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pointing out an employee's shortcomings **a must**

During a probationary period, if an employee is poorly performing, an employer is required to monitor their performance, discuss their level of performance with them and obtain the employee's feedback, and provide assistance and support to the employee, before considering dismissing them. The recent case of Stephenson v Sealegs International Ltd demonstrates that any support and guidance must be specific and detailed so an employee is aware where he or she is going wrong. In this case, the employee was hired as a CAD draughtsman. At his interview the

was struggling, and attempted to give him assistance to complete work, but it was still not completed. The employee was not able to complete the project assigned to him, despite being provided with extended time and assistance from his manager. The employer discussed with the employee his performance issues, and conveyed his grave concerns about his technical abilities. The employee accepted that he was having difficulties, but assured him that he could do the job. The employer set down a further time limit in which he was required to complete the project. The employee was not able

terminate employment. In accordance with this observation, the Authority found that the dismissal in this case was unjustified. The Authority held that the employer did not articulate or clearly point out to the employee the employee's shortcomings, nor advise him what improvements were necessary to allow him an opportunity to rectify them. The Authority found that the employee did receive feedback, and assistance but this was at a higher, more strategic level, which was not the level of assistance needed to successfully progress and complete his work. The Authority held that the employee was also entitled to an opportunity to respond fully to all of the concerns the employer had about his employment.

No doubt the employer in this case felt that it had done all it could to address what it felt was a genuine, and fundamental, problem with the employee. However, that is not how the Authority viewed this matter. In highlighting what more the employer should have done to articulate its concerns and provide targeted assistance, the Authority, has in this case, provided a timely reminder of the importance of following a procedurally fair process when performance managing an employee, even in a probationary period. ■

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employee confirmed to the employer that he knew how to use specific computer software and had a certificate of competence using that software, although he qualified those statements, saying he did not have in-depth knowledge of the software, and explained that he would require some targeted tutoring and initial additional assistance.

The employee was asked to do two pre-employment drawings and had a week to complete them. The employer found that there were some errors but was generally happy with the work. Although the employee could use the software, unbeknown to the employer, the employee had only been able to complete the test with the assistance of the support helpdesk, that specialises in that software. The employee was offered the job and commenced employment.

On the employee's first day he was asked to complete a simple drawing, however, his drawing was inadequate. His manager was aware that the employee

to complete the work within the time limit, with only 50-70 percent of the work having been completed. The employee's manager worked with the employee for a full day and half assisting him, but it became apparent that the employee was not capable of performing the role. The employer discovered that the employee had been making a number of telephone calls to the support desk, and was asking questions that the support desk would not expect from someone who had a basic understanding of that computer software. The employer sought to terminate the employee's employment.

The employee was not aware that his employment was subject to a probationary period. Notwithstanding this, the Authority found nevertheless that a probationary period was in place. Whilst noting that there are less stringent procedural requirements on an employer during a probationary period, the Authority confirmed that an employer is still required to act fairly, in relying on a probationary period to

crossword solution

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