

Short notes on:

Employers should avoid unnecessary delays in bringing disciplinary proceedings against Employees.

Introduction

Disciplinary actions have profound implications for employees. My experience working with labour matters is that 95% of the time, the employee would likely be found guilty once the employer institutes disciplinary hearings.

Employers need to ensure that they follow a procedurally fair process when instituting a disciplinary hearing and understand that a disciplinary inquiry must be held as soon as possible after suspension or the employer being aware of an employee's infraction. However, this does not mean that the employer should skip the investigation phase and hastily carry out the disciplinary process.

Overview

From a legal point of view, a disciplinary inquiry must be undertaken as soon as possible. Unnecessary delays can be procedurally irregular, especially when there is a Disciplinary Code that stipulates the period when the employer must institute disciplinary hearings. Moreover, undue delays in bringing in the charges can result in the belief that the charges are not because of proper grounds but because of some other hidden agenda and the employer has no strong evidence of an infraction or misconduct.

Depending on the period and reasoning for the delay, the Commissioner or the Court may rule that the disciplinary charges have fallen away. However, employees are cautioned that the lack of disciplinary proceedings does not mean that there was no serious misconduct.

It should be noted that the fact there is serious misconduct means an employer should always be adamant that the employee be found guilty in a disciplinary inquiry. This will only strengthen the case for holding a disciplinary inquiry without delay.

It should further be noted that depending on the kind of entity, a delay could be justified considering that the board of some entities act through functionaries such as human resources, company secretary, head of legal etc.

Conclusion

Employers should always take steps against employees who, according to them, were not doing their job properly. This may be through suspension, consultation, discipline short of dismissal or any other appropriate. It is respectfully submitted that it may cause substantial prejudice to the employee if the delay is unreasonable.

For any Labour/Employment related enquiries, contact SchoemanLaw Inc.