

The effectiveness of disciplinary action within a state owned entity

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Abstract

Disciplinary action is used within an organisation to remedy undesirable workplace behaviour and to redirect employee effort towards the achievement of organisational goals. However, to achieve this goal, principles of substantive and procedural fairness must be adhered to when implementing disciplinary action against any employee. The objective of this paper was to explore whether the state owned entity under study took into consideration the substantive and procedural elements in the application of its disciplinary action and how employees perceived these principles. To attain this objective, a qualitative research design was adopted in which semi-structured interviews were conducted with research participants. A total of 10 research participants, from every level of the organisation participated in the study. Results of the study demonstrated that research participants perceived disciplinary action to be in accordance with a fair procedure, but not always for a fair reason. It is recommended that the organisation under study adheres to the principles of substantive and procedural fairness at all times, that the disciplinary policy is reviewed, benchmarked and adhered to, that the human resources department plays a greater role in administering disciplinary action and that expenditure is minimised at external dispute resolution bodies.

Keywords: Effectiveness, disciplinary action, substantive fairness, procedural fairness.

Introduction and Background

Discipline is an important element within any society, as it creates order and systems of rules that govern how individuals behave and act within a certain environment. Within an organisational context, discipline is used to correct undesirable workplace behaviour and channel employees' efforts towards the achievement of organisational goals in the workplace. Workplace discipline can, therefore, be conceptualised as direct, policy processes with which leaders' correct employees' behaviours through the implementation of transparent procedures (Jones & Saundry, 2012). As Grogan (2009) states that, in its essence, disciplinary action is designed to remedy adverse workplace behaviours and to provide structure within employment relationships. Disciplinary action is also taken in situations where employee productivity does not meet the performance standards related to a job (Daniels, 2006). However, for disciplinary action to be effective, it needs to satisfy two elements of fairness within South African labour law. These elements refer to substantive and procedural fairness. To ensure that these principles are adhered to, organisations employ experts within their human resource management department to ensure that workplace discipline is dispensed with in the correct manner. Grogan (2009) states that workplace discipline is considered to be a primary duty of human resource professionals, as they are expected to educate leaders on ethical decision-making, especially when administering discipline on employees. Van Rensburg, Basson and Carrim (2011) state that employee discipline is an area of human resources management that involves expert knowledge on the subject, thus establishing a duty on human resource professionals to ensure that workplace discipline is implemented according to fair principles. The current role of human resource professionals within the disciplinary process in the organisation under investigation has often been queried. At times, allegations of incompetence amongst HR staff is raised and a number of internal disciplinary outcomes are often challenged at external dispute resolution structures such as the Commission for Conciliation, Mediation and Arbitration (CCMA) as well as the Labour Court. The above scenario has led to a possible lack of faith in the HR department and its employees, with the effectiveness of disciplinary action losing its value proposition to the organisation. The observance of principles of

fairness in relation to disciplinary action form the underlying basis for conducting this research, as these principles are inherent employment rights bestowed upon every employee within the workplace. Should these rights be violated or infringed upon, the root causes of these need to be highlighted and remedied within the organisation under study.

Problem statement, research question and objective

Principles of fairness are vital employee rights within South African labour law and it is the responsibility of HR staff to ensure that these rights are protected and preserved in the workplace. Although the organisation under investigation has a fully established and equipped HR department, the competence of these individuals and their knowledge on employment law is often questioned. Employees therefore hold a view that disciplinary panels, including HR representatives within those panels, are ill-equipped to ensure that employee rights are not violated during disciplinary hearings. With this negative view towards fairness and employee rights in relation to disciplinary hearings, the mechanism of disciplinary action could lose its legitimacy and lead to the escalation of undesirable workplace behaviours within the organisation.

Research question

In light of the research problem, the study investigates the following research question:

- Does the state owned entity comply with the substantive and procedural elements in the application of its disciplinary action?

Research objective

The primary objective of the study is:

- To establish whether substantive and procedural elements are complied with in the application of disciplinary action within the state-owned entity.

Literature Review

Disciplinary action must ideally be used to correct unwanted workplace behaviours within an organisation, and not as a means for punishing employees (Bendix, 2010). In instances where disciplinary

measures are however implemented as a form of punishment, the consequences that stem from it can lead to a proliferation of the unwanted behaviour on the part of employees. This view is supported by Daniels, (2006) who mentions that the consequences of punishment are usually short-lived, resulting in only a brief discouragement of the undesirable actions rather than removing it. The implementation of disciplinary action as punishment could further possibly produce feelings of anger and bitterness within an organisation. Should these ill-feelings not be correctly addressed, it might also negatively affect morale and motivational levels within the workplace (Robbin, Odendaal & Roodt, 2003). Bendix (2010) states that effective disciplinary processes ensure that disciplinary action is implemented in an orderly manner and according to a fair procedure. Further, a sound and fair procedure also ensures that employees within the workplace are treated similarly, thereby delivering consistency in the application of disciplinary action (Du Plessis & Fouche, 2006).

Discipline in the workplace

Grogan (2009) acknowledges that the interaction between employer and employees is a reciprocal, yet delicate relationship within the workplace. This is because employees provide their labour to employers in return for remuneration and other organisational benefits, while the employer utilises this labour for economic and competitive purposes. Islam, Khan, Ahmad and Ahmed (2012) state that organisations today compete on a global stage, with each organisation attempting to gain a competitive advantage over its rivals.

In order to achieve this objective, organisations utilise discipline to maintain order and ensure that policies and processes are adhered to. Mathis, Jackson and Valentine (2014) define discipline as a form of training which upholds rules within an organisation. Certo (2006) defines discipline as steps undertaken by management to avoid employees breaking any workplace rules. The theme which is common among both definitions is the need to uphold organisational rules, as a manner to provide structure and order within the workplace. Without this, employees would have no direction to channel their energies towards the achievement of organisational goals and no form of accountability would exist (Bendix, 2010). Cole (2004) explains that clarifying work processes, rules of the organisation and corporate procedures are an important aspect of the employment relationship. This ensures that employees are aware of what is expected of them, and can therefore adjust their behaviour to these standards (Grogan, 2009). Where, however, this is not forthcoming, managers as organisational leaders have a duty to restore order and correct the behaviour of employees. In correcting this behaviour, Certo (2006) states that a supervisor must differentiate between punishment and discipline. Certo (2006) explains that punishment is an undesirable consequence in response to undesirable behaviour, while discipline is a teaching process; correcting the behaviour of employees and explaining the importance and consequences of that behaviour. In correcting this behaviour, Camen, Croucher, and Leigh (2008) mention two options available to managers; the formal disciplinary approach, as well as the progressive disciplinary approach. The formal disciplinary approach is one where serious acts of misconduct are committed, and a disciplinary hearing and panel are constituted (Bendix, 2010). On the other hand, progressive discipline is an informal approach which takes the form of verbal and/or written warnings for less serious offences, where a disciplinary hearing would not be needed (Grogan, 2009). Both these

approaches would be guided by the disciplinary code and policy in existence within organisations.

The role of the disciplinary panel in the disciplinary process

In modern employment relations, disciplinary action is viewed as a corrective measure rather than as a punitive one (Grogan, 2009). Within the South African context, organisations utilise disciplinary panels to achieve this objective, and to ensure that the employee's behaviour is either corrected, or that the employee exits the workplace in serious misconduct cases (du Plessis & Fouche, 2006).

van Niekerk, Christianson, McGregor, Smit and van Eck (2012) outline that the disciplinary panel usually consists of; a chairperson, who presides over the hearing and makes a finding; an initiator, who leads the misconduct charges on behalf of the employer; and an HR representative, who guides the process and assists the chairperson in reaching a verdict. Bendix (2010) proposes that the disciplinary panel is an effective method for any organisation, but only if the chairperson is neutral and objective in the process. Finnemore (2006) agrees that a hearing should be chaired by an individual who is not or has not been involved in the dispute, having no prior knowledge of any allegations against the employee. Burke and Cooper (2008), further substantiate this by proclaiming that chairpersons' should set aside their personal feelings and bias, and treat both parties in a respectful and fair manner. Bendix (2010) argues that as much as this can be done by a chairperson, senior management could at times become involved in the verdicts that are delivered by the disciplinary panel and may even motivate for a harsher sanction, if a personal agenda is involved in the disciplinary action. This compromises the integrity of the process, while the disciplinary panel may feel helpless with instructions coming from the top (van Niekerk et al., 2012). In *SA Revenue Service V CCMA & others (2014)* the accused employee pleaded guilty to the offence, and the chairperson suspended the employee without pay for two weeks and gave him a final written warning. Management regarded the sanction as inadequate and summarily dismissed the employee. When the employee referred the case as an unfair dismissal dispute to the CCMA, it ruled in his favour and viewed management's interference in the disciplinary hearing as unfair.

The above case proves how costly senior management's actions can be viewed if it is driven by a personal agenda, and not one of correcting behaviour. du Plessis and Fouche (2006), therefore, advocate for the importance of an objective disciplinary panel to ensure that an organisation complies with its disciplinary procedures and practices.

The role of the trade union representative in the disciplinary process

Trade union representatives play an important role within South African workplaces, especially with the background of inequalities and past segregations (van Niekerk et al., 2012) Finnemore (2006) defines a trade union representative as an elected employee mandated with protecting employees' rights, whilst promoting fair labour practices in the workplace.

Within disciplinary hearings, these representatives also play a defining role, as they could be requested to represent employees who are members of their union (Bendix, 2010). The union representative would then be tasked with defending the case of the accused employee, monitoring the fairness of the process while also examining witnesses and cross examining management's witnesses (van Niekerk et al., 2012). Rendell (2000) defines the process of examining witnesses as a method

of relating a story and its authenticity through the verbal evidence of others, while cross-examining is a technique of challenging the evidence of others by casting doubt on it. Grogan (2009) suggests that these two techniques could assist the accused employee's case, while attempting to uncover the true nature of the allegations. Finnemore (2006) claims that having a union representative present adds substance to a disciplinary hearing, while protecting the employee's rights, as set out in the Code of Good Practice: Dismissal, as articulated in the Labour Relations Act 66 of 1995. The union representative further protects the employee from an unprocedural hearing, while assisting lower level employees who may not be conversant with employment relations and disciplinary practices in the workplace (Burke & Cooper, 2008).

Given South Africa's troubled and exploitative past, trade unions and its representatives are a key instrument in protecting employees' rights and interests (du Plessis & Fouche, 2006). Bendix (2010) further adds that they ensure that management comply with their disciplinary codes and procedures, and that no employee is subjected to an unfair and inconsistent disciplinary hearing in the workplace.

Substantive fairness

du Plessis and Fouche (2006), define substantive fairness as "a valid and lawful reason that will justify dismissal, and lawful in accordance with common law, statute law, a collective agreement or the contract of employment" (p. 271). Burke and Cooper (2008), mention that a valid reason for dismissal may not always be fair. A fair reason implies that, under the circumstances, dismissal was the only suitable sanction, and no other alternatives could be considered.

Grogan (2009) explains that under item 7 of the Code of Good Practice: Dismissal, the following criterion is assessed to measure substantive fairness:

- Whether or not the employee was aware of the work rule that he/she contravened;
- Is there a transparent reason for the disciplinary action?
- Is the employee's treatment consistent with the treatment of other employees who contravened the same or equal offence?
- Was there a consideration of special circumstances before the imposition of a sanction?
- Was there sufficient evidence of misconduct? and
- Was the sanction appropriate for the misconduct committed.

du Plessis and Fouche (2006), declare that an employer is expected to act consistently in the implementation of disciplinary rules, without being too rigid or inflexible. This will ensure that the employer observes the rules of natural justice whilst adhering to the substantive fairness requirements within South African labour legislation (Bendix, 2010).

Procedural fairness

Adams (2007) defines procedural fairness as the adoption of an objective procedure during a disciplinary hearing. This entails an employee facing dismissal and being afforded an opportunity to state his/her case in response to an allegation of misconduct, incapacity or poor work performance (van Niekerk et al., 2012).

In *Ngubeni v National Youth Development Agency & another*, it was indicated that procedural fairness can be incorporated as an element in a contract of employment. In *Twala v ABC Shoe Store*, the Industrial Court declared that to ensure a fair procedure in relation to disciplinary hearings, the rules of natural justice must be observed. These two cases indicate the importance of the audi alteram partem rule, where both

sides should be heard (Bendix, 2010). Grogan (2009) advocates that for a disciplinary hearing to be held as being procedurally fair, the following elements must be present:

- The employee should be aware of the nature of the offence committed;
- The employee must be given sufficient time to prepare for the disciplinary hearing;
- The employee must be provided with an opportunity to state his/her case;
- The employee's right to representation must be allowed;
- The employee should be informed of the reasons for a disciplinary sanction in writing; and
- The employee must be notified of his/her rights, such as the right to call witnesses, right to an interpreter and the like.

Bendix (2010) explains that where a company's policy allows for an appeal process, this should be outlined to the employee to ensure that all internal processes are exhausted in order to find a resolution to the situation. Where an organisation adheres to the principles of procedural fairness, this indicates the employer's commitment to a fair process and may increase the employee's acceptance or not of the final sanction which is imposed while reducing the risk of compensation payments, where an unfair dismissal dispute is lodged at external forums (Finnemore, 2006).

Existing disciplinary policy within the case organisation

The organisation under study has an existing disciplinary policy, called the disciplinary code of conduct and grievance procedure. The document has been effective as of August 2002 and serves to ensure the maintenance of discipline in the workplace to ensure that the organisation achieves its objectives. The policy document is reviewed every two years by the human resource department in consultation with trade unions.

The disciplinary policy of the organisation has a number of objectives, one of which is to ensure the correct, fair, consistent and procedurally acceptable application of discipline to employees at all levels of the organisation. This objective forms the premise of this research study, as it may seem that the principles of substantive and procedural fairness are not being fairly and consistently applied to all employees at all levels of the organisation. The policy also makes provision for the application of progressive discipline, through the use of verbal and written warnings before a harsh sanction is imposed on any employee. The policy further outlines the various categories of misconduct and the appropriate sanctions which may stem from it where an employee is found guilty of the said misconduct. Lastly, the organisation's grievance process and procedure is outlined.

The policy described above and its implementation forms the basis for this study, as its applicability to employees within the case organisation will be explored.

Research Method

A qualitative research design was used in an effort to explore perceptions held by employees on the effectiveness of disciplinary action within the state owned entity. In addition, semi-structured interviews were carried out to collect data supported by observation and field notes. With this method, research can be conducted within a natural environment, which allows face-to-face interaction to take place with research participants. The primary purpose for using a qualitative

approach was to obtain an in-depth or greater understanding about research participants' perceptions of disciplinary action within the organisation under study. Babbie and Mouton (2001) suggest that qualitative research centres on the exploration of phenomena over time as a process, which attains importance as theories aligned to management often develop over time. In addition, qualitative research is inherently inductive, frequently resulting in the development of new theories and hypotheses (Babbie & Mouton, 2001). An interview guide was developed to extract responses from research participants on the subject matter of this research (See Table 1 below):

The research sought to explore perceptions held by participants within the employ of the state owned entity, situated in Johannesburg, Gauteng Province, South Africa. The study consisted of a sample of ten research participants, inclusive of top management employees, middle management, junior management, trade union representatives as well as employees who have experienced disciplinary action in the past. All these individuals have therefore played a role in the organisation's disciplinary processes, either as chairpersons, initiators, investigators,

panel members or charged employees. This diverse sample would offer a rich source of data from every perspective of the organisation under investigation on its disciplinary processes and how they are applied. Table 2 below provides a profile of research participants within the study:

Data analysis and discussion of findings

This section of the study relates to the data analysis, which supports the interpretation of frequency and ranking of emergent themes that emanated from the data as provided by research participants, in respect of their perceptions about disciplinary action within the case organisation (See Table 3 below):

The state owned entity's compliance with the substantive and procedural elements in the application of disciplinary measures

With regards to the above, RP1 remarked: *"When there is an allegation of misconduct, the line managers can approach the implementation of this in two ways. One is if they've got sufficient*

Table 1. Interview guide questions

1. Does the state owned entity comply with the substantive and procedural elements in the application of its disciplinary measures?											
1.1. What are the procedures followed by line managers when instituting disciplinary action against employees?											
1.2. What is your opinion on the objectivity and professionalism displayed by members of the disciplinary panel during a disciplinary hearing?											
1.3. What is your perspective on the fairness and validity of disciplinary hearing outcomes?											

Source: Author's Fieldwork (2016)

Table 2. Profile of research participants within the study

Research participant	RP1	RP2	RP3	RP4	RP5	RP6	RP7	RP8	RP9	RP10	TOTAL
	M	F	M	M	M	M	F	F	M	M	10 Research participants: 7 Males 3 Females
Age	41	33	37	37	43	46	49	34	55	36	41 average age of research participants
Organisational level	Middle manager	Junior manager	Middle manager	Senior administrator	Administrator	Supervisor	Top management	Junior manager	Specialist manager	Top management	Top Mgt 2 Middle Mgt 3 Junior Mgt 2 Supervisor 1 Administrators: 2
Tenure	6	8	7	14	9	18	11	8	26	3	11 average years of service in case organisation
Highest level of education	Master's degree	Diploma	Degree	Master's degree	Matric	Diploma	Degree	Honours	Honours	MBA	Masters/MBA: 3 Honours 2 Degree 2 Diploma 2 Matric 1
Union affiliated	Y	Y	N	N	Y	Y	N	N	N	Y	Yes : 5 No : 5

Source: Author's Fieldwork (2016)

Table 3. Frequency and ranking of emergent themes for substantive and procedural elements

Emergent themes	Frequency	Total
Nature of misconduct	xxxxx	5
Communication with HR	Xxxx	4
Opportunity to state case	Xxxx	4
Motivation to discipline	Xxx	3
Procedural fairness	Xxx	3
Competency of DC panel	Xxx	3
Allegation of misconduct	Xxx	3
Investigation into misconduct	Xx	2
Unethical conduct by certain chairpersons	Xx	2
Convening a DC panel	X	1
Charge sheet formulated	X	1

Source: Author's fieldwork

evidence; they can there and then set up a disciplinary panel so that it can rule on the disciplinary hearing (DC). The other alternative is where there is a need for an investigation, is for line managers to approach either the internal forensic investigators or alternatively an external one, for them to conduct an investigation and then produce a report".

"Obviously management will receive, considering my line of work, they will receive facts about a particular misconduct and with proper recommendations after an internal investigation is conducted and therefore management will then be asked to, or a recommendation will be issued to discipline a particular employee". (RP3).

RP4 added: "If a line manager wants to discipline one of the individuals, he/she must first have to look at the validity or the transgression of the act of the person to see whether there is a case or not. If you take now for example, insubordination. You can't just shout insubordination if you do not have any infraction committed by the employee or a failure by the employee to carry out a lawful and reasonable task requested by the employer".

It is apparent from the above that management will usually consider the nature and severity of the alleged misconduct which the employee perpetrates before action is taken. This, as per the responses, takes place after an allegation has been investigated by management, or after a certain action by an employee has been brought to management's attention.

In terms of the procedure that is followed by line management once an allegation has been brought to light and investigated, a clear and sound procedure seems to exist. This is based on responses that were received from research participants as shown below:

"The line (manager) is expected by the delegation of authority framework to obtain permission from the head of the division or the business unit, authorising the line manager to continue with the disciplinary hearing. Once that permission has been obtained then the disciplinary hearing will then be implemented, in a sense that the line manager will then escalate the complaint to HR, who then has to facilitate the process going forward". (RP1).

"So then what happens is the manager consults with HR, HR gives advice and then they draw up a motivation request for a disciplinary action to be taken against the specific employee or the accused employee. The motivation being signed by the head of the department, receipt of proof and motivation of the disciplinary action to be taken against a certain or particular employee. Then from there we draw up a charge sheet in consultation with our labour relations for them just to go through to double check we actually do have a valid charge against the specific employee". (RP8).

Within this context, RP7 added: "For more serious offences which in my experience I have had as well is where it is necessary for the employee to be suspended. Officially there is a procedure around obviously the type of offence that warrants that. The process we follow there is obviously giving an intention to suspend the employee which allows him time to respond to that. Once they have responded, we review it and think about it to see if it is still necessary to suspend".

What emanates clearly from the above responses is that a detailed procedure is followed by management when they contemplate disciplining an employee, and this includes consultations with experts, including HR. As noted from RP7's response, a similar procedure also exists when an employee is suspended, as well as disciplined for serious misconduct. This seems to be a precautionary measure to allow for further investigations to take place before official disciplinary action is taken.

Similar to research participants 1, 7 and 8, RP3 stated the following: "In terms of the internal process, the line manager needs to submit a motivation, some form of a request to discipline to the higher authority to say we intend to discipline a particular person and then approval will be granted you know after interactions between themselves and the line manager as to the reasons behind it. And then my understanding will be that the next step here is to engage employee relations to facilitate the process".

"With help of employee relations and HR, normally HR you get advice, you put in writing allegations whatever, and you give the employee, ask them for reasons you know, what is their side of the story and in some cases if it is of a serious nature for reasons why they should not be suspended". (RP9).

As outlined above, RP9 concurs with RP7 that suspension, in addition to disciplinary action, would be required for serious acts of misconduct. In addition, the latter two research participants verified the procedure, where a motivation is written by the line manager, seeking permission from a higher authority to commence and officialise disciplinary action, to ensure its validity, as per the disciplinary policy and procedure.

Objectivity and professionalism displayed by members of the disciplinary panel during a disciplinary hearing

With regard to a follow up question, which relates to the professionalism and objectivity displayed by members of a disciplinary panel once disciplinary action commenced, RP7 responded as follows: "It is very important to act professionally to ensure there is no bias at all in terms of the process and it must be a fair and open process. One can't just based on one's evidence being presented and already making a conclusion on that. You have to be open minded in terms of listening to both sides of the case".

RP7's response supports the notion that it is important for both sides of the matter to be heard (*audi alteram partem* rule) before any decision can be made on the outcome of any matter.

In the same vein, RP8 stated: "The panel will be objective and they will not be biased towards the case that is being held. We normally make use of people outside of the department, who are not directly affected with the case and are not familiar with its merits; it can be the working environment or the person being charged who can make sure whatever objective panel will be put together".

"In my experience with interactions with the panel, because I most of the time lead evidence or provide evidence on matters that are investigated, the professionalism is of high note and I have never had any issues per se with the panel. I have always observed that the people who sit on those panels are of utmost professionals and they display that. I think that is my view, which is obviously supported by the fact that they understand that they are dealing with people's reputations, people's futures and you know careers". (RP3).

The common theme which emerged from the above responses was the competency and professionalism which are displayed by a disciplinary panel during proceedings. This theme may be linked to the fact that individuals who serve on those panels understand the procedure and the matters which are at stake during a disciplinary hearing.

However, RP1 brought the following to light: "It depends on who had made the request to discipline within the organisation, whether that person is in a position to influence the chairperson of the hearing. You cannot rule out that possibility. You have instances where the chairperson

would assume that because the complainant is from a particular unit, headed by a particular individual, therefore there is an expectation that he/she should return an outcome that is favourable to the line managers, thereby compromising the professionalism of that person and the objectivity. So yes, you may have a person who is experienced and competent but the environment and the circumstances maybe such that, that person is influenced in not seeing to it that he conducts the disciplinary hearing in a professional and objective manner”.

RP1 seems to hint that there are certain situations where the integrity of a disciplinary hearing could be compromised owing to the individuals involved in the matter. This would seem to be dependent on the ethical nature of those individuals, their relationship with line management, and their reason for instituting the disciplinary action.

Perspectives on the fairness and validity of disciplinary hearing outcomes

The research participants' experiences on valid and fair reasons for disciplinary action were explored next to elaborate on substantive fairness. Responses to this question are presented below:

“My view is that it is fair and it is also valid. The reason being that whatever outcomes is based on fact you know, it is based on firstly documentary evidence that is being provided and also based on testimonies and the fairness of it is also based on the fact that the other party who is being disciplined has been given the opportunity to you know, cross-question or cross-examine whatever witness has been brought to testify in that matter and they are given the opportunity to also question the documentation or evidence that is being presented and the findings are based on facts you know”. (RP3).

RP8 concurred that before any decision is made on a disciplinary matter, the facts and circumstances of the matter would have to be considered:

“We always look and take into consideration the circumstances surrounding the disciplinary matter. We always make sure that we get all the facts of the employee because that will also affect the severity of the transgression before you give a harsh sanction for lack of a better word”. (RP8).

With the above noted, RP7 brought some interesting remarks to the fore, which relate to fairness as an underlying element:

“In terms of my current employer, there were different experiences obviously. It was in terms of one particular case where I felt it wasn't fair because it was clear insensitivity of the sanction written by the Chairperson afterwards and management didn't take that into consideration. So I felt that was a bit unfair. But at the same time there was a different case chaired by a different Chairperson and a different panel where again there was unfairness”. (RP7).

RP7 touched on a concern, which was shared by RP1 in one of his previous statements, namely that of certain chairpersons in disciplinary cases not being ethical during disciplinary proceedings. This could result in certain disciplinary outcomes being rendered as unfair, with the affected employee having options that he/she can pursue in order to obtain a certain relief based on the disciplinary outcome.

All the responses, which have been outlined above represent the research participants' views on substantive and procedural elements that play a role in the application of disciplinary measures. A clear procedure is followed for disciplinary action, as articulated by all research participants, but the fairness of disciplinary action was questioned by some participants. In other words, an employee within the organisation may be disciplined according to a fair procedure, but not for a substantively fair reason.

The findings indicate that the state owned entity considers the nature of an employee's alleged misconduct before any disciplinary action is taken, to determine how the alleged misconduct has affected its business operations. It was also found that communication with the human resources (HR) department of the organisation under study follows, where the alleged misconduct and undesirable behaviour was analysed and a plan of action or procedure adopted on how to deal with the matter. The findings further revealed that within the disciplinary process adopted, the employee would be given the opportunity to state his/her case in response to the allegations levelled, which adhered to the *audi alteram partem* rule, where both sides of a case are heard. This would provide the accused employee with an opportunity to cross examine the witnesses of the employer, to interrogate any evidence that would be used against the employee and to call his/her own witnesses in defence of the allegations levelled. It can therefore be deduced from the findings that the case organisation observed the *audi alteram partem* rule in its disciplinary hearings, which is consistent with the constitution and our labour law of the country in that all employees are entitled to a fair hearing. The findings on the question of procedural fairness demonstrated that before a disciplinary hearing commenced, the line manager would write a motivation to discipline the affected employee based on the findings of an investigation and outlining the reasons why the manager deemed it important for that employee to go through the disciplinary process. During the interview process, participants highlighted that this motivation to discipline would be approved by a higher authority than that of the manager as demonstrated by the following quote, *“The line (manager) is expected by the delegation of authority framework to obtain permission from the head of the division or the business unit, authorising the line manager to continue with the disciplinary hearing”* (RP1). This process ensured that the correct procedure was followed and that the manager displayed fairness as a trait, which employees view as an important characteristic of any manager. This element of procedural fairness is critical in the institution of discipline, to ensure that the employer is guarded against any litigation claims related to procedural unfairness by an affected employee.

Findings revealed that once the line manager had observed the elements related to procedural fairness, he/she had to ensure that the competency of any potential disciplinary panel was of an effective nature. It can therefore be inferred that a fair and suitable sanction would stem from a disciplinary hearing, where all evidence would be weighed by the panel to determine the seriousness of the charge in relation to the alleged misconduct. The finding suggests that the alleged misconduct by an employee would be brought to the attention of the relevant line manager, where the source of the information would articulate the circumstances around the alleged misconduct and how it transpired. It was further found that the line manager would ensure that the alleged misconduct was investigated by relevant experts within the organisation, such as the internal audit department or alternatively, an external forensics audit firm. The finding revealed that after a matter had been investigated, and if a valid case was perceived to exist, a chairperson would be identified to rule on the disciplinary hearing. It was further found that the nature and severity of misconduct can be exaggerated under certain circumstances, leading to a dismissal for an offence which may not warrant dismissal, where the employee could pursue remedies for unfair dismissal at external dispute resolution bodies. Findings highlighted that once an objective and impartial chairperson had been identified, a disciplinary panel is normally convened to adjudicate on the disciplinary matter. This panel would consist of a chairperson as mentioned, an HR representative and another individual from an unrelated business unit. Further to this, it became apparent from the finding that the organisation would also

identify an initiator to lead evidence on its behalf, and this initiator would be responsible for obtaining a favourable sanction on behalf of the employer. Lastly, the findings revealed that after a disciplinary panel is convened, an employee would be handed a charge sheet with detailed allegations of misconduct and a date would be provided on when the disciplinary hearing would be held.

From the discussion outlined above, it is obvious that the organisation does follow a clear and fair procedure when implementing discipline within the workplace. This fulfilled the requirements of a fair hearing, as discipline needed to be applied according to an objective and rational procedure. Based on the above, the research objective, which dealt with understanding the existence of substantive and procedural elements in the application of disciplinary measures in a state owned entity has been achieved. Based on my personal experiences as an employee within the employment relations department of the state owned entity and also being involved in disciplinary cases as a panel member, it can be said that the state owned entity complies with the elements related to a fair procedure when disciplining an employee, however, discipline was not implemented for a substantively valid or fair reason at all times. This is affirmed by the information that emanated from the data collected and analysed from research participants. In other words, an employee may at times be disciplined for breaching a workplace rule or standard which does not exist, or for an unreasonable purpose.

Recommendations

Based on information received from research participants it has been established that a perception exists that disciplinary action within the case organisation is not always implemented for a fair reason. In an attempt to increase the legitimacy of disciplinary action, and to fully comply with the principles of substantive and procedural fairness, the following recommendations are suggested:

Thorough review of the disciplinary code and policy and benchmarking of best practices

The organisation should thoroughly review its current disciplinary code and policy in order to assess whether it is sufficient to achieve the objectives of disciplinary action in the workplace. This process must involve employees from the HR department, as well as officials and shop-stewards from the respective recognised trade unions within the workplace. Once the policy has been revised and improved, its implementation should be benchmarked against other state owned entities or leading organisations within the country. This will allow the organisation under investigation to adopt a "best practice" approach, where disciplinary action will be implemented consistently in a fair and rational manner.

Adherence to organisational policies and procedures and improved communication

Regardless of how sound or fair a disciplinary policy and process is, it will be rendered as being ineffective if it is not strictly adhered to within the organisation. Hence, in order to address this issue, line management within the organisation must respect and obey the disciplinary policy and process, and apply it when and where necessary in all instances without fear or favour. There is also a need for line management to improve its communication methods when contemplating disciplining an employee. This should allow the affected line manager to receive adequate advice on how to handle the matter with the respective employee, and a process should be enacted to resolve the matter in a fair and transparent manner. The affected employee's

trade union must also be communicated with throughout the process in order to allow them to consult with the employee and approach the matter in an amicable manner.

Increased respect for the HR function within the organisation

There is an urgent need for the HR function to play a more proactive and critical role within the organisation, especially in terms of the manner in which discipline is dispensed. More than this, HR professionals possess the knowledge and skills to effectively resolve conflict and manage discipline. Therefore, line management should engage the HR function before any discipline decision is taken. In short, once advice is received from the HR function, such advice should be accepted and respected, regardless of whether it serves the initial intentions or preferences of certain line managers.

Eliminating wasteful expenditure on disciplinary cases without merit

There is an urgent need for the organisation to avoid pursuing disciplinary matters that lack merit and fairness. Moreover, these are the type of cases where toxic leaders attempt by any means, to suspend or discipline an employee for personal and/or self-serving reasons, which result in hundreds of thousands of rands being spent on external lawyers, litigation fees and settlement agreements at external dispute resolution bodies. Instead, where a case has no merit, this should be communicated internally and the matter should be regarded as closed at that point, without any state funds being spent on consultations with private and associated law firms. This approach will be useful in cases where an employee has committed an honest mistake (in good faith), or where no intention of wilful wrongdoing is found on the part of the affected employee. This would negate the need to assemble disciplinary panels for each and every act of misconduct in the workplace, and save the organisation time and productivity, as potential panel members will perform their usual day to day duties instead of sitting in disciplinary hearings for days or weeks.

Conclusion

The articulation of the research problem alludes to the contention that principles of substantive and procedural fairness are not always precisely followed, which has the potential of affecting the legitimacy and integrity of disciplinary action. This had created perceptions of injustice among employees. It is therefore worthy to underline here that findings related to the study validate the research problem, where it was undeniably found that disciplinary action within the case organisation was unable to achieve its aims as a result of substantive fairness lacking in some disciplinary cases. Accordingly, the case organisation finds it difficult to defend some disciplinary cases at external dispute resolution bodies, resulting in reinstatements and settlements being reached at a cost to the organisation. This trend has led to the effectiveness of disciplinary action being questioned, as well as the relevance of the human resources department within the case organisation. Consequently, the organisation under study is encouraged to comply with the principles of substantive and procedural fairness fully, in addition to other recommendations suggested within this study. Once these are complied with, disciplinary action will regain its effectiveness in the eyes of employees and perceptions about the human resources department will become more favourable within the workplace.

References

1. Adams, J. (2007). *Managing people in organizations: Contemporary theory and practice*. Hampshire, NY: Palgrave Macmillan.

2. Babbie, E. & Mouton, J. (2001). The practice of social research. Cape Town, RSA: Oxford University Press.
3. Bendix S. (2010). Industrial Relations in South Africa. Cape Town: Juta & Co. Ltd.
4. Burke, R. J., & Cooper, C. L. (2008). Building more effective organisations: HR management and performance in practice. Cambridge, UK: Cambridge University Press.
5. Camen, M. M., Croucher, R., & Leigh, S. (2008). Human resource management: A case study approach. The Broadway, LON: Chartered Institute of Personnel and Development, CIPD House.
6. Certo, S. C. (2006). Supervision: Concepts and skill building. Boston, MA: McGraw-Hill International Edition.
7. Code of Good Practice: Dismissal in the Labour Relations Act 66 of 1995.
8. Cole, N. D. (2004). Gender Differences in Perceived Disciplinary Fairness. Oxford, UK: Blackwell Publishing Ltd.
9. Daniels, K. (2006). Employee Relations in an Organizational Context. London, UK: Chartered Institute of Personnel and Development.
10. Du Plessis, J.V., & Fouche, M.A. (2006). A practical guide to Labour Law, (6th edition). Durban, SA: Lexis Nexis.
11. Finnemore, M. (2006). Introduction to Labour Relations in South Africa, (9th edition). Durban, SA: LexisNexis Butterworths.
12. Grogan, J. (2009). Workplace Law. Cape Town: Juta & Co. Ltd.
13. Islam, T., Khan, S.U.R., Ahmad, U.N.U., & Ahmed, I. (2012). Does organisational commitment enhance the relationship between job involvement and in-role performance? *SA Journal of Human Resource Management*, 10(2), 1-9, doi: 10.4102/sajhrm.v10i2.460.
14. Jones, C., & Saundry, R. (2012). The practice of discipline: Evaluating the roles and relationship between managers and HR professionals. *Human Resource Management Journal*, 22 (3), 252-266.doi: 10.1111/j.178-8553.2011.00175x
15. Mathis, R. L., Jackson, J. H., & Valentine, S. R. (2014). Human resource management, 14th edition. Stamford, CT: Cengage Learning.
16. Ngubeni v National Youth Development Agency & another (201) 35 ILJ 1356(LC).
17. Rendel, M. (2000). Natural Justice and Disciplinary Cases in Britain and France. London, UK: Institute of Education
18. Robbin, S.P., Odendaal, A., & Roodt, G. (2003). Organisational Behaviour: Global and Southern African Perspective. Cape Town: Pearson Education South Africa.
19. SA Revenue Service V Commission for Conciliation, Mediation & Arbitration & Others (2014) 35 ILJ 656 (LAC).
20. The Labour Relations Act 66 of 1995.
21. Twala v ABC Shoe Store (1987) 8 ILJ 714 (IC).
22. van Niekerk, A., Christianson, M. A., McGregor, M., Smit, N., & van Eck, B. P. S. (2012). Law at work, second edition. Sandton, JHB: Lexis Nexis.
23. Van Rensburg, H., Basson, J., & Carrim, N. (2011). Human resource management as a profession in South Africa. *SA Journal of Human Resource Management*, 9(1), Art. #336, 15 pages.