

THE LEGALITY OF RUNNING PARALLEL HEARINGS CONCERNING THE SAME EMPLOYEE

In South Africa there has been no consensus or decision made concerning the case whereby an employee is subjected to one hearing after another hearing.

This matter was most recently dealt with in the matter of ***Rabie v Department of Trade and Industry and Another (LC)***. In this particular case an employee who works for the Department of Trade and Industry (DTI) had been charged on four counts of misconduct. It was then subsequently agreed to by the Employer and the Employee to institute the proceedings as provided under section 188A of the Labour Relations Act (LRA) which provides that should there be an agreement between an Employer and Employee a matter concerning an employee's misconduct can be dealt with by an accredited arbitrator.

After the scheduled hearing in terms of section 188A, it was discovered that the Employee had committed a further offence whereby DTI had scheduled a further disciplinary hearing which was in-house and not in terms of section 188. The in-house hearing was held whereby the employee raised the issue of the parallel hearing which had been scheduled in terms of section 188A and contended that both hearings are related and therefore he should not be subjected to the parallel hearing.

The Employee made an urgent application the labour court to stop the in-house hearing pending the decision made in the section 188A hearing.

The Labour court found in favour of the employee's application and provided that the section 188A hearing

proceed before proceeding with the parallel disciplinary inquiry. The Labour Court held the purpose of section 188A is to avoid duplication of the process and to expedite the process.

In this event there was an agreement to have the section 188A disciplinary hearing continue therefore the employer cannot hold a parallel disciplinary hearing.

The law is, however, unclear about whether two disciplinary hearings can be held where it is discovered that the employee has committed two separate offences which are unrelated to one another.

Therefore, employers should be mindful when instituting a disciplinary hearing against an employee and ensure that the employee is not prejudiced. An employer must ensure that it is clear what offence was committed by the employee and allow the employee sufficient time to prepare in order to make representations for the process to be procedurally fair. In the case that a parallel hearing were to be heard it would seem that from the case above that the offences should be unrelated and that the employee be afforded time to prepare.

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