
The Labour Court weighs in on the application of the Prescription Act in disciplinary proceedings

Prescription Act – disciplinary proceedings – misconduct – charges

On 16 April 2025, the Labour Court handed down judgment in *Public Investment Corporation v More*. The judgment concerned the application of the Prescription Act to disciplinary proceedings, and whether misconduct disciplinary charges prescribe.

In June 2020, the applicant, the Public Investment Corporation (PIC), charged its Chief Financial Officer (CFO) with misconduct. The charges related to the alleged breach of her duties committed five years earlier, in 2015. In the disciplinary proceedings against her, the CFO raised various objections to the charges, including prescription, waiver and undue delay in bringing of the charges of misconduct against her. The objections were dismissed by the disciplinary hearing chairperson. On 8 October 2021, the PIC dismissed the CFO.

The dismissed employee referred an unfair dismissal dispute to the Commission for Conciliation, Mediation and Arbitration (CCMA). At arbitration, she raised the same objections of prescription, waiver and undue delay, which were dismissed in her disciplinary hearing. The arbitration was presided over by two senior commissioners.

The commissioners firstly dealt with the special defence of prescription. They had to determine whether the Prescription Act applies to disciplinary proceedings, specifically whether the dismissed employee's breach of her duties to the PIC fell within the ambit of a 'debt' in terms of the Prescription Act. The commissioners found that it did and thereafter found that the debt (i.e. the charging and dismissal) had prescribed. Accordingly, Ms More was reinstated and awarded back pay.

The PIC instituted an application in the Labour Court to review and set aside the arbitration award. The PIC raised seven grounds of review. Notably, it contended that the commissioners committed a material error of law in finding that the Prescription Act applied to disciplinary proceedings, in particular, to an employer's right to discipline its employees.

Prinsloo J found that the position adopted by the commissioners – that the Prescription Act applies to disciplinary enquiries – is unsound in law. Moreover, the Labour Court found that the interruption of prescription requires that a "process" be served on a debtor. The term 'process' is defined in section 15(6) of the Prescription Act and excludes serving a disciplinary charge sheet on an accused employee. Accordingly, the court found that the Prescription Act does not and cannot apply to internal disciplinary proceedings.

The court made it clear that the Prescription Act applies to civil litigation only, of which a disciplinary process is not. The review application was thus upheld, and the arbitration reviewed and set aside, and remitted to the CCMA for a re-hearing. The court did not consider the other grounds of review as the prescription ground was dispositive of the application.

As the Court points out – correctly in our view – disciplinary proceedings are meant to be informal, with the purpose of affording the employee an opportunity to account for their

conduct. The process is not litigious and does not constitute civil proceedings as contemplated in the Prescription Act.

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