

Disciplinary Proceedings, Termination and Severance Allowance

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1

Disciplinary Proceedings



1. Disciplinary Proceedings

A mere procedural ritual ?

■ Cie Mauricienne d'Hypermarches v Rengapanaiken (2003) SCJ 220

"It is a well settled principle that a hearing...is not required to be "conducted with the formality and all the exigencies whether procedural or evidential appropriate to a Court of law or Tribunal", it does not follow that a hearing is merely meant to be a procedural ritual to enable the worker to give his explanation to the charges before his dismissal."

■ **When?**

Alleged misconduct

Alleged misconduct is subject to criminal proceedings

Cases not covered by above two

Poor performance

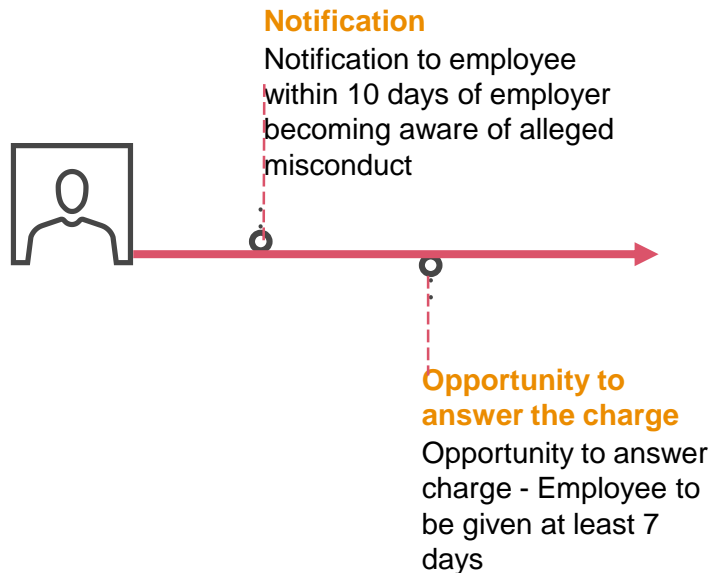
NOTE: Cases not covered by above 2

1. Disciplinary Proceedings

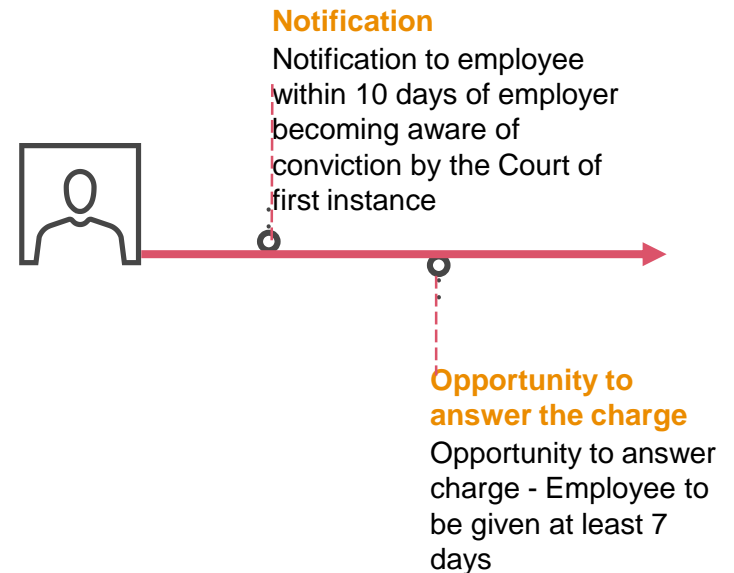
The Timelines



Alleged Misconduct



Alleged Misconduct is the subject of criminal proceedings



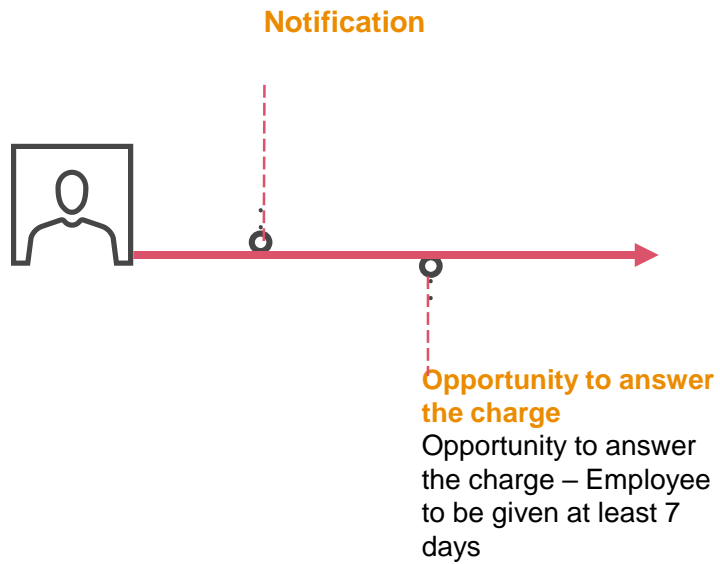
- 1) What form should the opportunity to answer the charge take?
 - The opportunity to answer any charge can take a number of forms, even in writing, but provided that the procedures laid down in the law are complied with
 - No formal hearing is necessary where the employee clearly admits his guilt to the employer – If the employee fails to offer any answer within an appropriate time limit.

2) What if there is a police declaration and disciplinary proceedings run concurrently?

1. Disciplinary Proceedings

The Timelines

Poor Performance



1. Disciplinary Proceedings

The Timelines



When are the timelines triggered ?

- 01 Novelty**
When it comes to alleged misconduct or alleged misconduct subject to criminal proceedings, the novelty now is that the employer may carry out an investigation first and the 10 days kick in only after the investigation has been completed.

- 02 Status of Documents During Investigation**
Docs of investigation are internal, confidential – Not normally produced

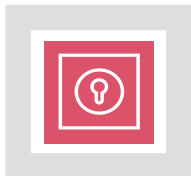
- 03 Pro employer?**
Often used by employers

1. Disciplinary Proceedings

Notification of Charge



The Process



Notification

Although the section concerns notification of charge, a notice to answer a charge and a notification of termination.



ERA

Provision reproduced from ERA, ie

- Notification to be handed personally to the employee
- Notification to be sent at usual or last known place of residence of the employee



Defence

If the employee refuses to accept delivery or fails to take delivery after being notified that a notification awaits him at a specified post office – Notification deemed to have been duly served on the day the employee refuses to accept delivery or is notified that it awaits him at the specified post office.

1. Disciplinary Proceedings

Suspension, Request for Documents, Representation



Suspension

Remained the same, save that now there is the requirement that the suspension be in writing



The Employee's Request for Documents

Novelty

In cases where the employer decides to hold a hearing:

- the employee can request information/documents
- the employer is under a mandatory duty to provide the information/documents that are relevant to the charge



Representation

This has remained unchanged

When there is a disciplinary hearing, the employee may have the assistance of:

A representative of a trade union or a legal representative or both

An officer who is designated by the supervising officer of the Ministry of Labour

1. Disciplinary Proceedings

Who conducts the Proceedings? Written acknowledgment of guilt, minutes of Proceedings



Who conducts the Proceedings?

Before the law provided that when there was an oral hearing, the hearing would be presided by a person not involved in the investigation and who is able to make an independent assessment.

Now?

Who is in the panel? Explanations in writing, oral hearing, panel?



Written statement acknowledging guilt

Obtained at the instance of the employer – Not admissible before a disciplinary hearing, or any authority or any Court.

Statement acknowledging guilt vs statement acknowledging debt?



Minutes of Proceedings

Novelty

Who may make request? The employee who appeared before the disciplinary hearing; The person assisting the employee in the disciplinary hearing

When can the request be made? Anytime

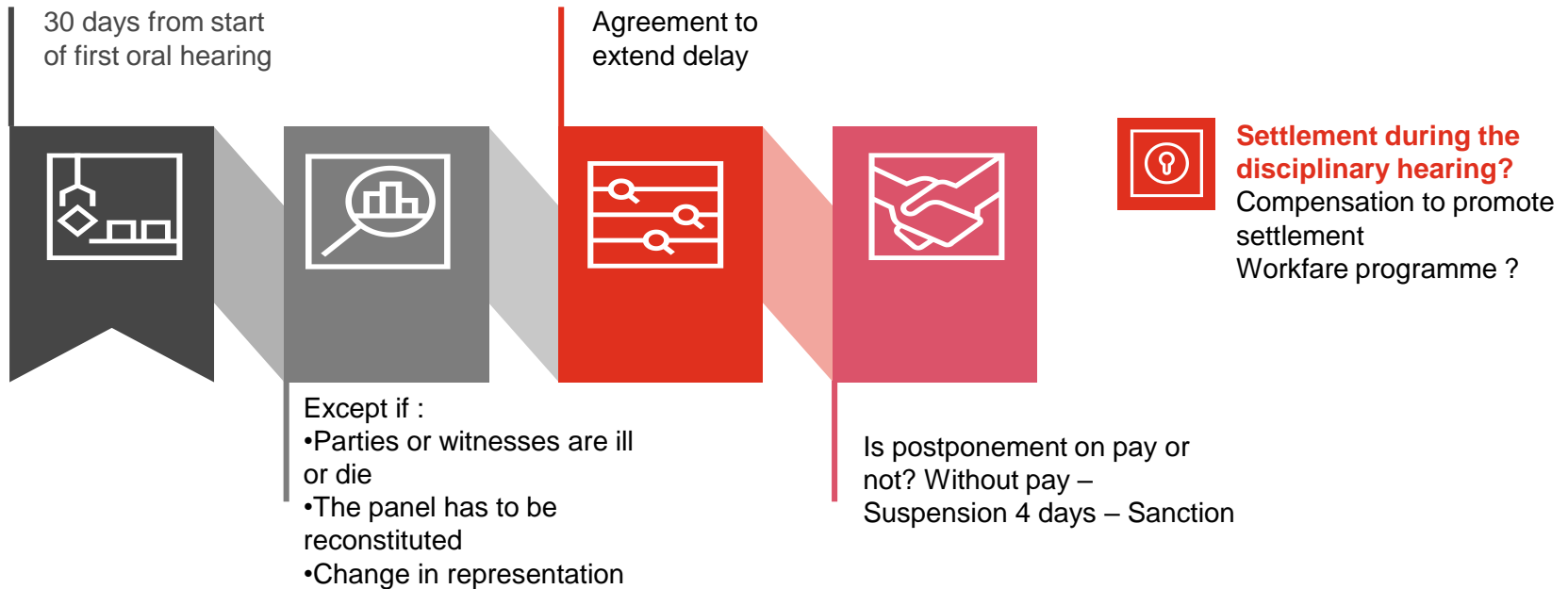
When should the minutes of proceedings be communicated? Within 7 days of receipt of the written request

Disclosure – What about ruling?

Putting the chairperson into cause

1. Disciplinary Proceedings

Timeline to complete disciplinary proceedings ?



2

Termination



2. Termination

Protection against termination

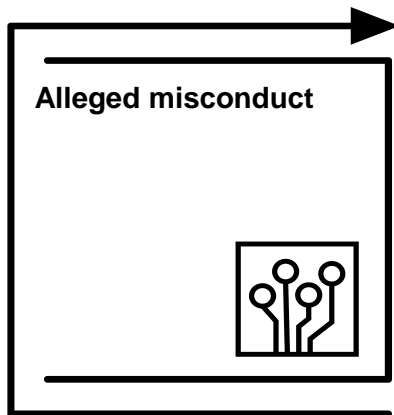


An agreement shall not be terminated by an employer by reason of –

- (a) a worker's race, colour, caste, national extraction, social origin, place of his origin, age, pregnancy, religion, political opinion, sex, sexual orientation, HIV status, impairment, marital status or family responsibilities;
- (b) a worker's absence from work during maternity leave and for the purpose of nursing her unweaned child;
- (c) a worker's temporary absence from work because of injury or sickness duly notified to the employer and certified by a medical practitioner;
- (d) a worker becoming or being a member of a trade union, seeking or holding of trade union office, or participating in trade union activities outside working hours or, with the consent of the employer, within working hours;
- (e) a worker, in good faith, filing a complaint, or participating in proceedings, against an employer, involving alleged breach of any terms and conditions of employment;
- (f) a worker exercising any of the rights provided for in this Act or any other enactment, or in any agreement, collective agreement or award.

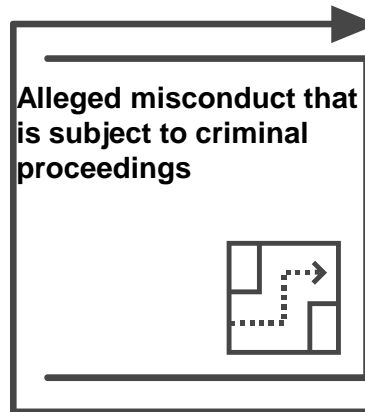
2. Termination

Circumstances where the employment agreement may be terminated



Termination (if the employer cannot in good faith take any other course of action) – Not later than 7 days (i) after the employee has answered the charge or (ii) where the charge is the subject of an oral hearing, after completion of the hearing.

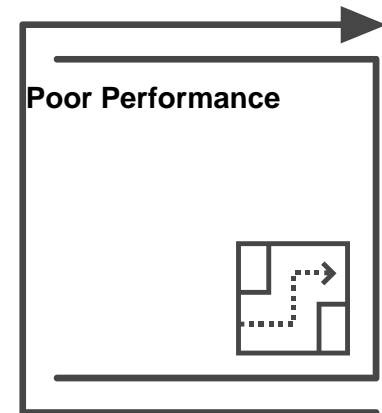
Cannot in good faith take any other course of action



Termination – Within 7 days of completion of the hearing

Difference between not later than or within 7 days?
Within = Today is Day 1

Cannot in good faith take any other course of action



Termination (if the employer cannot in good faith take any other course of action) – Within 7 days of completion of the hearing

Cannot in good faith take any other course of action

2. Termination

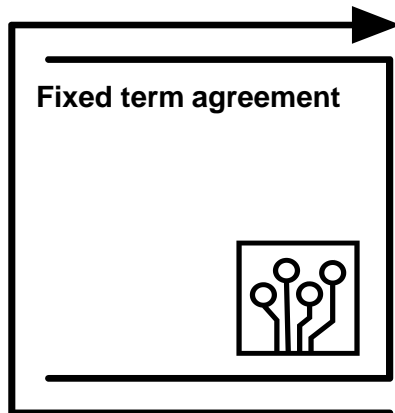
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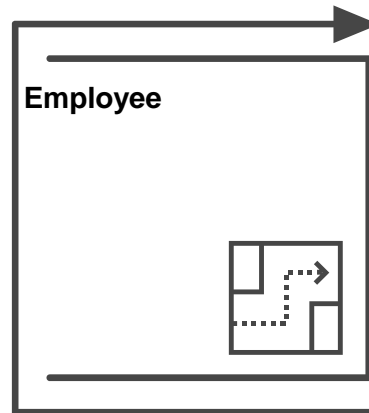
- A question whether a company has a valid reason to dismiss the employee is obviously different from a question whether it could not in good faith take any other course than to dismiss him. The former asks only whether the misconduct was a ground for dismissing him. The latter asks whether in all the surrounding circumstances the only course reasonably open to the employer was to dismiss him.
 - It does not seem entirely fair, or in accordance with the purpose of section 32, that, simply because his misconduct had been the subject of criminal proceedings, an employee should be deprived of the opportunity which is afforded by section 32(2). It is not hard to imagine circumstances where an employee might be able to advance strong mitigating factors to his employer in order to explain why his activities which had led to a conviction, and which in the absence of those factors, might justify his dismissal, should lead his employer to conclude dismissal was not appropriate, or the only option
- ...give an employee an opportunity of dissuading his employer from dismissing him in circumstances where he might otherwise be dismissed. In other words, the primary purpose is to afford an employee the opportunity of keeping his job
– Bissoonauth v The SIFB

2. Termination

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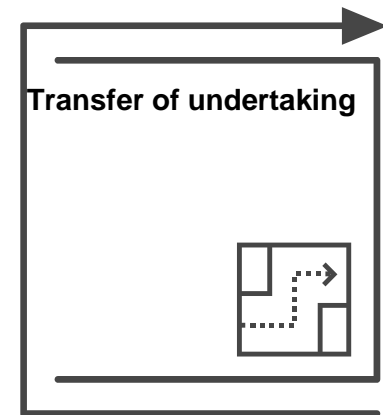


On the last day of the period agreed



An employee may claim that his employment has been terminated where:

- He is ill-treated by the employer
- The employer fails to pay his remuneration
- The employer fails to provide work and to pay remuneration under an agreement
- The worker is made to resign by fraud or duress or is made to sign a letter of resignation or such document in writing



Transfer of undertaking – Novelty
-Where a business is deemed to be transferred or taken over, eg merger, business disposed of as a going concern.

3

Severance Allowance



3. Severance Allowance



Severance Allowance

12 months continuous employment:

- Contract of indeterminate duration;
- Under one or more determinate agreements with the same employer – Except for a migrant or non-citizen



Deductions

Any gratuity granted by the employer

Any contribution made to any fund or scheme – Purports to provide retirement benefits to the employee
Contributions under the PRGF

pwc.com/mu/en/pwclegal.html

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