

IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT JOHANNESBURG

Not Reportable
CASE NO: J1435/11

In the matter between

POPCRU obo TEFFO, MD

Applicant

and

MINISTER OF SAFETY AND SECURITY

First Respondent

NATIONAL COMMISSIONER OF THE SAPS

Second Respondent

LT COL DJ SMIT

Third Respondent

Date of hearing: 3 August 2011

Date of Judgment: 4 August 2011

JUDGMENT

VAN NIEKERK, J:

[1] This is an urgent application brought yesterday in terms of which the applicant seeks an order reviewing and setting aside a decision made on 21 July 2011 to suspend Mr MD Teffo. On his behalf, the applicant acts with effect from 21 July 2011 without remuneration.

[2] The employee on whose behalf the applicant acts is a warrant officer in the South African Police Service. He is also a shop steward of

the applicant, the Police and Prison Civil Rights Union. The dispute between the parties relates to a notice of suspension issued by the third respondent, a Lieutenant Colonel Smit, on 21 July, in terms of which Warrant Officer Teffo was suspended with effect from the same date.

[3] The brief history of the matter is that disciplinary charges were brought against Warrant Officer Teffo. He was initially suspended on 8 November 2010 prior to a disciplinary hearing to be convened in due course. For reasons that are not apparent from the papers, the disciplinary hearing was postponed to 24 January 2011, to 7 February 2011, to 1 April 2011, to 13 April 2011 and then to 26 May 2011 and then again to 21 July 2011.

[4] On 14 July 2011, Warrant Officer Teffo's union representative addressed a letter to the Provincial Commissioner of the South African Police Service. The letter requested a postponement of the disciplinary hearing scheduled to commence on 21 July 2011, proffering as his reasons the fact that Warrant Officer Teffo would be on official annual leave from 18 July to 4 August 2011 and further that his representative was required to attend another arbitration matter at the Department of Correctional Services on 22 July 2011. Further dates in August and September were then proposed for the disciplinary inquiry to continue.

[5] The chairperson of the inquiry refused to postpone the hearing and 15 July 2011 advised Teffo of that fact and that he was expected to

be in attendance on 21 July. On 21 July, neither Teffo nor his representative appeared at the hearing. The chairperson then invoked regulation 18 (5) and had issued a letter on 21 July 2011 to Warrant Officer Teffo advising him that in terms of Regulation 18(5) (a) (i), he was deemed to have been suspended from the service of the SAPS without remuneration with immediate effect. The letter continues and I quote:

"This suspension is as a result of the employee's failure to appear at the departmental hearing on 21 July 2011, to answer to charges as stated in the notice of the hearing that had been remanded and the employee warned by the chairperson at the hearing on 26 May 2011 to appear before him on the adjournment date, namely on 21 July 2011."

[6] The basis of the applicant's argument in these proceedings is that on a proper interpretation of Regulation 18, if an employee fails to appear on a date scheduled for a disciplinary hearing, the chairperson must postpone the hearing for a period of not less than seven calendar days in terms of Regulation 18(3); that the notice of postponement must be served on the employee and must be in the form determined by the National Commissioner and must comply further with Regulation 12(3); that on the fixed date to which the hearing has been postponed in terms of Regulation 18(3), the chairperson is required to enquire into the reasons for absence of an employee; that if an employee fails to appear

at the hearing on the fixed date the chairperson must postpone the hearing indefinitely in terms of Regulation 18(5)(a)(ii) and having done so, the chairperson is required to exercise a discretion in terms of Regulation 18(5)(d), whether or not to suspend the employee or postpone the hearing to a later date.

[7] In particular, the applicant contends that the notice of suspension should be reviewed and set aside on the basis that the chairperson of the hearing failed to issue a notice of postponement, that he failed to consider the fact that Warrant Officer Teffo had a right to be heard before being suspended and that he exceeded his authority by issuing the notice of suspension without compliance with the provisions, particularly of Regulation 18(3).

[8] The respondents contend that the effect of Regulation 18 is to provide for what might amount to an automatic suspension in circumstances where a disciplinary hearing has commenced and where proceedings have been postponed to a later date in the presence of the employee concerned. In other words, the provisions of Regulation 18(3) which require a postponement of the hearing on 7 days' notice and service of notice of the postponement on the employee, apply only in circumstances where the disciplinary inquiry is first convened (or reconvened by agreement between the parties) and where the employee fails to appear at that hearing. In other words, subregulation (3) applies only where there is a failure to appear or remain in

attendance at a hearing convened or rescheduled in terms of subregulation (2).

[9] At issue is the interpretation of regulation 18(5) (a) and the pertinent part of the regulation reads as follows:

"(5)(a) In the event that *the employee fails to appear at the disciplinary hearing on any date to which the hearing has been postponed* (my emphasis) or a date to which it was postponed in terms of subregulation 3-

(i) the employee shall, from the date of such failure to appear or remain in attendance, be deemed to be suspended without remuneration; and

(ii) the chairperson must postpone the disciplinary hearing indefinitely and the disciplinary hearing shall only be reconvened at the instance of the employee concerned, after liaising with the employer representative, as contemplated by subregulation 1(b)...."

[10] It bears mentioning at this stage that subregulation 5(c) provides that notwithstanding the provisions of paragraphs (a) and (b), the chairperson may on good cause shown and at any time set aside the suspension effected in terms of subregulation 5(a)(i). Further, in terms of paragraph (d), the chairperson may, notwithstanding the provisions of paragraphs (a) and (b), decide that the employee should

not be suspended and postpone the hearing to a later date.

[11] It seems to me that the provisions of regulation 18(5) (a) contemplate two different circumstances. The first is a failure to appear at a disciplinary hearing on a date to which the hearing has initially been scheduled, or rescheduled in terms of subregulation 18(2). The second circumstance that in which a hearing is postponed to a particular date in terms of subregulation (3) and a notice of postponement is issued and served on the employee.

[12] It is clear to me that the introductory portion of regulation 18(5) (a) clearly envisages circumstances, such as the present, in which an employee may be automatically suspended without the employer invoking the provisions of regulation 18(3). These circumstances are a failure to appear at a disciplinary hearing on any date *to which the hearing has been postponed*.

[13] In the present instance, it is common cause that when the matter was postponed on 26 May 2011 the disciplinary hearing was postponed in Teffo's presence, to 21 July. In terms of regulation 18(5)(a) it seems to me that for the purpose of that regulation, this is "a *date to which the disciplinary hearing has been postponed*", and not a failure by Teffo to attend a disciplinary hearing on the date on which it had been scheduled in terms of subregulation (2).

[14] I might mention that there is support for this interpretation of regulation 18(5) in an unreported judgment handed down by Lagrange J under case number J291/11.¹ That judgment was handed down on 24 February this year and as I have indicated, deals with precisely the point regarding the interpretation and application of Regulation 18 that arises in the present circumstances. Lagrange J concluded that the requirements of postponement and notice contained in subregulation (3)(a) did not apply when a disciplinary hearing was postponed to a later date in the presence of the employee concerned; it applies only in the case of a failure to appear on a date on which a hearing is scheduled. It follows then that the suspension of Warrant Officer Teffo, on account of his failure to appear at the disciplinary inquiry on 21 July was automatic in terms of regulation 18(5) (a) and that the applicant has therefore failed to establish a clear right for the purposes of the present application.

[15] Further, it is clear to me that there is an alternative remedy available to an aggrieved employee in circumstances such as the present. As I have already indicated in terms of regulation 18(5) (c) the chairperson of an inquiry is empowered on good cause shown at any time to set aside a suspension and in terms of sub-paragraph (d) to decide that the hearing should be postponed to a later date.

[16] There is nothing in the papers to suggest that the applicant in the present matter exercised any right to seek to have the suspension set aside on the basis that good cause was shown for his failure to appear. In short, having failed to establish a clear right to the final relief that the applicant seeks and in view of the fact that alternative rights of recourse and remedies exist, none of which appear to have been invoked, the application stands to be dismissed.

[17] I wish to add a note of concern. The purpose of the regulations is clearly to ensure that disciplinary proceedings are expeditiously conducted. In the present case, the proceedings were first initiated as far back as November last year. At this point, some 9 months later, no progress whatever has been made in determining the substance, if any, of the charges brought against Warrant Officer Teffo.

[18] The purpose of the Labour Relations Act² and in particular the Code of Practice on Dismissal is to ensure that matters such as the present are expeditiously dealt with at the lowest possible level. Instead, the parties have resorted to litigation in circumstances where they ought properly to have sought the resolution of this matter at the level of the shop floor, or, in this case, the police station. In my view, the disciplinary inquiry should proceed at the soonest possible date and this matter ought to be brought to the soonest possible resolution.

[19] Since the judgment by Lagrange J was not reported and since none of the parties to the present litigation were parties to that application, it would be unfair for me to make a punitive order as to costs in relation to these proceedings. Having said that, there is no reason why the respondents should be deprived of their costs incurred in having to defend this matter. So for those reasons I make the following order.

The application is dismissed, with costs.

Van Niekerk J

Appearances:

For the applicant: Adv J Basson, instructed by Grosskopf Attorneys

For the respondents: Adv MJ Ramaepadi, instructed by the State Attorney