

26 August 2008

Professor John van den Berg
School of Mathematical Sciences (PMB)
Science Block F12
Pietermaritzburg Campus



BY HAND

Dear Professor van den Berg

RE: NOTICE OF DISCIPLINARY HEARING

You are hereby given notice of a disciplinary hearing to be convened as follows:

Time: 09:00

Date: 4 September 2008

Venue: Labour Relations Board Room, Vice-Chancellor's House, Westville Campus

The purpose of the hearing is to conduct a disciplinary enquiry into the following allegations of misconduct against you.

It is alleged that:-

1. in your capacity as associate professor and lecturer in the Department of Mathematical Sciences at the University of KwaZulu-Natal and as a member of the University Senate; and

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■ Medical School

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■ Westville

2. despite the CONDITIONS OF SERVICE of the University of KwaZulu-Natal, which are applicable to all permanent staff members both academic and support, and which conditions of service were made applicable from 18 February 2006; and
3. despite the disciplinary code of the University providing for misconduct as a ground for termination of service and dismissal; and
4. despite the disciplinary code defining misconduct to include:-
 - 4.1 the failure to follow standing orders or procedures; and
 - 4.2 disclosure of confidential information; and
 - 4.3 dishonesty and/or gross negligence.
5. you have committed serious acts of misconduct in terms of *Annexure A* of the University's Disciplinary Code, in that you have:
6. **failed to follow standing orders or procedures**, by:-

not exercising due care in communicating with the media and, in so doing, have brought the University, the Office of the Vice-Chancellor, and the reputation of the Vice-Chancellor into disrepute with the publication of the following media articles despite the standing order laid down by the Senate at the Senate meeting of 2 August 2006, wherein it was resolved that members of Senate shall exercise due care when communicating with the media so as not to bring the University into disrepute:-

“Van den Berg... told The Witness his main concern was not the personal attacks against him, but that the attacks were ‘meant for others’ ears’. Nobody is now going to criticise his [Makgoba’s] actions for fear of facing disciplinary procedure. And no-one did. You can’t have free debate preceded by that kind of talk, he said”.

“Van den Berg, who was interviewed by Bengu on Tuesday, said: The vice-chancellor’s explanation of the impasse was that senate had made conflicting statements about what it wanted to have done with the faculty submissions on academic freedom... these decisions were not in conflict with one another – the decision of the October meeting merely qualified that of the August meeting. But even if one accepts the vice-chancellor’s interpretation of events, surely the easiest and most transparent way of resolving the impasse would have been for the vice-chancellor to have put the following question to senate: what does senate wish to do with this document? Does senate wish to see the document first and comment on it before sending it to the steering subcommittee or would senate prefer that it be sent directly to the academic steering subcommittee? A simple show of hands would have settled the matter. Surely senate does not need to appoint a special commission to try to uncover what it is that senate wants? We just say what we want.”

M&G Higher Learning – March 2008, vol. 24 no. 11

“Associate Professor John van den Berg from the faculty of science and agriculture said that a senate meeting last year proposed that faculties be invited to make submissions on academic freedom and that these serve

before the senate for discussion. 'The faculty of science and agriculture prepared such a submission. It subsequently tried through its representatives on senate and repeatedly over a period of several months, to get its submission placed on the senate agenda. These attempts have, however, met with no success.' He said that each attempt had been blocked by the chairperson of the senate, vice-chancellor Professor Malegapuru Makgoba. 'When pressed to give reason for his actions, the vice-chancellor said the science and agriculture submission on academic freedom was self-serving and contributed nothing to the debate.'"

"Van den Berg said that while he was unaffected by Makgoba's attempts to intimidate him, he was concerned that this behaviour would prevent members of the senate from speaking out on issues. 'Others will worry now that if they contradict him they will be threatened with disciplinary action.'"

7. **disclosed confidential information**, by:-

- 7.1 making public statements to the press which included confidential content and deliberations of Senate meetings and which statements were then published in certain media articles of which extracts are detailed below:-

Mail & Guardian online – 15 April 2008

"Van den Berg said: The intention has never been that the submissions not go to the academic steering subcommittee, but rather that they first serve

before senate, thus affording senators the opportunity to comment on their content.”

“Van den Berg, who was interviewed by Bengu on Tuesday, said: The vice-chancellor’s explanation of the impasse was that senate had made conflicting statements about what it wanted to have done with the faculty submissions on academic freedom... these decisions were not in conflict with one another – the decision of the October meeting merely qualified that of the August meeting. But even if one accepts the vice-chancellor’s interpretation of events, surely the easiest and most transparent way of resolving the impasse would have been for the vice-chancellor to have put the following question to senate: what does senate wish to do with this document? Does senate wish to see the document first and comment on it before sending it to the steering subcommittee or would senate prefer that it be sent directly to the academic steering subcommittee? A simple show of hands would have settled the matter. Surely senate does not need to appoint a special commission to try to uncover what it is that senate wants? We just say what we want.”

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however, met with no success.’ He said that each attempt had been blocked by the chairperson of the senate, vice-chancellor Professor Malegapuru Makgoba. ‘When pressed to give reason for his actions, the vice-chancellor said the science and agriculture submission on academic freedom was self-serving and contributed nothing to the debate.’”

“Van den Berg said that from the end of last year ‘senate itself has not been passive and has sought to resolve the impasse by passing several resolutions calling for the immediate inclusion of the science and agriculture submission on the senate agenda.’ He said that at a senate meeting two weeks ago, ‘I was accused of racism and fermenting racial discord for tabling resolutions demanding that the chairman of senate comply with senate resolutions. I was called arrogant and accused of having appropriated for myself the authority of the chairman of senate (this because I sent the vice-chancellor a copy of the statement that I read out at the senate meeting on November 14 which he was unable to attend – I did so because I thought it proper that he gain sight of this statement and not have to hear reports of it second hand).

I was told that as a junior academic I had no right to communicate with a person of his standing in this manner. I was told that I was a coward and that my comments had defamed him and that disciplinary action would now be taken against me. He suggested that I was one of a group of academics that did no research. Actually my research productivity hasn’t been too bad recently – three papers in 2007. But what’s this got to do with the issue at hand?”

“Van den Berg said the vice-chancellor had defended his actions, claiming that agreement had been reached that the submissions on academic freedom be considered by the academic steering subcommittee of the senate. ‘The intention has never been that the submissions not go to the academic steering subcommittee, but rather that they first serve before senate, thus affording senators the opportunity to comment on their content.’”

- 7.2 posting written statements on an internet website, titled “Change@UKZN”, which includes confidential content and deliberations of Senate meetings as the following extracts from two postings demonstrate:-

“Crisis in Senate” John van den Berg – February 22, 2008

“When pressed to give a reason for his actions, the Vice-Chancellor stated that the Science and Agriculture submission on Academic Freedom was ‘self-serving’ and ‘contributed nothing to the debate.’”

“The most recent of these resolutions, passed by an overwhelming majority at the last meeting of senate on 14 November reads: ‘Senate demands that the Vice-Chancellor undertakes to comply with the aforementioned Senate decision and to accept the Faculty of Science and Agriculture submission on Academic Freedom for inclusion on the agenda for the next scheduled meeting of Senate.’”

“Regrettably it appears that these utterly unambiguous instructions have fallen once again on deaf ears, for I have just received the agenda for the

meeting of Senate on 27 February and notice that it still does not contain the Science and Agriculture submission on Academic Freedom.”

“The repeated refusal of the Vice-Chancellor to comply with legal Senate resolutions is, in my view, a most serious transgression and it is this that has now become the central issue.”

“I have attached to this email two documents. The first is a copy of a document that I read out at Senate.... The second document is the one line at the centre of this controversy, the Faculty of Science and Agriculture submission on Academic Freedom. You will see that it is hardly controversial and thus hard to comprehend why it has elicited the response that it has.”

“Crisis in Senate Battle Lost” John van den Berg February 29, 2008

“I was called arrogant and accused of having appropriated for myself the authority of the chairman of Senate (this because I sent the Vice-Chancellor a copy of the statement that I read out at the Senate meeting on 14 November which he was unable to attend... I was told that as a junior academic I had no right to communicate with a person of his standing in this manner.”

“So what then did I say at the meeting? I made an impassioned plea to Senators stating that they (the Senators) had passed two clear and utterly unambiguous resolutions demanding that the Vice-Chancellor accept a certain document for inclusion on the Senate agenda and that he had chosen not to comply with these resolutions.”

“Are we some sort of academic advisory committee that makes recommendations that the Vice-Chancellor can choose to ignore. Should the decisions of Senate be subject to an executive veto or are we a body with real authority that makes final decisions on matter that are within our ambit.”

“I then proposed a motion censoring the Vice-Chancellor for his repeated refusal to comply with resolutions of senate.”

8. acted dishonestly and/or grossly negligently by alleging that the Vice-Chancellor was not entitled to keep the item “*academic freedom*” off the Senate agenda in circumstances where he was entitled to do so having regard to the quorate resolution of the Senate meeting of 1st August 2007 in terms of which it had been resolved that all faculty submissions on “*academic freedom*” would first serve before the Academic Steering Committee before serving at Senate. Your dishonest and/or gross negligence is evident from the quotations cited under charges 6 and 7 above when considered against the fact that:-

You knew that the only quorate decision of Senate which was binding on the Vice-Chancellor was that of 1st August 2007 in terms of which faculty submissions were to serve before the Academic Steering Committee.

You ought alternatively to have been so aware when by the exercise of reasonable diligence and care a reasonable person of your position and standing at the University would have made the necessary enquiries to establish the correctness thereof.

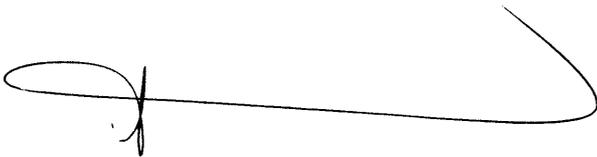
Please note that these allegations against you are serious and may result in your dismissal if proved.

At the hearing you will be given an opportunity to state your case in response to the allegations. You are also entitled to the assistance of a fellow employee (which includes a Union Representative) at the hearing or to be legally represented. This will be a closed hearing, not open to members of the University or the public at large.

We have appointed and authorised an independent person to chair the hearing, namely, Advocate Dumisa Ntsebeza SC. Advocate Omar Moosa SC has been appointed to prosecute the matter.

If you do not attend the hearing it may proceed in your absence.

Yours sincerely

A handwritten signature in black ink, consisting of a large, sweeping loop followed by a horizontal line that ends in a small upward curve.

PAUL FINDEN