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GROSS NEGLIGENCE

1. As a point of departure, it should be mentioned that the Employee has been found guilty on at least 1 (one) dismissible offence, namely gross negligence
2. To warrant dismissal, the negligence must be gross, that is, if the employee was persistently negligent or if the act or omission was particularly serious. Where the consequences of a single act or omission are particularly serious, or when an employee holds a position in which negligence on a single occasion may have disastrous consequences, dismissal may be justifiable on the first occasion¹
3. The Constitutional Court has held² that commissioners are principally required to determine whether a dismissal is fair or not in terms of the Labour Relations Act ("LRA").³ The aforesaid ruling also applies to myself as an external chairperson determining the outcome of this matter
4. In arriving at a decision, a commissioner is not required to defer to the decision of the employer. What is required is that he / she must consider all relevant circumstances, as such, but not limited to the importance of the rule breached, the harm caused by the employee's conduct,

¹ *Somyo v Ross Poultry Breeders (Pty) Ltd* [1997] 7 BLLR 862 (LAC).

² In the matter of *Sidumo and another v Rustenburg Platinum Mines Ltd and others* (2007) 28 ILJ 2405 (CC)

³ 66 of 1995 (as amended)



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whether additional training and instruction may result in the employee not repeating that misconduct, the effect of the dismissal on the employee and his or her long service

5. As chairperson, I have given regard to the following:

5.1.

5.2.

5.3.

6. Both the Company the Employee were given an opportunity to submit aggravating and mitigating factors respectively and I as chairperson have given due regard thereto.

7. In light of all the aforesaid I recommend the following: