

Disciplinary Proceedings in the Workplace: A Guide to Ensure Fairness and Transparency

It is imperative for every employee to behave appropriately in the workplace. Indeed, the employer expects standard behaviours to be observed by each and every member of his/her workforce.

However, occasions may arise where an issue develops between the employer and an employee or between fellow employees. Ideally, the employer should have in place a suitable and transparent disciplinary mechanism to ensure that all disputes arising at or in connection with work, be legitimately settled.

It has been recognised in case law, both local and foreign, that an employee must be allowed to make his case and to defend himself against the allegations brought against him by his employer.

There are a number of steps that an employer should consider taking in order to secure fair proceedings and this article shall be taking us through some cardinal rules to be observed to this effect:

- (a) The employee is entitled to know the nature of the charge/s against him in sufficient detail to enable him to prepare his case. Ideally, the charge should be given to him in writing and logically in a language that the employee understands well;
- (b) Any statement made by witnesses should be made available to the employee except in those cases where the employer considers it necessary to preserve the informant's anonymity. The requirement to preserve the informant's anonymity should not in any case prejudice the right to a fair hearing. In all cases, the employer has a duty to look into the allegations put forward by the informant and to investigate further into the veracity or otherwise thereof;
- (c) An employee should always be given an opportunity to state his case whatever the circumstances may be. He is entitled to plead that he did not do the alleged act or that mitigating circumstances relating to his case should be considered;

- (d) The employee should be informed of the right to appeal to a higher level of management who has not been previously involved in the decision or to an independent arbitrator. Therefore, essentially, the person who would have taken the decision to dismiss cannot be involved at appellate stage. The fact that the employee does not exercise this right of appeal does not in any way mean that he has prejudiced his subsequent right to file a case before the Industrial Tribunal for unfair dismissal, should he feel that he has been unfairly dismissed. If the initial procedure for dismissal is flawed, a refusal by the employer to permit an employee to appeal from the decision taken will render the dismissal unfair;
- (e) Where the disciplinary hearing is of such nature that it can lead to the imposition of a sanction, the employee very often invokes his right to be accompanied which right is interpreted as referring to either to an official of a trade union or to another employee. There is nothing at law which expressly provides for the right of an employee to be accompanied by a lawyer during a disciplinary hearing but there may be circumstances in which such right should be available to secure a fair procedure;
- (f) Warnings, whether verbal or written, also retain their importance as part of the disciplinary mechanism because the use thereof enables the employer to draw his employees' attention to unacceptable conduct while at the same time allowing the employee to improve or correct his faults before more drastic measures are taken.

If an employee feels that he wasn't given a chance to make his case or that the reason for his dismissal as explained in the disciplinary hearing is not sufficient or justifiable, the matter can be taken to the Industrial Tribunal. If the Tribunal feels that the termination was not justified, the employer can be ordered to pay compensation to the employee and, in certain cases, to reinstate the employee in his former post.