

Labour law

for shop stewards

Shop stewards are being required to fulfil an increasing number of functions in the current environment. As part of an attempt to assist shop stewards in their work, the **Labour Bulletin** will be running a series of articles on handling disciplinary inquiries, mediations and arbitrations. This, the first in the series, looks at what goes into preparing a case to represent a worker in a disciplinary enquiry.

A key function of shop stewards is to take up grievances on behalf of workers and to represent workers at disciplinary hearings. As a Numsa publication on case handling for shop stewards states: 'Workers develop pride and confidence in an organisation that takes up workers' cases and wins them. A union that loses cases, loses members as well... For the sake of the union, shop stewards should

take defence of workers seriously.'

How a disciplinary case is handled inside the workplace has an impact on the chances of winning it when it goes to either the CCMA or bargaining council. Hence, the slogan to shop stewards should be: 'Gather evidence, don't destroy it!'

There are two main grounds for disciplinary action. The most common being for misconduct (which can include insubordination, theft and or unauthorised possession, assault and intimidation) and incapacity (which relates to a situation where a worker is dismissed for operational requirements – retrenchments). There are some acts of misconduct which could lead to dismissal if repeated while others could be considered to be more serious and could lead to dismissal even if it is the first offence. For an employer to dismiss a worker fairly, he/she must have fair reason (substantive fairness) and must follow correct procedures (procedural fairness).

HOW DO YOU PREPARE A CASE?

The first thing a shop steward should do is get all the facts – find out what actually happened. This involves a number of steps. In order to find out what happened you need to: *Take a statement from the accused* – this involves taking both personal information and allowing the accused to tell his/her story without interruption. It is important to listen carefully; obtain clarity of points that you are not sure about and ensure the story is told from the beginning.

Interview possible witnesses – who should not be interviewed together but separately. All the details must be carefully recorded so as to check for contradictions in stories. Witnesses and the accused should be asked who was involved, where did the incident happen, why, how and when it happened and who saw it.

Inspection – only necessary if there is damage to property or if the circumstances

surrounding the case require it.

Having found out the details, the next step is to assess the case. In assessing the merits of the case, you have to assess the worker's version and those of the witnesses. In addition, you have to assess whether the stories are believable and credible. For example, are there hidden agenda's involved?

In assessing the case you also have to consider whether:

- Any company rules/practices were broken.
- The sanction for the alleged offence.
- Has the company followed its procedures and whether there are any precedents you can follow in the case where similar offences were committed.
- Try to assess what the company's case is and whether you have a proper argument to counteract their claims.

Having assessed the case, the next step is developing a strategy to handle the case. You need to decide whether the worker should plead guilty or not. If not, then you need to have a basis for the case – could there be a case for procedural or substantive unfairness? In attempting to deal with management's case, you need to review the type of evidence likely to be presented. For example, documentary or audio-visual evidence, expert or circumstantial evidence. In addition, you need to consider which part of the disciplinary code the employer is likely to use and how you will challenge this.

Once you have completed planning and preparing your case, you need to prepare your team. This includes preparing your witnesses and the accused worker (prepare questions to ask your witnesses and accused). Finally, as a shop steward it is important to engage and get advice from other shop stewards and even call a shop stewards committee, if necessary, to discuss the case.

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This article is based on Numsa's shop steward course on case handling.