor/lack of social skill. Others view gossip as a light-hearted way of spreading information. A feminist definition of gossip presents it as *“a way of talking between women, intimate in style, personal and domestic in scope and setting, a female cultural event which springs from and perpetuates the restrictions of the female role, but also gives the comfort of validation”* (Jones 1990: 243). In early modern England, the word *“gossip”* referred to companions in childbirth, not limited to the midwife. It also became a term for women-friends generally, with no necessary derogatory connotations as it is known today. The Oxford English Dictionary (Simpsons 1998) definition refers to gossip as a familiar acquaintance, friend, chum, supported by references from 1361 to 1873. It commonly referred to an informal local society or social group, who could enforce socially acceptable behaviour through private criticism or witty retort. In Judaism, gossip spoken without a constructive purpose is known as sin. Speaking negatively about people even if retelling true facts, counts as sinful, as it demeans the dignity of both the speaker and the subject of the gossip. According to Proverbs 18: 8: *“The words of a gossip are like choice morsels: they go down to a man’s innermost parts”* (New English Version (NIV) Proverbs 1973: 583).

Backbiting or gossip as seen in Islam is equivalent to eating the flesh of one’s dead brother. This literal definition of the word *“backbiting”* is something that we don’t often think about. The condemnation we give to the act of cannibalism is the same horror that we should feel when engaging in or even speaking about, backbiting (Huda 2013: 1). According to Islam, backbiting harms its victims without offering them any chance of defence, just as dead people cannot defend against their flesh being eaten. Muslims are expected to treat each other like brothers, deriving from Islam’s concept of brotherhood amongst its believers. *“Why do not the believing men and women, whenever such [a rumour] is heard, think the best of one another and say, “This is an obvious falsehood”? When you take it up with your tongues, uttering with your mouths something of which you have no knowledge, you deem it a light matter, whereas in the sight of God it is an awful thing!”* (Quran 24: 12-15). This verse was made known to a

prophet of Islam during a period of contemplation. The prophet had to arrive at a well thought of punishment for his wife Ayisha who was accused of adultery. The ill effects of gossip and the innocence of the prophet’s wife were revealed in this verse. The prophet was warned that the spread of gossip did not please God and that man should not spread false rumour.

Gossip according to the book of Romans (1: 28-32), is associated with a list of sins including sexual immorality and murder: *“And even as they did not like to retain God in their knowledge, God gave them over to a reprobate mind, to do those things which are not convenient Being filled with all unrighteousness, fornication, wickedness, covetousness, maliciousness; full of envy, murder, debate, deceit, malignity; whisperers, backbiters, haters of God, despiteful, proud, boasters, inventors of evil things, disobedient to parents. Without understanding, covenant breakers, without natural affection, implacable, unmerciful who knowing the judgment of God, that they which commit such things are worthy of death, not only do the same, but have pleasure in them that do them”* (New English Version (NIV) 1973: 1006).

Gossip based on psychology as postulated by Dunbar’s (1994) evolutionary theory, states that gossip originated to help bond groups that were constantly growing in size. To survive, individuals need alliances; but as these alliances grew larger, it was difficult if not impossible to physically connect with everyone. Conversation and language was able to bridge this gap. Gossip became a social interaction that helped the group gain information about other individuals without personally speaking to them. It enabled people to keep up with what was going on in their social network. It also creates a bond between the communicator and the listener, as they share information of mutual interest and spend time together. It also helps the listener learn about another’s behaviour and helps them have a more effective approach to their relationship. Dunbar (2004) found that 65% of conversations consist of social topics. Dunbar (1994) further argues that gossip is the equivalent of social grooming often observed in other primate species.

Anthropological investigations indicate that gossip is a cross-cultural phenomenon, providing evidence for evolutionary accounts of gossip (Besnier 1989; Gluckman 1963; Haviland 1977). Further support for the evolutionary significance of gossip comes from a recent study

conducted by Barret (2011: 369) who hypothesises that the Conceptual Act model was created as a solution to the emotion paradox studies that measure emotion by relying on human perception, such as feelings or judgments. What serves to glue the various perceptions according to the Conceptual Act Model, is a word.

Words are powerful. Words facilitate the learning of novel categories as early as 6 months of age, words guide an infant's categorization of animals and objects by directing the infant to focus on the obvious and inferred similarities shared by animals or objects with the same name (Barret 2011: 369). Words in essence placeholders act as placeholders that allow an infant to categorise a new object as a certain kind, and to make inductive inferences about the new object based on prior experiences with other objects of the same kind. Words form a powerful form of categorisation based on a shared experience or visual representation associated to a word, for example a picture of a cat associated with the word cat. This according to Barret (2011: 369) perspective suggests that words provide a trigger to emotion perception. For example, emotion words cause a perceptual shift in the way that emotions are perceived. The use of words in the process of gossip can therefore act as triggers that often initiate emotions that cause the recipient to perceive anger, hurt or joy. The use of words used in social conditioning, contributes to information about social norms and guidelines for behaviour. Gossip usually comments on how appropriate the behaviour was, and the mere act of repeating it signifies its importance. In this sense, gossip is effective regardless of whether it is positive or negative. Some theorists have proposed that gossip is actually a pro-social behaviour intended to allow an individual to correct their socially prohibitive behaviour without direct confrontation of the individual. By gossiping about an individual's acts, other individuals can subtly indicate that said acts are inappropriate and allow the individual to correct their behaviour (Schoeman 1994). However, the use of words either negative or positive has to be guarded so as not to trigger adverse emotion, as society's views on those who gossip are often negative.

Views on Those Who Gossip

Society perceives individuals who engage in gossiping regularly, as being less like with di-

minished social power. The type of gossip being exchanged affects likeability whereby those who engage in negative gossip are less liked than those who engage in positive gossip (Farely 2011). In a study done by Turner (2003), having a prior relationship with a gossipier was not found to protect the gossipier from less favourable personality ratings after gossip was exchanged. In the study, two individuals were brought in to the research lab to participate. Neither of the two individuals were friends prior to the study they were strangers scheduled to participate at the same time. One of the individuals was affiliated to the study and they engaged in gossiping about the research assistant after she left the room. The gossip exchanged was either positive or negative. Regardless of gossip type either positive versus negative or relationship type that is friend versus stranger the gossipers were rated as less trustworthy after sharing the gossip. Views of those that gossip or participate in this type of banter are disliked and seen as untrustworthy, lacking credibility and ethical restraint.

Gossip in Various Contexts

Individuals spread gossip every day; it can be as simple as gossiping about recent events in the lives of celebrities or as hurtful as spreading a nasty rumour or someone else's secrets. Gossip is so pervasive, it is difficult to confine or restrict gossip to a particular context. Do gossip at home, church, school and work vary according to context? Literature is unclear as to the type of gossip that occurs at home or church. Literature pertaining to gossip within the school context suggests that the gossipier usually picks a victim who they know others will be interested in chatting about, such as: popular children, unpopular children, clever children, disadvantaged children and children who are different in any way. Gossip is not confined to children but often expands to teachers, parents and administrative staff. However, gossip within the workplace has received much attention particularly with the imposition of stricter workplace legislation.

Workplace Gossip

Workplace gossip may be identified in various ways. Body language is generally the first indicator. Animated people become silent; individuals indulging in gossip begin staring at one

another or rolling their eyes in a coded manner. They often seek attention they present information which tends to undermine others while attempting to make themselves the centre of conversation. *"They often perceive that if they tell a good story, people will rally around them and give them undivided attention"* (Goessi 2009: 1). Someone or most workers indulge in inappropriate topics of conversation. Tronshaw (2013: 1) suggests that the best way to avoid workplace gossip and negativity is to refuse to participate in gossip and negativity, even if others are actively involved. He openly declare that you practice the golden rule and do not gossip. Refrain from complaining about others, whether work-related or otherwise. *"Recognise that complaining, no matter how harmless, can open the door for gossip and negativity. If you have problems with your co-workers, confront them directly, rather than discussing the issue with your peers. If you can't resolve the problem by speaking to you co-worker directly, take the issue to a supervisor or a human resources representative"* (Tronshaw 2013: 1). Shield yourself from being gossiped about by refusing to take the proverbial 'bait'. Find ways to genuinely compliment your co-workers on a regular basis rather engaging in negative dialogue. Reduce the possibility of being gossiped about by keeping your personal business to yourself. Finally do not participate in workplace gossip, allow for the gossip to subside.

Peter Vajda *"identifies gossip as a form of workplace violence, noting that it is essentially a form of attack"* (Librado 2010: 152; Vajda 2013: 1). Gossip according to Vajda (2013: 1) *"is essentially a form of attack, which often arises from an individual's conscious and unconscious fears. For some people, their ostensible commitment "not to gossip" is easily lost in their fears, anxieties, or concerns about what their life might be like if they stopped gossiping"*. Some broader definitions of gossip not only relate to "negative" remarks, but even extend to "positive" or "neutral" remarks that are focused on making conversation that is orientated around the activities of others, again, outside the presence of that person. Although workplace gossip is an almost unavoidable occurrence in all offices and businesses, it can have very negative repercussions for a company's morale and values. When individuals spend the majority of their day discussing other employees in an offensive or discrimi-

natory manner, they are wasting time that they should have spent completing important office tasks. In addition to being a huge drain on productivity, being known as an office that allows malicious gossip to stand can result in a decreased amount of individuals wanting to work for the company (Vajda 2013: 1).

Workplace gossip, according to Kurkland (2000: 430) can be very serious depending upon the influence or power that the gossipers has over the recipient, which will in turn affect how the gossip is interpreted. Gossip can be categorised into negative and positive gossip. For instance, gossip can be negative if it describes an unfortunate event that befell someone but it can also be negative if it describes unethical behaviour. Here, the term gossip is interpreted as negative when it constitutes slander that would compromise an individual's reputation. Positive gossip, conversely, tends to enhance an individual's reputation. There are four types of control that influence gossip. Within the categories of positive gossip and negative gossip, it is possible to make additional distinctions.

French and Raven (1953) identified five bases of power or control. Legitimate, this type of power comes from the belief that a person has the right to make demands, and expect compliance and obedience from others. Coercive power or control is when a gossipers tells negative information about an individual; the recipient may fear that the gossipers will also spread negative information about them. This fear causes the gossipers coercive power to increase. Reward occurs when a gossipers tells positive information about a person; the recipient may believe that the gossipers will also spread positive information about them. This causes the gossipers reward power to increase. The expert is when a gossipers seems to have very detailed knowledge of either the organisation's values or about others in the work environment, the expert's power becomes enhanced. Referent power can either be reduced or heightened to a point. *"When people view gossiping as a petty activity done to waste time, a gossipers referent power can decrease along with their reputation. When a recipient is thought of as being invited into a social circle by being a recipient, the gossipers referent power can increase, but only to a high point where then the recipient begins to resent the gossipers"* (Kurland 2000:430; French 1959). These power bases as postulated by French and

Raven (1959) have the potential of manifesting into negative consequences of workplace gossip.

Different Type of Gossip

Kurland (2000:430) refers to three type or distinctions of gossip in the workplace, sign, credibility and work relatedness. Sign can be described as nature of the content of the gossip. Is the gossip positive or negative? or does the information that is being related have a positive attribute? for instance, did you hear Mary graduated top in her class or negative, for example, did you hear Mary's husband is a drunk. When gossip consists of favourable news about others it is seen as positive. When gossip consists of unfavourable news about others, it is seen as negative. Credibility is the extent to which the gossip is believable and that it is supposedly accurate and truthful. Work-relatedness is the degree to which gossip is focused on an individual's work life, such as job performance, career progression, relationships with other organisational members and general behaviour in the workplace (Kurland 200: 430). Vos (1996:23) and Rosnow (1976:130) on the other hand describe three separate type of gossip, namely informative, moralising and malicious. The informative type is used for news trading and for providing participants with a cognitive map of the social environment. Moralising gossip is a manipulative device through which one person aims to gain control over another. Malicious gossip furthers gossipers own political or social ambitions gratifying envy or rage and satisfying or generating a sense of power. Vos (1996:23) explains that malicious gossip can be further categorised as: distilled malice and serious gossip. Distilled gossip plays with reputation, motivations and proposed feelings of others often serving a serious purpose for the gossipier. Serious gossip exists only as a function of intimacy. Serious gossip is often shared among two or three individuals and in most cases never goes beyond the circle of gossipers. The negative consequences of gossip are never considered as parties engross themselves in delving into the affairs of others.

Consequences of Gossip

Negative consequences of workplace gossip may include loss of productivity and wasted time,

erosion of trust and morale. Increased anxiety and concern among employees as rumours escalate without any clear information as to what is fact and what is not. Growing dissension among employees as individuals choose sides, injured feelings and reputations are growing attributes as gossip takes hold of the workplace. The gossipier ironically prevents his or her own chances for advancement as they are perceived as unprofessional. The gradual attrition of employees may be attributed to the unhealthy work environment.

Turner (2003) theorise that among the three main types of responders to workplace conflict, are attackers who cannot keep their feelings to themselves and express their feelings by attacking whatever they can. Attackers are further divided into up-front attackers and behind-the-back attackers. Turner (1983) notes that so called behind-the back-attackers are difficult to handle because the person targeted is not sure of the source of criticism, nor sure that there is criticism (Turner 1983; Librado 2010:153). It is possible however, that there may be illegal, unethical, or disobedient behaviour happening at the workplace and this may be a case where reporting the behaviour may be viewed as gossip. It is then left up to the expert in charge to fully investigate the matter and not simply look past the report and assume it to be workplace gossip.

The question is: Can idle gossip result in dismissal? This may sound ludicrous as to why should an innocent act of jest result in dismissal. This is a thought that often crosses the mind of many an employee. However, the repercussions are serious and severe.

Idle Gossip and Dismissal

The code of Good Practice (Republic of South Africa 1995) provides an authoritative explanation as to why gossip may result in dismissal. The Code of Good Practice: Dismissal Labour Relations Act 66 of 1995 schedule 8 (Code) (Republic of South Africa 1995) states that the Code is not intended as a substitute for the employer's disciplinary code. However, the key principle set out in the Code is that employers and employees should treat one another with respect (Rust 2001; Bendix 2003). While employees should be protected from arbitrary action, employers are entitled to satisfactory conduct and work performance from their employees. The practice of gossip in the workplace, if malicious and intended

to do harm, would amount to a contravention of this schedule and therefore be equivalent to misconduct. The sanction for misconduct may be a warning, or even dismissal in the event of gross misconduct (Venter 2009). Section 3(4) (Schedule 8 Code of Good Practice: Dismissal, Republic of South Africa 1995) of the Code states that it is generally not appropriate to dismiss an employee for a first offence, for a first infringement, the employee should receive a written warning, and for more serious infringements, a final warning. Dismissal should be reserved for cases of serious misconduct or repeated infringement of disciplinary rules that makes a continued employment relationship intolerable (Schedule 8 Code of Good Practice: Dismissal, Republic of South Africa 1995). Gross dishonesty or willful damage to property, willful endangering of other persons, physical assault, and gross insubordination are examples of serious misconduct.

Misconduct

Dismissal based on misconduct according to The Code of Good Practice: Dismissal enforces various obligations on an employer. Three of these requirements are: The employer should first consider factors such as the employee's length of service and disciplinary record; the misconduct must be of such a grave nature that it makes a continued employment relationship intolerable; and an employee should be dismissed only if he/she has been found guilty of gross misconduct. Formal procedures are not raised every time a rule is broken or a standard not met. Informal advice and correction is recommended as the best and most effective way for an employer to deal with minor violations of work discipline rather than dismissal. In the event of the employee being found guilty of repetitive misconduct the employer is advised to issue a warning which is graded according to the degree or severity of the misconduct. More serious infringements or repeated misconduct result in a call for a final warning, or other action short of dismissal. Dismissal is reserved for cases of serious or gross misconduct or repeated offences. Examples of gross misconduct include: wilful damage to the property of the employer; wilfully endangering the safety of others (Vajda 2013:1); physical assault on the employer, a fellow employee or a client; gross insubordination; and gross dishonesty.

Examples of serious misconduct are subject to the rule that each case should be judged on its merits. Irrespective of the merits of the case for dismissal, a dismissal will not be fair if it does not meet the requirements of section 188 (Republic of South Africa 1995).

When deciding on whether or not to impose the penalty of dismissal, the employer has to decide on other factors in addition to the gravity of the misconduct, factors such as the employee's circumstances (including length of service, previous disciplinary record and personal circumstances), the nature of the job and the circumstances of the infringement itself. The employer is expected to apply the penalty of dismissal consistently with the way in which it has been applied to the same and other employees in the past, and consistently as between two or more employees who participate in the misconduct under consideration.

Guidelines in cases of dismissal for misconduct based on gossip is that any employer or employee who is determining whether a dismissal for misconduct is unfair, should consider whether or not the employee contravened a rule or standard regulating conduct in, or of relevance to, the workplace; and if a rule or standard was contravened, whether or not the rule was a valid or reasonable rule or standard; the employee was aware, or could reasonably be expected to have been aware, of the rule or standard; the rule or standard has been consistently applied by the employer; and dismissal was an appropriate sanction for the contravention of the rule or standard (Section 7 (a) Schedule 8 Code of Good Practice: Dismissal, Republic of South Africa 1995).

In the instance where the employer claims that the relationship due to the gossip is intolerable and the employee has breached the trust relationship. An employer in this instance may claim that, where an employee is found guilty of dishonesty, the trust element of the employment relationship has been damaged. Likewise, the employer is entitled that where the employee is found guilty of gossip the trust element of the employment relationship has been damaged. Employers are cautioned that this does not necessarily mean that the damage to the trust relationship is bad enough to be considered irreparable.

It is a well-accepted principle that employees are expected, as part of their employment contract, to behave honestly and in the interests of their employers; and that trust is an important

element to consider in deciding whether the employment relationship of a dishonest employee should continue. However, the employer's right to dismiss the dishonest employee for breach of trust resultant of misconduct depends on the answers to a number of questions including: has the trust been irreparably destroyed? Was the position the employee occupies the type where trust was a key factor? Was there an alternative corrective measure available, short of dismissal? Has the employer acted consistently? For example, have other employees, committing similar offences, been dismissed due to the destruction of the employment relationship? Did the employee try to cover up the dishonest act with further dishonesty or did he/she immediately own up and show genuine remorse?

The intolerability of the continuation of the employment relationship can be caused by misconduct other than dishonesty or breach of trust. For instance, an employer could argue that an employee, who sexually harassed a colleague, has severely damaged the working relationships between employees and/or damaged the employer's reputation. The employer in this case must still prove that this damage was serious enough to make continued employment intolerable and the act itself amounted to gross misconduct as with gossip. Fair procedure has to be adhered to, in order to ensure that the dismissal was based on a gross misconduct that resulted in the breach of trust that would cause the relationship to become intolerable should the employee continue to be employed by the organisations. Breach of the trust relationship is the test to be applied to determine whether the employee should be dismissed or not. If there is no evidence of such a breach, then the employer cannot dismiss and should apply corrective action. However, if the employer can establish that the evidence points to breach of trust grounds for dismissal would be substantiated. Fair procedure is imperative and should be adhered to at all times.

Fair Procedure and the Grounds for Dismissal

Procedural errors often occur when an employer decides to charge an employee and the charges are not well thought through and tested against the evidence or the complainant fails to correctly apply the evidentiary burden of proof.

Many employers have a comprehensive disciplinary code and procedure which provides for a list of transgressions and proposed sanctions. Employers often complain that it is complicated and time consuming to decide which charge in the disciplinary code and procedure fit the transgression. Employers are forced to adhere to these charges throughout the disciplinary process and possible arbitration thereafter. Usually, the employer would conduct an investigation to determine whether there are grounds for dismissal. This does not need to be a formal enquiry. The employer thereafter notifies the employee of the allegations, using a form and language that the employee can reasonably understand (Section 4 (1) Schedule 8 Code of Good Practice: Dismissal, Republic of South Africa 1995). The employee is then given the opportunity to state their case in response to the allegations presented against him or her. The employee is entitled to a reasonable time to prepare a response in his or her defence with the assistance of a trade union representative or fellow employee. On completion of the enquiry, the employer is obligated to clearly communicate the decision taken, and preferably furnish the employee with written notification of that decision. Written or verbal information has to be communicated to the employee in his or her first language. The adherence to these procedures allows for both parties to agree to communication.

Discipline against a trade union representative or an employee who is an office-bearer or official of a trade union is not to be instituted without first informing and consulting the trade union. If the employee is dismissed, the employee should be given the reason for dismissal and reminded of any rights to refer the matter to a council with jurisdiction, or to the Commission or to any dispute resolution procedures established in terms of a collective agreement. In exceptional circumstances, if the employer cannot reasonably be expected to comply with these guidelines, the employer may dispense with pre-dismissal procedures. Employers are asked to keep records for each employee specifying the nature of any disciplinary transgressions, the actions taken by the employer and the reasons for the actions. The use of case law apart from establishing precedent can be used as an effective tool in assisting the employer. Previous decisions can be used as an effective guideline when determining consequences for disciplinary actions based on gossip or any other employee related issues.

Decisions Based on Gossip

The following are examples of case law that has dealt with disputes relating to gossip in the workplace. The purpose for the inclusion of these cases in this paper is two-fold. Firstly, to alert the reader to cases pertaining to gossip in the workplace that has resulted in dismissal. Secondly, to sketch the variance in cases that equate to gossip. This would enable the reader to appreciate the evidence that establishes the link that justifies the dismissal in each instance. Dismissal is a sanction commonly exercised when an employee is found guilty for the spread of undue slander resulting in emotive damage and loss of reputation.

In *Rautenbach v Relyant Retail (Pty) Ltd* (2005) 8 BALR 890 Council for Conciliation Mediation and Arbitration (CCMA) a number of the employer's managers met socially at a country resort. One of the managers made comments to his colleagues that he had sexual intercourse with one of the female managers while she was in one of the hotel rooms recovering from a drinking bout. The manager was later charged with sexually harassing the complainant and dismissed. The complainant could not remember what had happened in the room. The dismissed manager denied that he had molested the complainant, and denied that he had made any remarks suggesting that he had sexual intercourse with her. The presiding Commissioner found that, because certain rumours had been flowing, it was probable that something untoward had been said at the bar when the dismissed employee returned from the room in which the complainant had been sleeping. The presiding Commissioner established that these rumours had emanated from a statement made by the dismissed employee, and that statement suggested that he had sexual intercourse with the complainant in her hotel room. The presiding Commissioner concluded that, on the balance of probability, it was not probable that he did have sexual intercourse. However, the grounds for the decision were based on misconduct as the gossip has impinged on the complainant's reputation and good name. The fact that the dismissed employee made this statement in the bar while under the influence of alcohol, and the fact that he had apologised to the female manager, were taken into consideration by the Commissioner. However, despite the above, the Commissioner found the conduct of

the dismissed manager to be of such a serious nature that dismissal was justified. The remark made by the accused that was under the influence of alcohol was made with the intention of creating an impression as to the complainant's social skills resulted in his dismissal. The *Rautenbach* (2005) case dealt with gossip pertaining to an employee's sexual conquest which resulted in the disrepute of a fellow employee (the complainant).

In *Poonyane v Metal and Engineering Industries Bargaining Council (MEIBC)* (2008) GAJB26089-08 Arbitration (ARB), Poonyane was dismissed for gross misconduct. The grounds for dismissal were based on evidence led by the respondent (employer) who claimed that Poonyane had circulated an email that defamed members of management and used racist language, thereby directly or indirectly inciting other members of staff against the MEIBC. The e-mail, directed at particular employees, contained words like "black puppets," "stooge," "puppet master," and "baas." The Poonyane case is unlike the *Rautenbach* (2005) case, yet it is illustrative that the spread of gossip irrespective of the content will result in dismissal. Most cases pertaining to gossip in the workplace result in dismissal (Bhoola 2002). Provided evidence can be established that the gossip resulted in slander and the spread of the untoward gossip. The Poonyane (2008) case is no exception to the number of cases based on gossip that reach the Council for Conciliation Mediation and Arbitration (CCMA).

In *Warner v Value Sales* (2010) ECEL3533-09 (ARB) the employer advised the employee Warner of the termination of her contract of employment on the basis that she defamed the character of a member of management by accusing him of being the father of her unborn child. The employee was upset and lashed out against her employers in retaliation to their decision to terminate her services. In her defence the employee tried to illicit the help of other employees within the organisation to agree with the alleged rumour. As in criminal law, the source, motive and context of the facts presented as evidence at the disciplinary hearing were questioned. Matters dealing with labour issues are no different facts pertaining to the case need to be presented in order to determine the source of the rumour pertaining to the gossip. The severity of the sanction would thereafter be based on the evidence presented. Based on the need to present evidence in sup-

port of a defence the complainant (employee) was unable to establish that the gossip she attempted to spread was based on fact and witnesses' testimony.

In *Prinsloo v Zonke Monitoring Systems* (2005) - GAJB11290-05 (ARB) the respondent (employers) witnesses testified about a rumour that circulated at the respondent offices about an affair between the Chief Executive Officer (CEO) and the financial manager. Two witnesses testified about the employee telling them about being sexually harassed by the CEO. The applicant (employee) denied being involved in the spreading of the rumour and also the allegation of having been sexually harassed by the CEO. No evidence was submitted by the applicant with regard to her claim of a conspiracy to get rid of her. There was also no evidence that suggest that the respondent's witnesses might have fabricated their testimonies. The presiding Commissioner found that the respondent's witnesses to be reliable and did not doubt their testimonies. The presiding Commissioner further noted that the applicant behaved in an unprofessional manner, and her action had a negative impact on the working relationships at the respondent premises. It was wrong for the applicant to have made such inappropriate statements. The presiding Commissioner noted that through her action, the applicant has caused an irreparable damage to trust that is corollary to an employment relationship and concluded that the respondent discharged the onus of proving that the dismissal of the applicant was for a valid reason.

In *H. J Mostert v Kampstone Brokers* (Gerda Dafel) (2005) GA33145-04 (ARB) the respondent (employer) testified that she was the owner of the applicant. On 03 August 2004 she found the applicant (employee) gossiping about work related issues. She called a meeting of staff to address the issues that the applicant was gossiping about. The applicant interrupted the meeting and she defended the other employees. She accused her of screaming at the employees. The applicant raised her voice and she tried to stop her but the applicant continued screaming at her and the meeting could not continue. On the same day, the applicant accused her of ill-treating the employees. She said loyalty comes with respecting the employees. The applicant also accused her of lying about an appointment that she could not attend. As a result of that incident, she charged the applicant for insubordination. She notified

the applicant of a disciplinary inquiry on 12 August 2004 scheduled for 16 August 2004. The applicant refused to sign the notification and she failed to attend the inquiry on the scheduled date. The applicant was suspended and she was notified that the inquiry would take place on 17 August 2004. She again refused to sign the notification. The inquiry took place on 19 August and the applicant was found guilty as charged and the outcome was a dismissal. The applicant was dismissed for insubordination. The respondent testified that the applicant undermined her authority by interrupting a meeting that she was having with the employees.

This paper has attempted to serve three purposes. Firstly, to illustrate the fact that gossip in the workplace should be taken seriously, and in most instances, will result in dismissal. Secondly, gossip does impact the workplace and this can be supported by case law and other evidences. Thirdly, the facts of each case should be evaluated on merit and context. Literature suggests that employers who intend to avoid unnecessary litigation should inform employees as to the consequences of gossip in the workplace, just as one would with any other code of conduct. Addressing gossip and the instance it occurs or revealed is meant to inform parties involved regarding the consequences should the transgression continue. There is a need to investigate the transgression in the event of repeated transgression, and also a need to document evidence, and record any further communication by the parties under investigation. It is also important to ensure that the investigation and disciplinary actions are substantively and procedurally fair. Finally, employers need to appreciate that there is no set formula or one-size-fits-all approach to dealing with matters such as these. The employer has to rely on his or her expertise to skilfully address the misconduct in an impartial and ethical manner, whilst not contributing to the gossip.

CONCLUSION

The unassuming act of conversation in a maternity room in the early 19th century has since evolved into a destructive social virus infecting households and organisations. Once known for its comforting qualities, gossip has come to be known as hostile and unwelcoming. Views on gossip have varied over the years from a feminist definition through to Judaism, Islamism,

Christianity, psychology and anthropology. Literature refers to gossip in the workplace as an act of violence. Employers label the act of gossip equivalent to a misconduct which may result in a breach of trust that has the effect of making a working relationship intolerable, and often resulting in disciplinary action and dismissal. Views on those who gossip are negative. Employers in particular see gossip in the workplace as destructive, the repercussions of which could amount to dismissal. Idle gossip can result in dismissal which is irrefutable. Legislation and case law in particular point to informing employers and employees alike as to the adverse effects of not minding one's business. Fair procedure and stipulated grounds for dismissal are the guiding light that ensures that employees are protected against unfair treatment and bias. The employees' failure to comply with workplace policy may result to disciplinary action and dismissal, which is a breeding ground for workplace litigations.

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