

# **DISCIPLINE AND GRIEVANCE ISSUES HOW TO MANAGE EFFECTIVELY**

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## **1..INTRODUCTION**

In the 1980's it was felt the Labour laws which in most cases existed since independence were over-protective, over-reactive, fragmented out-dated, irrelevant and have created "hurdles" in achieving the target of ensuring fair Labour practices. The emergence of globalization, liberalization and privatization had further brought new challenges in 1990 s which necessitated to reform Labour law in 2004. This reform of 2004 needed also to reform the mind set of the employer-employee community so that, they can improve the law effectively. What is important to note is that removing hurdles in law without removing hurdles in the mind set of the practioner of the law it can not achieve the goal or objective. The reform of 2004 among other, reform of the dispute resolution procedures both at work place and in Labour Tribunal was another important theme aimed to

**Stimulate and promote economic development and economic justice** as provided for under section 3(a) ELRA/6/2004. .

In modernizing Labour law to meet the challenges of the 21st century, the Labour law focused on the work-life balance and encouraged the family friends type of relationship between the capital and Labour or Capital and Capital or Labour and Labour. It is seen better to resolve the disputes within the enterprise itself because it encouraged and promote parties to keep locus of control over the outcomes with themselves and to take the responsibility for resolving their problems,

## **2. DISPUTE RESOLUTION AT THE WORKING PLACE**

It involves discussion between employee (s) or their representative(s) and management or its representative(s). It usually follows a series of steps laid down in an agreed procedure which may be part of a collective bargaining or code of conduct. It may progressively involve higher levels of management

and employees representative. It may include consultation, training, counseling, facilitation, negotiation, mediation, Arbitration, inquiry and collective bargaining

This is provided for under DISCIPLINARY AND GRIEVANCE PROCEDURE, page 66 to 82 of the Government Notice No. 42 of 2007. (Employment and Labour Relations code of Good practice Rule 2007 of 16th February 2007.

It is very important as the law do frequently be improved to reflect the changing environment such as political, legal, economic, technological, social and cultural also it is important for the interacting parties to be reformed their mind set so that they can understand and realize the changes in law and work on the changes effectively.

### 3. GRIEVANCES AND DISCIPLINE HANDLING

In the mind of the people has been of rare cases. It is important that reform must begin with the people so as to make proper reforms in law and practice.

*Employment contacts* entails reciprocal and mutual expectations and obligation of employees and employers. Employees expectations arising out of employment contract become employer's obligations and employers expectations become employee's obligations. An employee would feel aggrieved if his/her expectations were not fulfilled. An employer considers and employee to be indisciplined if his/her expectations about the employee, will not/can not be met.

### 4. MANAGING EMPLOYEE GRIEVANCES

Employment contract, are not fulfilled. Thus grievance and indiscipline are two sides of the same coin. The management has certain expectations from the employees in terms of standards of behavior and performance, code of conduct, and desirable actions/ behavior that are made known to the employees through formal/informal or written/verbal means.

Failure to meet these expectations or deviations from the laid down norms of behavior on the part of the employees leads to the problem of discipline. In such situation the employer or the management must initiate action to ensure

that employees behavior is in conformity with the expectations and sometimes the employee may be terminated even without adhering to prescribed disciplinary procedure(s)

The position was well illustrated in the case of LEVINA KASENENE & ANOTHER Vs. CHODAWU MAKAO MAKUU, Labour Revision No. 302 of 2010 (unreported) In this case the applicants (employees) of a registered trade union best known by its acronym, CHODAWU, had as one of their duties to collect and bank of monies received from members as union dues; on more than one occasion, each applicant had failed to deposit admitted in writing to the employment committee

(Kamati ya ajira) that they had not banked the money instead put it to their own use; they each agreed to have the missing amounts deducted from their salaries; and that conduct was repeated on another occasion; they put the collected monies to their own use and made a similar administration in writing. Following that, the employer did not call for disciplinary hearing proceedings (DHP) instead terminated their employment.

In the CMA, the arbitrator concluded that each applicant had been guilty of a serious misconduct more than once; that such misconduct was sufficient to make their termination fair and that in the circumstances of the case i.e. given the applicant's own admission the respondent properly dispensed with the usual termination procedures prescribed by section 37 (2) (c) of the Employment and Labour Relations Act 6 of 2004 read together with rule 13 (11) of the Employment

and Labour Relations (code of Good practice) Rules. GN 42/2007. That rule 13 (11) GN 42/2007 permits the employer to dispense with the procedures prescribed in the code in exceptional circumstances. The arbitrator conducted that it was not necessary to follow termination procedures where the applicants/employee had admitted to have committed the misconduct and accepted to take the missing money deducted from their salaries. The court confirmed the decision of the CMA by stating that; "The applicant's admission of the misconduct it was unnecessary to terminate them according to guidelines provided under the code".

The International Labour organization (ILO) classifies a grievance *as a complaint of one or more worker with respect to wages and allowances,*

*condition of work and interpretation of service conditions, covering such areas as overtime, leave, transfer, promotion, seniority, job assignment and termination of employment or service. Although the precise nature of grievance differ from one organization to another in general they tend to*

## 5. CAUSE OF GRIEVANCE

Follow under the following categories in most of Tanzanian organizations

- a) Promotion - Acting promotion - Seniority - Pay fixation
- b) Compensation - Increments
  - Payments - Working hours - Recovery of dues
- c) Amenities - Inequitable distribution - Entitlement - Medical benefits
- d) Service matters - Transfers - Continuity of service – Superannuation
- e) Disciplinary and Grievance action - Procedures - Punishment - Fines - Victimization
- f) Nature of job - Job allocation
- g) Condition of work - Safety - Health – Hazards
- h) Leave - Maternity.- Paternity - Sick - Compassionate - Trade activities.

**MEANING** Grievances are indicative of discontent and dissatisfaction among employees arising out of management practices and procedure. It forms a significant part of the upward communication flow in an organizations and, therefore, an important source of feedback to the management .

On the reactions that various managerial actions evoke among the employees. The grievances, even if biased or subjective, provide useful diagnosis data to the management to asses the health of the institution or the organization, to evaluate the impact of its policies and to initiate corrective actions whenever necessary. Even when dissatisfaction is expressed in overt terms, it is necessary for management to develop ways and means to identify the sources of dissatisfaction rather than allowing to take the form of expressed grievances By not initiating timely action even before the articulation of

grievance , on Institution a organization tend to loose the productive efforts of a discount employee.

This also can cause unnecessary costs like paying compensation, damages, defending unnecessary case with huge cost inform of money and time.

**The following steps are important to follow when dealing with grievances**

**a)** If an employee has a grievance which can not be resolved informally he should raise it in writing with a manager or supervisor unless it relates to the line manager in which case it should be raised with another manager.

**b)** A meeting should be held where the employee can explain his grievance and how can think it could be. Every effort should be made to attend. The employer should consider adjourning the meeting if anything raises it requires investigation. The employee is entitled by law to bring a companion to the meeting but must make a reasonable request to do so.

**c)** Once the meeting is concluded the employer should send a written decision to the employee without unreasonable delay. If the action are to be taken there should be specified.

**d)** The employer must inform the employee that he has a right to appeal the decision if he is not satisfied with it.

**e)** An appeal should be heard ideally at an agreed time and place and without delays and should be conducted, if possible by manager who has no previously been involved in the dispute.

**f)** If an employee submits a grievance during a disciplinary process it is for the employer to decide Whether to deal with both at the same time, or to suspend the disciplinary until the grievance has been fully investigated.

Having an informal or formal grievance procedure is necessary and one thing and proper condition for effective handling of grievances is another thing. Like many other formal mechanisms existing in an organization, the grievance procedure also tends to become procedural oriented rather than outcome oriented.

In other words, following laid down procedures rather than the speedy redressal of grievance tends to be primary concern. This causes delay which increase frustration among the employees, which in turn affects the productivity and also morale of employees. The social costs of delay in redressal of grievance are quite high, which are not appreciated by those responsible for making the procedure operationally efficiently and effective.

*The managerial approach to dealing effectively with employee's grievance can be stated as follows:* Immediate of action; The grievance or dissatisfaction of employees, must be recognized and settled immediately as and when they arise. The first line supervisors, therefore, need to be trained to handle a grievance or complaint properly.

If grievances are settled at the first stage itself, corrective action can be taken immediately and the Possible adverse effect an unsettled grievance on the employee's performance can be minimized and unnecessary compensation and cost can be avoided and allocated to the welfare of the capital and Labour as provided for under section 3 (a) ELRA/6/2004 In the case of COMMUNICATION TRANSPORT WORKERS UNION (T) COTWU (T) Vs. FORTUNATUS CHEREKO, Labour Revision No. 27 of 2008 (unreported)

In this case the respondent (employee) was awarded Tshs. 20,512,229 plus the bus fare from Mwanza to Dodoma for himself and his family because the employer terminated him unfairly by not adhering to the code of conduct before effecting the termination for misconduct without being heard. **The effect of having the code of procedure and policy but not adhering to**

A grievance when presented to the supervisor, must initially be accepted as an expression of the genuine feeling on the part of the employee. Acceptance does not necessarily mean agreeing with the grievance; it simply convey the willingness of the supervisor to look into the complaint objectively and dispassionately. A supervisor or manager or leader who show greater concern for their employees tend to create a climate where the number of grievances gets reduced

The supervisor need to listen to the complaint properly and to provide help in identifying the real problem and solution

## **Problem identification**

It is necessary for the supervisor to collect relevant and adequate facts relating to the nature of the grievance. The facts must be separated from the “opinion” “interference”, “sympathy” and “feelings”. It is also useful to maintain records of these facts so that they can utilize at later stages of grievance redressal in case the grievance is not settled easily.

## **Getting the facts**

Here an attempt must be made to identify the real causes, after ascertaining the facts, leading to the grievances. This require a deeper analysis of the problem in terms of its frequently of occupancy, past records relating to the individual and similar problems, management practice, union practice, nature of the job, relationship with other employees and above all the individual attitudes to and behavior at work. Identification of the cause help the management

## **Analysis of the grievance**

To adopt such corrective measures as will prevent recurrence of similar grievances. The impact of various cause on the nature of grievance needs to be evaluated with the view to generating alternative courses of action. After examining the consequences of each alternative solution on the current and future practice of management on the individual, and also the union a decision need to be taken which is best suited to the situation.

It will be necessary for the supervisor to keep in mind that the decision he has taken might become a precedent .

## **Taking decisions**

Whether favorable or unfavorable to the employee concerned, must be immediately communicated and implemented, preferably by the supervisor himself or manager. This adds further to the credibility of the supervisor in the eyes of the employees. The decision thus implemented should be followed up and renewed to see whether the grievance has been satisfactory resolved or not. In case, it is discovered that the clash of interest has not been satisfactory resolved, then one has to go back to the

## **Implementation and follow-up**

First step of redefining the problem, collecting facts and follow through the subsequent steps The problem-solving approach to grievance handling has obvious advantages over the formal legally-oriented grievance procedure. While it provides useful diagnostic data to management about the state of affairs in the work place, it also leads to the development of a *climate of trust, openness, confidence and mutual concern between the management and the*

*Employee in the organization or institution or at the work place.* The essence of grievance procedure is well articulated in the case of NICODEMUS G. MWITA Vs. BULYANHULU GOLD MINE LTD, Labour Revision No. 12 of 2013 (unreported) In this case the applicant (employee) at the working place was charged with three offences before disciplinary committee, among other is the failure to Immediately report knowledge of sexual harassment after being raised to him in the form of grievance procedure being the chief security officer. Being the chief security officer the applicant failure to handle the grievances even after being reported to him specifically sexual harassment which was taking place at his department.

The applicant (employee) was terminated as a chief security officer at Bulyanhulu Mine because of the failure to take action against complaint and report concerning sexual harassment “unyanyasaji wa kijinsia” which was committed by his deputy or assistant one Ndazi which was contrary to the company’s rules and the public in general.

In the above cited case the applicant being the chief security officer neglected and refused to take any actions against the person who committed the sexual harassment who was his assistant. The CMA and Labour Court ruled in favour of the employer because the employee [chief security officer] in his capacity neglected and refused to take action against the malpractice in his department and that the procedure and reason for termination were fair. In the sense of procedure, the applicant (employee) was suspended to give way to further investigation and later summoned to appear at the disciplinary hearing.he was heard and given chance to ask question.

Then the disciplinary committee found the applicant [chief security officer] responsible and hence the employer terminated him. (***failure to take action always the action will be taken against you***) .

## 7. EFFECTS OF GRIEVANCES

- ☒ Lower quality work, products and customer services;
- ☒ Distraction (taking attention away) from corporate goals;
- ☒ Loss of confidence and communication between employees, manager and supervisors;
- ☒ Low morale and job satisfaction which can lead to industrial problems, increased absenteeism and increased staff turnover;
- ☒ Loss of reputation as a employer and service provider
- ☒ Lost working time of every one involved in dealing with a complaint
- ☒ The potential for legal action and damages (see the case above).
- ☒ Loss of interest in work and consequent lack of morale and commitment
- ☒ Increase in wastage and costs
- ☒ Increase in the incidence of accidents
- ☒ Indiscipline , Unrest , Diseases like HIV etc.

## 8. IMPORTANCE OF HANDLING EMPLOYEE GRIEVANCES

- ☒ An unsettled disruption in work will result in disaster;
- ☒ To have a smooth functioning of the factory you need to have contented work force
- ☒ To obtain contented work force you need to resolve the individual or sectional and total grievance fully
- ☒ It is important to make sure that grievances do not resurface etc.

### ***Ways to contain grievances***

☒ Direct observation ☒ Grievance procedure ☒ Gripe or suggestion Box ☒ Open door policy ☒ Exit interviews ☒ Discussion /conversation should be used

### **9. HOW TO DISCOVER THE GRIEVANCES**

Redressal of grievances in Tanzania has received much attention in the legislative framework but in practice the mind set of the people have not reformed to go hand in hand with the current in the law. This can be incidence by the case of NICODEMUS G. MWITA V. BULYANHULU GOLD MINE LTD (supra)

### **10. GRIEVANCE REDRESSAL PROCEDURE IN TANZANIA**

Discipline means conformity to the norms, rules, regulations and expectations of the management by the employees. In case of deviation from norms, particularly the formal ones contained in the standing codes, which is referred to as “misconduct” the management initiates disciplinary action.

### **11. *MANAGING DISCIPLINE***

The term misconduct is defined in the Employment and Labour Relations Act No 6/2004, Labour Institutions Act No. 7/2004 and even in the GN 42/2007. “Misconduct” is improper behavior, intentional wrong doing, or deliberate violation of a rule standard of behavior. The Labour court of Tanzania in the case of PETER D. NENE V. CHINE NEW ERA INTERNATIONAL ENGINEERING CORPORATION, Revision No. 29 of 2013 (unreported) defined the term misconduct .

*“misconduct implies an act done willfully with a wrong intention and conveys the ideas of wrongful intention”.*

Failure to do that lead to unfair termination which attract the penalty i.e reinstatement or reengagement or compensation and other remedies. The case of TANZANIA TELECOMMUNICATIONS COMPANY LTD V. AUSTINE KIBADU, Labour Revision No. 122 of 2009. the illustrates the above position.

Court stated that *“Based on the above evidence on record, the respondent was not given a fair hearing in terms of Rule 13 of the code... perhaps it is worth stressing that a right to be heard in employment termination cases embodies the*

*constitutional right not to be condemned unheard, that right in part of the objectives spelled out in section 3 (a) (f) and (g) of the Act”.*

### ***Objective of Discipline***

- ☒ To improve and enhance good service and goods delivery
- ☒ To promote team look at working place
- ☒ To avoid unnecessary of grievances and misconduct
- ☒ To avoid unnecessary litigation

### ***Reasons for indiscipline***

- ☒ Payment of very low wages.
- ☒ Poor communication.
- ☒ Ineffective leadership.
- ☒ Extensive work pressure.
- ☒ Unfair management practices .
- ☒ Lack of promotional opportunities .
- ☒ Absence of any code of conduct to regulate behavior on both sides.
- ☒ Faulty supervision & Personal problems etc.

Having discipline in the organization is essential for the all around development and healthy growth of any institution.

### ***Importance of discipline***

- ☒ To infuse respect for leadership in an institution without which the supervisor subordinate relations will crumble
- ☒ To keep order and peace at the place of work An employee may be disciplined for misconduct that adversely affects the efficiency of the institution. Conduct problems typically stem from employees who refuse or

neglect or fail to comply with the written and unwritten rules or norms of the work place on time; Obeying lawful orders etc. The above position can be illustrated in the case of MAGNUS ASSENGA V. DIRECTOR, AUTOMOBILE LTD, Revision No 122 of 2008 (unreported) In this case the applicant (employee) was given and signed a job description through a letter and agreed to work in accordance with the job description and instructions from the supervisor.

The evidence in his claim before the CMA showed that the applicant used to refuse to perform lawful instruction given to him by his immediate boss this led to the termination of his service for insubordination after several oral and written warnings. The CMA confirmed the decision of the employer that the termination was fair and dismissed the claim for unfair termination. Aggrieved by the decision of the decision of the CMA, made an application for Revision before the High court of Tanzania Labour Division.

The court confirmed the decision of CMA.

#### DISCIPLINARY PROCEDURE & ACTION

Sometime, despite the efforts made by the management to develop a culture of positive discipline, there could still be a few employees who may not conform to the norms and standards of behavior, the rules and regulations, and the policies of the organization. In such cases, disciplinary action has to be administered. See; Employment and Labour Relations (code of good practices) Rules, GN 42/2007 of 16th February 2007

The code also intends to assist employers and employees to manage any issue of misconduct or poor performance at the work place. The essential elements of any procedures for dealing with grievance and disciplinary issues are that, they must be ***“rational” and “fair”*** that the basis for the disciplinary action is clear, the range of penalties that can be imposed is well defined and the internal appeal mechanism is available.

Procedures should be always reviewed and updated periodically so that they are current and consistent with the charged circumstances in the work place development in employment “legislation”, “case laws” and “good practice generally”

As a general rule no disciplinary action can be taken before the disciplinary procedures have not been conducted properly and fairly. The major emphasis here is that the employee (Labour) is always innocent until proved contrary (guilty) and also the employer (Capital) is always innocent until proved contrary (guilty) It is very important to adhere to the code because failure to do so lead to unfair termination and/or unfair.

Labour practices. If an employer unreasonably faults to follow it, it is against the Industrial norms and practice which may cause unnecessary costs and frustration of the production. It is important the employer to follow the following procedure before taking disciplinary action ☐ Employer shall make an investigation and this can be made when the employee is still working or may be suspended.

Investigation is a matter of fact which shall be determined by the prevailing circumstances. What is important is that if the alleged employee continue to work during the investigation, his/her presence may jeopardize or frustrate the investigation or not like any other business choice, the employer shall also weigh out paying a person who is not producing pending investigation if is suspended. it is important to make sure that any decision before is

taken the balance must be made between the survival of the capital and Labour as provided under section 3(a) ELRA/6/2004 [suspension & investigation] ☐ If the investigation concludes that the employee has the case to answer, the employer should notify the employee in writing of the alleged disciplinary issues and the practical consequences. This should provide sufficient information for employee to be able to respond at the disciplinary hearing. If there is any evidence

This can be illustrated in the case of BARRICK NORTH MATA MINE LTD V. FANUEL PETRO SASI, Labour Revision No. 8 of 2013 (unreported) In this case the employee was charged for the alleged misconduct of buying/purchasing the land he was aware that the employer was interested contrary to the employer's code of business conduct and ethics. The disciplinary hearing was conducted and the employee was found guilty and terminated.

When the matter went before the CMA it was proved that employer did not follow the procedure for termination and failed to adduce evidence to prove the reason for termination and ordered reinstatement without loss of already

aimed rights The employer aggrieved by the decision of the CMA referred the matter for revision in the LC, the court had this to say *“that being the position, I see no basis to fault the arbitrator’s conclusion that there was no proof that the Employees termination substantially and confirm it”*... the court went further to state that “I agree with the arbitrator’s conclusion that involvement of the chairperson in the investigations which lead to disciplinary hearing, provided reasonable ground for suspecting that his decision might be shaped by extraneous factors and therefore, the respondent’s termination was procedurally unfair”. Also in the case of EMMANUEL IGONE V. TANZANIA ONE MINING LTD, Labour Revision no. 21/2010 (unreported) In this case the chairperson of the disciplinary hearing (DH) was also involved in the investigation.

The LC found that this was unprocedural and observed that it was a violation of natural justice *“nemo judex in causa sua”* which demands that a decision maker should not be a party in the litigation and judge of his own cause.

The court of Appeal of Tanzania which is the apex court in Tanzania has emphasized the essence of adhering to the procedure in dealing with Labour grievances and misconduct that fairness must be seen to be done for propelling, promoting and protecting industrial relations. In the case of HAMISI JONATHAN JOHN MAYAGE V. BOARD OF EXTERNAL TRADE, Civil Appeal No. 37 of 2009, CAT (unreported)

In this case the chairperson of the disciplinary hearing (DH) was involved in the investigation process and at last he was the chairperson of the DH which found the employee guilty and at last was terminated from his employment. The court found that the involvement of the chairperson in the investigation violated the disciplinary proceeding (DH) and consequently termination.

In the case of TANZANIA DISTRIBUTORS V. ATANAS ABDALLAH, Labour Revision, no. 274 of 2008 (unreported) It was held that *the employer has to show that there is a valid reason for termination and it was to be proved.*

In case of dissatisfaction on the side of the employee, the appeal should be heard ideally at an agreed time and place and without delay in order not to impair the production and the same time social justice as provided under

section 3 (a) ELRA/6/2004 ☐ The employee is allowed to have the companion during the disciplinary hearing to assist him or her in the hearing .

Grievance issues vary considerably from employment to employment depending on wide varieties of factors including the terms and conditions of employment contracts, locally agreed procedures; industry agreements and whether trade unions are recognized for bargaining purpose; the principles and procedures of the code of practice etc. It is very important to have a fair code of practice and to comply with it or to them.

Matter like strikes, lockout, constructive termination, loss of production are mushrooming. This can be evidence in the case of PETER OTIENO V. TRIPOD SECURITY SOLUTION LTD, Labour Revision No. 239 of 2010 (unreported), MARCH L. LUMANJA & ANOTHER V. TANGANYIKA BUS CO. LTD, Labour Revision No. 223 of 2008 and 2000 INDUSTRIES LTD V. HALIMA Z. GITETA & 8 OTHERS, Labour Revision No. 9 of 2009 (unreported).

The above cited cases illustrate the challenge of not having the grievance and disciplinary procedures at working place and taking decisions unilaterally by the employer without communicating employees.

Thank you for listening