

# The Right to Natural Justice in Disciplinary Hearings

By Xander Wehncke

## THE LABOUR COURT REITERATES: THE RIGHT TO BE HEARD IS A CARDINAL RULE OF NATURAL JUSTICE

In the case of *Ngwathe Local Municipality v South African Local Government and Others*<sup>[1]</sup> the Labour Court reiterated that a party's right to produce and challenge evidence was an essential component to a fair hearing.

VAN DER MERWE, AJ reasoned as follows:

*“[14] It is a fundamental principle that a party should be allowed to present his/her case in an effective manner. The right to present one's case applies to all aspects of proceedings where a factual finding is to be made. This right is an expression of the audi alteram partem principle.*

*[15] ... In Kock and Another v Department of Education, Culture & Sport of the Eastern Cape and Others*<sup>[2]</sup>, Acting Judge Nkabinde gave a brief analysis of the rules of “natural justice”:

*‘The primary procedural safeguards in South African administrative law are expressed by the twin principles of natural justice: audi alteram partem (‘the audi principle’) and nemo iudex in causa sua: that is, that a public official should hear the other side, and that one should not be a judge in his own cause. As a general rule it may be said that the principles of natural justice apply whenever an administrative act is quasi-judicial. An administrative act was considered to be quasi-judicial if it affects the rights, liberties (and perhaps, the privileges) of an individual’.*

*[16] A Commissioner may determine a dispute in a manner that the Commissioner considers appropriate in order to determine the dispute fairly and quickly. This much is clear from the first part of section 138(1) of the LRA which deals with the general provisions of arbitration proceedings. It, however, remains important in any arbitration proceedings that the Commissioner grants each party a proper and fair opportunity to present their respective cases before an unbiased arbitrator.” (\*emphasis added)*

In this matter the parties had an agreement to postpone the Arbitration for the Employer to arrange legal representation. This was the day prior to the date of set down. Notwithstanding this prior arrangement that was common cause on the day, the Commissioner insisted that the proceedings continue.

The Employer's representative was consequently unprepared for arbitration. The Arbitrator ruled that the employer was “wasting time” and had lost its right to proceed.

The Labour Court found that in doing so the arbitrator effectively “closed the door on the employer”. The Commissioner's failure to allow the employer a fair opportunity to present its case amounted to a gross irregularity and the Arbitrator's Award was Reviewed and set aside.

The Court stated that the right to be heard was a cardinal rule of natural justice may only be dispensed with in exceptional circumstances.

Xander Wehncke - Johanette Rheeder Inc.

[www.jrattomeys.co.za](http://www.jrattomeys.co.za) / [www.laboursmart.co.za](http://www.laboursmart.co.za)

<sup>[1]</sup> (JR 1710/12) [2015] ZALCJHB 55 (26 February 2015) (unreported)

<sup>[2]</sup> [2001] 7 BLLR 756 (LC)