



MASERUMULE

Corporate Employment Law

Where results matter

NO REPRESENTATIONS BEFORE SUSPENSION, SAYS CONCOURT

Long v South African Breweries (Pty) Ltd and Others [2018] ZACC 7

In its judgment in *Long v South African Breweries (Pty) Ltd and Others [2018] ZACC 7*, the ConCourt held that an employer is not required to give an employee an opportunity to make representations prior to the employee being suspended.

The court confirmed the correctness of the LC's findings that the fairness of a suspension is determined by assessing:

1. whether there is a fair reason for the suspension; and
2. whether the suspension prejudices the employee.

In this case, the fair reason for the suspension was to protect the integrity of the investigation into serious allegations of misconduct. However, in our view a fair reason may take other forms, such as the protection of a company's reputation or mitigating operational risk.

Suspension pending a disciplinary investigation and/or hearing is a precautionary measure, not a disciplinary one and the prejudice suffered by the suspended employee is mitigated by their salary being paid.

If a company's code or policy, a contract of employment or collective agreement provides for representations to be made before an employee may be suspended, an employee may challenge a suspension as an unfair labour practice if they are not given an opportunity to do so.

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February 2019

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