



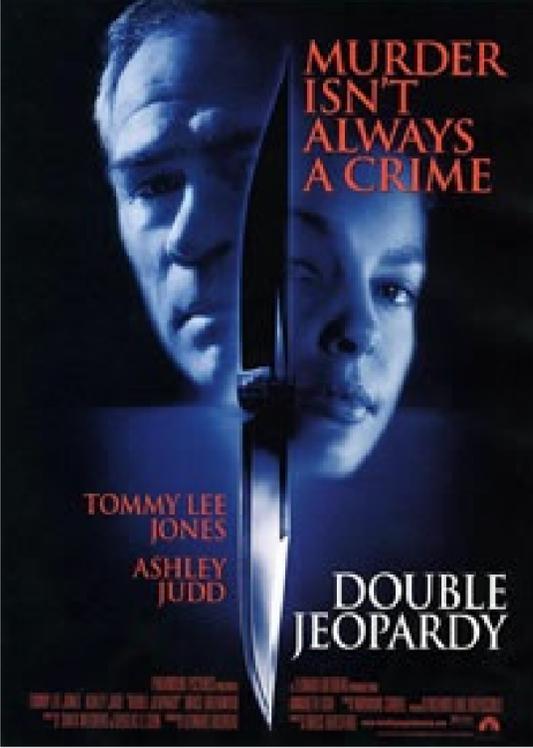
DOUBLE JEOPARDY



What does the South African Law say about Double Jeopardy?

Mention the words 'Double Jeopardy', and it's safe to assume that the highly successful movie of that name would come to mind.

The 1999 film starred Ashley Judd as a woman convicted of her husband's murder, although no body was recovered. She is sent to prison, where she befriended women who were used to the 'system'. She discovered her husband had framed her and broke her parole to find him, with her parole officer hot on her heels. As the film climaxes, the husband tries to kill her and the parole officer, but ends up being killed by his wife. As she had been convicted of 'killing' him before, she couldn't be tried again for the same offense, as per the Double Jeopardy clause of the Fifth Amendment of the United States Constitution. The four essential protections included are prohibitions against, for the same offense: retrial after an acquittal; retrial after a conviction; retrial after certain mistrials; and multiple punishment. (Source: Wikipedia)



South African Labour Law:

In South African Labour Law the concept is the same, where an employee cannot be punished twice for the same offence should that employee already have received punishment. Also if the employee has been found innocent during a disciplinary enquiry and acquitted, a second disciplinary enquiry may not be held for the same offence.

However, as with many labour laws and cases, nothing is 'absolute' and Double Jeopardy is no different.

It's interesting to note a common misconception amongst South African employers who believe that the 'no work, no pay' approach is illegal and is covered by the Double Jeopardy concept in the case of the employee. It isn't, and – particularly if a warning has already been given regarding unauthorised leave of absence – withholding monies from an employee is perfectly legal. The employee is supposed to work to be paid.

Further examples are where the employer may overturn the decisions* of a disciplinary enquiry that unduly favoured the employee, although further action after a fully-constituted disciplinary hearing has been held is the exception rather than the norm.

** If the employer has the "right of review" in its disciplinary procedure.*

The 'exceptions to the rule' can cover issues such as: a supervisor giving an employee a mild punishment for a misdemeanour that the employer feels should deserve a harsher, more suitable punishment (Branford v Metrorail); an employee covers up an original misdemeanour – on which judgement was made - with another misdemeanour (Mahlakoane v South African Revenue Service) or when all the evidence was not taken into account in the first hearing (Clencor (Pty) Ltd v Mngezana NO and others); or an employee is given a warning at a hearing for a misdemeanour that is considered a case for dismissal, the clause of which is in the employee's contract and the company has previously dismissed employees for the same offence – in this case, the distribution of pornography using the company's computers (Shaun Samson v CCMA, Almeiro Deyzel and Toyota Motors (Pty) Ltd.).

The advice given by the labour experts at GEO seems basic, but is vital to any employer wanting a fair punishment meted out to an employee.

- Get ALL the facts of the case 'on the table'; research as much as possible to avoid surprises
- Ensure the Chairpersons handling the initial (and hopefully, final!) disciplinary hearing are experienced with contactable references and
- Use the expertise of GEO to ensure you are not caught in the Double Jeopardy trap.

Regards
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Summary

A common misconception amongst South African employers who believe that the 'no work, no pay' approach is illegal.

GEO Advice



The advice given by the labour experts at GEO seems basic, but is vital to any employer wanting a fair punishment meted out to an employee.



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Ensure the Chairpersons handling the initial (and hopefully, final!) disciplinary hearing are experienced with contactable references and;



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