



# Notable case

## Suspension—when is an employee liable to discipline?

Date of decision: 12 October 2018

### Overview

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

Timeline of events:

- The employer received information about an incident that occurred outside the workplace, involving the employee and a co-worker, which led to the employee being charged with two serious criminal offences.
- The employee was advised by letter that they may be liable to discipline and that they were being suspended on full pay.
- The employer was notified the employee's professional registration had been suspended.
- The agency was notified by the Queensland Police Service that the employee had been convicted of the two offences and sentenced by the court.
- The employer advised the employee that consideration was being given to suspension without pay under the *Public Service Act 2008* (PS Act) and asked them to show cause why this should not occur.
- The employer decided to suspend without pay because:
  - the employee's registration remained suspended and the employee was unable to perform the inherent requirements of their position
  - the nature of the conviction and sentencing terms limited the opportunity for alternative work
  - the employee's behaviour giving rise to the criminal convictions raised concerns about the employee's ability to conduct themselves appropriately in the workplace.
- The employee lodged a notice to appeal the decision to suspend without pay. Grounds of appeal included that:
  - the employer had erred in relying on section 189 of the PS Act in circumstances where there had been no positive finding that the employee was liable to discipline under a disciplinary law (no findings had been made by the employer with respect to the employee's conduct, and no decision had been made to take disciplinary action
  - the employee submitted that the correct source of power in the employee's circumstances was section 137 of the PS Act, to enable the employee to be removed from the workplace during the preliminary stage of an investigation, and prior to any findings being made that the employee was liable for disciplinary action.



## Decision

The Queensland Industrial Relations Commission Commissioner (the QIRC Commissioner) did not accept the employee's submission.

The Commissioner found that:

- there was little room for doubt that the decision-maker was entitled to conclude that the conduct in question was likely to lead to the commencement of a disciplinary process, or was conduct that was captured by section 187 of the PS Act (which outlines the grounds for discipline)
- the power to suspend is to be exercised in circumstances where there is a reasonable belief that a breach of disciplinary law may have occurred, not that any positive finding has to be made that circumstances exist which assure a finding that discipline will be taken.

## Messages for managers

A decision-maker must form a reasonable belief that the conduct or behaviour in issue may lead to disciplinary action or could attract disciplinary action.

A positive finding that discipline will be taken does not have to have been made to decide to suspend without pay.

## 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](#).