



EMPLOYMENT

Does an Employer's Right to Discipline and Dismiss its Employees Prescribe?

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In *Public Investment Corporation v More and others*, handed down on 16 April 2025, the Labour Court was called upon to consider whether the Prescription Act 68 of 1969 ("**Prescription Act**") can be raised by an employee as an absolute defence to disciplinary proceedings and dismissal.

The case concerned an employee who was dismissed for misconduct pursuant to disciplinary charges levelled against her in 2020. These charges related to the employee's recommendation in 2015 that the Chief Executive Officer enter into a revolving credit facility that contained different terms to those approved and ratified by the employer's fund investment panel.

At the disciplinary enquiry, the employee raised, *inter alia*, a "special defence" of prescription, arguing that her alleged misconduct constituted a breach of her obligation to render a service in terms of her contract of employment. This, in turn, she argued constituted a debt for the purposes of the Prescription Act, which considers the rendering of a service as a debt, and which debt had prescribed at the time of her disciplinary process.

This "special defence", which was dismissed by the chairperson of her disciplinary enquiry, was reconsidered and ultimately upheld by commissioners during the employee's unfair dismissal dispute before the Commission for Conciliation, Mediation and Arbitration ("**CCMA**"). The CCMA ruling to this effect formed the subject of the review application before the Labour Court.

The Labour Court ultimately found that the Prescription Act is not applicable to disciplinary enquiries and is only triggered when proceedings, such as proceedings at the CCMA, commence.

In doing so, the Labour Court, drawing from various Constitutional Court judgments, stated that the purpose of the Prescription Act is to ensure that creditors timeously institute legal proceedings. Certain statutes prescribe time periods for steps necessary to pursue claims and the Prescription Act provides a cut-off point when those steps can no longer be pursued on account of the claim having prescribed.

The Labour Court concurred with previous judgments that held the Labour Relations Act 66 of 1995 provides time periods for the referral of unfair dismissal disputes, in which applicants pursue debts, for the purposes of the Prescription Act, in the form of unfair dismissal claims. The Prescription Act therefore finds applicability in these circumstances.

However, there is no authority for the position that the Prescription Act applies to disciplinary proceedings as no timeframes for instituting such proceedings have been legislatively prescribed.

In addition, sections 15 and 17 of the Prescription Act, by their very nature, manifestly do not apply to disciplinary proceedings.

Section 15 of the Prescription Act provides for the interruption of the running of prescription by the service of a process and defines such process as including "*a petition, a notice of motion, a rule nisi, a pleading in reconvention, a third party notice referred to in any rule of court, and any document whereby legal proceedings are commenced*". This definition does not include a disciplinary charge sheet and it would be untenable if a party could not interrupt the running of prescription.

Section 17 of the Prescription Act provides that prescription must be raised in the "*relevant document filed of record in the proceedings: Provided that a court may allow prescription to be raised at any stage of the proceedings*". A disciplinary enquiry does not contemplate any document filed of record in litigation before a court. Therefore, prescription cannot be raised at a disciplinary enquiry.

The Labour Court also considered whether disciplinary enquiries and acts of dismissal constitute the claim of a debt for the purposes of the Prescription Act and found that, since disciplinary enquiries and acts of dismissal are rooted in labour law and its fairness dispensation, rather than in the law of contract, disciplinary enquiries and acts of dismissal cannot be characterised as a claim of a debt for the purposes of the Prescription Act.

Following the Labour Court's decision, although employers need not necessarily concern themselves with the Prescription Act when seeking to take disciplinary action and/or dismiss their employees, the principles of fairness entrenched in our labour law legislation and jurisprudence nevertheless dictate that employers must take disciplinary action as soon as reasonably possible after becoming aware of acts of misconduct. The failure to take disciplinary action timeously could compromise an employer's right to take such action at a later stage and may impact on the procedural and/or substantive fairness of any dismissal, independently of the Prescription Act.

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