

Suspension without pay to curb dilatory conduct during disciplinary proceedings

Unpaid suspension – delay caused by employees – disciplinary proceedings

While employees are entitled to postponements in a disciplinary hearing if they demonstrate good cause, there is a limit to how long an employee-driven delay can be justified. A recent decision of the Labour Court has raised the question of whether an employer may implement suspension without pay in the face of dilatory tactics occasioned by the employee.

In *Strydom v ArcelorMittal*, the employee was placed on precautionary suspension with full pay during the course of his disciplinary hearing. At the hearing, the employee raised a number of preliminary points which resulted in repeated postponements. In November 2023, the employer, ArcelorMittal, suspended the employee without pay because of his conduct in deliberately delaying the disciplinary hearing.

The employee referred an unfair labour practice dispute, relating to unfair suspension, to the Bargaining Council. He also instituted an urgent application in the Labour Court, seeking an order that the employer's decision to suspend him without pay be declared unlawful, or be set aside.

The Labour Court per, *Prinsloo J*, held that for unfair labour practice claims, an unfair labour practice dispute must be referred through the mechanisms as contemplated in the LRA. A mere allegation of unlawfulness will not give the Labour Court jurisdiction. The application was accordingly struck off the roll for lack of jurisdiction. The court observed further that suspended employees facing disciplinary action cannot be allowed to find reasons or to utilise tactics to delay the disciplinary proceedings at the employer's expense, as that would constitute an abuse of process.

The same approach has been consistently applied by commissioners in arbitrations. In *Msipho / Plasma Cut* and *SAEWA obo Member / Aberdare Cables*, the commissioners found that the employer's failure to pay the employee during the period where suspension was extended because of the employee's dilatory tactics did not amount to an unfair labour practice.

In essence, a suspended employee is entitled to full pay pending disciplinary action unless the suspension is extended for an unreasonably long period due to the delay caused by the employee. However, each case should be assessed on its own merits, balancing the employee's right to fair labour practices against the employer's right to prevent abuse of the disciplinary process.

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