

# WIKUS VAN RENSBURG ATTORNEYS

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### NEWSLETTER 23

#### **SINGH v SA RAIL COMMUTER CORPORATION LTD t/a METRORAIL (2007) 28 ILJ 2067 (LC)**

Suspension - Suspension without pay - Common law - Employer has no right at common law to suspend employee without pay - Moreover employee not to be deprived of constitutional right to fair labour practices.

#### **SUMMARY**

The applicant, an engineer in the employ of the respondent corporation, was suspended with full pay and benefits pending a corruption investigation in January 2007. On 15 March 2007 the corporation unilaterally suspended his medical aid benefits, and on 27 March it suspended his salary and benefits. The applicant approached the Labour Court on an urgent basis for reinstatement of his salary, benefits and medical aid pending finalization of the investigation. The corporation relied on the common law to justify the suspension of the applicant without pay.

The court examined the common-law authorities and held that the position was simply that the employer had no right at common law to suspend without pay. A suspension prevents an employee from performing work and is done at the behest of the employer. Such a situation entitles an employee to be paid even if there is no service by him or her.

The court found further that, even if the contract of employment - which the corporation had failed to produce in evidence - provided for suspension without pay, such a provision would be invalid because it would be unfair and deprive the applicant of his fundamental right to fair labour practices and would be contrary to the collective agreement.

The court accordingly granted the application with costs.

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