



Notable case

Suspension—reasonable notice to respond to proposed suspension without pay

Date of decision: 20 December 2018

Overview

This case is concerning a fair treatment appeal regarding the suspension of an employee without pay.

Timeline of events:

- The employer wrote to the employee advising they had received information about alleged criminal offences (which occurred outside of work) but which raised serious allegations about the employee's professional behaviour. They were suspended on full pay effective immediately.
- The letter also advised that consideration was being given to suspend the employee without pay. The employee was given an opportunity to respond and was directed to provide their response within 48 hours of receipt of the correspondence. The correspondence from the employer was emailed on a Friday, and also delivered by courier to the employee on the same Friday.
- The employee emailed the employer on the same day, acknowledged receipt of the correspondence, and requested a two-week extension to enable time to respond appropriately to the correspondence. In support of the request, the employee attached a note prepared by their treating psychiatrist. The note:
 - indicated that the employee was not in a fit state to respond to the correspondence "in a timely fashion"
 - stated that the employee was being admitted to a psychiatric hospital for acute management of the employee's condition
 - supported the employee's request for an extension
 - offered to update the employer on the employee's progress at an appropriate time as to the employee's ability to respond to the request.

The employer replied the same day and said that they would respond to the employee's request for an extension on the following Monday.

- On the Monday, the employer advised that they had carefully considered the advice from the employee's treating doctor but had nevertheless decided to reject the employee's request for more time. The employer advised that they had also decided that the employee was to be suspended without pay from the next day (Tuesday), and that the suspension would remain in place until the outcome of further court proceedings, or unless otherwise determined.



Decision

The Queensland Industrial Relations Commission Commissioner (the QIRC Commissioner) upheld the employee's appeal on grounds relating to procedural fairness.

The Commissioner returned the matter to the decision-maker with directions to issue a new show cause notice giving the employee reasonable notice in which to respond to the proposal that the employee be suspended without pay.

The reasons for the decision included that:

- there was a reasonable doubt that the employee would have had a capacity to respond to the show cause notice within the specified time period – especially in the circumstances where the employer was aware that the employee had been admitted to a psychiatric hospital on the same day they received the decision to suspend
- it was open to the employee to conclude that when the employer told the employee that they would respond to the request for an extension on the Monday, that a response on the request for an extension would have been given prior to the determination of the substantive issue
- at the time of the decision to suspend the employee without pay, the employee did not know whether their request for an extension had been allowed or rejected. The employee therefore, was placed in the invidious position of either providing some form of “provisional” response, or waiting for an answer on the request for an extension
- in discounting the reasonableness of a requirement to provide a provisional response, it becomes clear that the employee was denied the opportunity of providing any response at all
- it is questionable whether a period of 48 hours across a weekend could be considered adequate in the circumstances, where it could be anticipated that difficulty may be experienced in securing legal advice and preparing an adequate defence.

Messages for managers

- The principles of natural justice apply when considering suspending an employee without pay.
- The employee must be given the opportunity to respond to the proposed suspension without pay prior to the decision being made by the delegate. This can occur through a show cause process at the time of notification of the initial suspension on normal remuneration, or at any subsequent stage during the suspension.
- The length of time given to the employee to respond must be reasonable in the circumstances.

More information

If you are a Queensland public service human resources or industrial relations professional and want to know more contact the Public Service Commission, CaPE and HR assist team on 3003 2777 or via our [online enquiry form](#).