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Labour law Masterclass

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Definition of Termination

- A contract of employment is terminated when the legal relationship between the parties are severed and parties consequently relieved of their duties and obligations under the contract



Fair termination

- Termination is fair if the contract of employment was terminated by the employer on the following:
- Incompetence of the worker
- Proven misconduct of the worker
- Redundancy
- Legal restrictions imposed on the worker



Unfair termination

- Termination is not fair for the following reasons
- Joining or intending to join or ceasing to be of a trade union
- Seeking office or having acted in the capacity of a worker's representative
- Filing a complaint or participating in proceedings against an employer involving alleged violation of the Labour Act



Unfair termination

- Gender ,race ,colour , ethnic ,religion ,creed ,social, political or economic status.
- In the case of a female worker due to pregnancy or absence from work during maternity
- In the case of a worker with disability
- Temporary illness or injury certified by a medical practitioner



Unfair termination

- Lack of educational qualification which was not a requirement at the commencement of worker's employment
- Refusal to work during a lawful strike action



- LEGAL IMPLICATIONS OF UNFAIR TERMINATION
- If a contract of employment is unfairly terminated the worker may make a complaint to the National Labour Commission or may proceed to a court of competent jurisdiction .
The best is to file a complaint at the NLC



- Where a worker's contract of employment is unfairly terminated , the Commission has the power of the High Court to make the order for:
 - a. Re-instatement
 - b. Re-employment
 - c. Compensation



Trade unions

- Definition of trade union:
- Trade unions are voluntary organizations formed by workers to promote and fight for the collective interests and rights of workers , particularly in relation to employers but also in relation to the state



- Trade unions represent their members' interests , through collective bargaining over wages and other terms and conditions of work and provide them with social and welfare benefits



Objectives of trade unions

- To improve terms and conditions ,security of employment and income through collective bargaining
- To equip members with knowledge and skills to be able to respond to challenges of society
- Influence government policies positively for socio-economic growth and development of the country



- Involved in labour laws formulation on behalf of workers
- Assist in grievance handling between workers and managements



- The TUC serves as the apex or central body that coordinates the activities of all national unions affiliated to it. The TUC derives its strength from the affiliated national unions



Structure of the TUC

- The Delegates Congress
- The delegates Congress is the highest organ of the TUC and it is made up of delegates from all its affiliated national unions .The delegates congress meets every 4 years
- Accredited delegates are from the national unions based on their numerical strength and financial position



Functions of delegates congress

- Election of TUC officials:
- Secretary-General, Deputy Secretary General, Chairman and 2 vice chairpersons (with the 2nd chairperson who must be a woman)
- Elects finance board members
- Adopts broad policies and programmes that will guide the organization
- Passes resolutions
- Deals with issues of international affiliations



Formation of trade union

- Two or more workers employed in the same undertaking may form a trade union
- The union shall not be subject to the control of or be financially or materially influenced by a political party
- The union has the right to draw up its constitution and rules, elect its officers and reps



- Organize its administration and activities and formulate its own programmes
- Join an international workers' organization



Union membership

- The right is opened to all workers except those in
- Policy making
- Decision making
- Managerial
- Holding positions of trust
- Performing duties that are highly confidential in nature
- An agent of the shareholder of an undertaking



- However, the classes of workers who may not form or join trade unions shall be determined by agreement between the employer or the worker or trade union after considering the organization structure and job description and functions of the worker concerned



FORMATION OF UNIONS

- Main reasons
- Workers exercising their democratic right
- Registered union organizing workers into group
- Certification process
 - -application to CLO
 - -investigation/ascertainment by CLO
- Issues of certificates



Certification process

- Application for registration
- Registration with CLO is obligatory
- The application should include the description of the class of the workers in respect of whom the application is made and estimated number
- The number of workers of that class who are members of the union whom the application is made



- It must be accompanied by
- -the constitution
- Names of officers
- Office address of the trade union



investigations

- The CLO will consider the application on the following
- 1. compliance with the provision of the required particulars
- 2. confirmation that the applicant trade union established properly and that it does not resemble that of another registered union so as to confuse the public
- That it meets all democratic principles



Issue certificate of registration

- When the chief labour officer is satisfied with the above ,he shall register the union and issue a certificate of registration to the union



Decision making and filling of option form

- Employees fill option forms to determine that the union has support within the enterprise
- Union conducts election of executives supervised by officers of the labour department or electoral commission
- Union introduces executives to workers and then management



caution

- Union and management should allow workers free exercise of their right to voter for or against representation
- It should be emphasized that freedom of association also connotes freedom not to associate and one can only become a member of an association or union by one's own volition without any form of coercion from any other source



Collective bargaining

- The phrase collective bargaining is said to have been coined by Sydney and Beatrice Webb in Great Britain .It is made up of two words collective which means ‘group’ and bargaining which means ‘proposals and counter proposals’
- It is the process in which the representatives of a labour organization and the representatives of a business organization meet and attempt to negotiate a contract or agreement , which specifies the nature of the employee-employer relationship.



- A collective agreement is a document which regulates the terms and conditions of employment of workers, concluded between one or more trade unions on one hand and representatives of one or more employers or employers' organizations on the other hand. It also regulates employer-employee relations and ensures uniformity of application and consistency in decision making



- The parties to negotiate a legally binding Collective Agreement are certified trade union[s] or persons duly appointed by the trade union[s], the employer or employer's organization[s] or their duly appointed representatives



Duty to negotiate in good faith

- All parties to the negotiation of a collective agreement shall negotiate in good faith and make every reasonable effort to reach an agreement.
- A party to the negotiation shall make available to the other party information relevant to the subject matter of the negotiation



Duty to negotiate in good faith

- When any information disclosed for the purpose of the negotiation of a collective agreement is not made public , the information shall be treated as confidential by the party receiving the information and shall not be disclosed to a third party without the prior written consent of the party providing the information



Negotiate in good faith

- The parties to the negotiation of a collective agreement shall not make false or fraudulent misrepresentations as regards matters relevant to the negotiations.
- Negotiating in good faith requires employers' organizations and trade unions to:
 - a. endeavor to secure appropriate mandates to freely and willing negotiate , conclude negotiations and sign Collective Agreement for implementation



Negotiate in good faith

- b. Be transparent and open to each other in the process of negotiation
- c. Provide all relevant documents and information necessary to conduct meaningful negotiations
- d. Respect the privacy of each other in the management of vital information and data supplied during the period of negotiation



- e. Negotiations conducted in an atmosphere devoid of intimidations ,threats ,attacks
- f.implement the articles of the negotiated collective Agreement to the spirit and letter of it



Coverage of collective agreement

- Collective bargaining extends to all negotiations which take place between an employer , a group of employers or one or more employers' organizations ,on the one hand , and one or more workers' organizations , on the other, for-
 - a. determining working conditions and terms of employment ;and/or
 - b. regulating relations between employers and workers ; and/or
 - c. regulating relations between employers or their organizations and workers ' organization or workers organization(ILO,)



Content of collective agreement

- Contents may include
- Class or category of workers to which it relates:
- The conditions of work, including the hours of work , rest period ,meal breaks , annual leave , occupational health and safety measures
- The remuneration and the method of calculating the remuneration of the workers;



- The period of probation and conditions of probation
- The period of notice of termination of employment , transfer and discipline
- The procedure for the avoidance and settlement of disputes arising out of the interpretation ,application and administration of the agreement



- The principles of matching remuneration with productivity and
- The essential services within the establishment



CHARACTERISTICS OF CB

- **Collective:** Collective bargaining is a two way group process where the employers representative and employees or workers representatives sit together to negotiate terms and conditions of employment
- **Strength :** Both parties in collective bargaining are strong and equal
- **Voluntary :** Both parties come to the negotiation table voluntarily in order to go into a particular negotiation.it is based on discussion, mutual trust and understanding.
- **Formal :** It is a formal process in which certain employment related issues are to be regulated at national, organizational and workplace level



- Flexible : It is flexible and continuous process and not fixed or static
- Improvement :It is a method to improve the employer-employee relations in an organization and resolve management and employee conflicts
- Representation :Collective bargaining is between the representatives of employees and management .The management does not directly deal with employees .It carries on negotiations with the representatives/executives of unions and associations



- **Dynamic** :Collective bargaining is dynamic ,that go on changing over a period and grows and expand the way of agreement ,the way of implementation and the way of discussion.
- **Continuous** :Collective bargaining is continuous and begins with agreement ,the implementation of the agreement and the negotiations of a new agreement
- **Bipartite process** : Because the employee and employers representatives negotiate directly face to face across the table



Collective bargaining /negotiation is a process

- The first thing to note is that negotiations involves social relations between those individuals and groups which are parties to the dynamics of collective bargaining
- The second is that negotiations have representative and communicative functions
- The third is the implication that differences in power exist between the groups which are directly involved in the negotiation.



Issues of collective bargaining

- Wages and working conditions
- Incentive payments
- Changes in technology
- Work tools
- Staff transfer and promotions
- Grievances
- Disciplinary matters
- Health and safety



- Union recognition
- Union activities/responsibilities
- Management rights



Collective bargaining certificate

- A trade union shall make an application to the chief Labour Officer of a certificate appointing that trade union as the appropriate representative to conduct negotiations on behalf of the class of workers specified in the collective bargaining certificate with the employers of the workers



Bargaining certificate

- The union must have a bargaining certificate before it can negotiate with management
- The bargaining certificate is issued to the national union with the mandate to negotiate on behalf of the workers named in the certificate with management



constitution

- The formation of the standing negotiating committee is guided by a constitution that provides the representation of both sides and how the relationship should be and also determines how problems are to be solved during negotiations



Representation

- There is the need to form a standing negotiating committee(SNC) made up of management's team and the workers' team.
- Management team leader is the chairperson of the SNC and the union team leader is the vice chairperson of the SNC



COMMON RULES

- Common rules or ground rules must be set to guide the negotiations and each party must adhere to these rules



INFORMATION RULES

- No communication outside the room. Ignoring this can be costly both to the union and the management.
- The unions are mostly guilty of this since they let out matters under discussion to their shop stewards or rank and file, and this can put unnecessary pressure on them.



CONCESSION RULES/TIMINGS

- When a party makes a concession, it can not take it back. For example, when one offers 30%, one can not go below to re-offer 25%.



MANDATE

- There is the need to have a clear mandate before any salary negotiation takes place.
- Ideal settlement
- Realistic settlement
- Fall back or rock bottom settlement



DUE PROCESS/SANCTIONS

- Negotiations must follow the due process of law. This means that negotiations must be done in an orderly manner and the parties must negotiate at will and not under duress or under coercion.
- Management frequently negotiates under some form of pressure which the union side will seek to maximize in the course of the bargaining process. Such attempts should be resisted as long as the cost of resistance does not exceed the cost of settlement. At times it is the employer who tries to intimidate the workers by talking of labour rationalization.



MINUTES

- Minutes are prepared by joint secretaries from the management side and the union side. The minutes must always be prepared and vetted by the chairperson and the vice chairperson before the next meeting. Clauses agreed upon must be dictated by the chairperson to the secretaries.



ASSESSMENT OF BARGAINING POWER

- There is the need to assess the bargaining power of one's opponent. One's bargaining power and that of his opponent's bargaining power are a function of the relative costs of disagreement to each of the parties.
- Generally, if the cost of rejection exceeds the cost of acceptance, one has bargaining power over the other side.



ATTITUDE AND CONDUCT

- Honestly: one can not underestimate the importance of telling the truth. If one is truthful, it helps to build trust on both sides.
- Patience: one must have enormous reserve of patience. At the negotiation table all the parties are equal and should be prepared for deliberate provocation.



STRATEGY

- Each party to the negotiation must develop a strategic plan. One must learn to develop a plan for each negotiation



TACTICS

- This involves the preparation of manoeuvres to give effect to the strategic plan. One should understand how to choose appropriate behavioural tactics in any negotiations, formal or informal.



AT THE NEGOTIATION TABLE

- There must be a spokesman for each group with full powers to accept or reject matters for the group to present arguments to ask for recess(caucus) and generally to direct ones side during the bargaining.
- Members of the bargaining group should not contradict each other; a member should not speak unless asked to do so by the leader of the group; a member could make a written or whispered request to the leader when a recess is desired to clear up a mater.
- One should learn when to compromise, through consultation; try and determine when one has the best terms.
- One should know when to stand firm.
- One should refuse to be intimidated.



CERTAIN STRATEGIES

- Timing of concession very important
- One should be flexible, but firm
- One must be persuasive
- One must be a good listener- A successful negotiator is a good listener
- Compromise is a good tool- Many negotiators are rigid and inflexible



EMOTION

- First recognize and understand emotions in negotiations, theirs and yours
- Allow the other side to let off steam
- Do not react to emotional outbursts.
- Look for signs of tiredness and desire to quit.



COMMUNICATION

- Listen attentively and acknowledge what is being said
- Speak to be understood
- Speak about yourself and not about them
- Speak for a purpose



NEGOTIATION PROCESS

THE OPENING MOVES

- At the meeting or at the table, the union negotiators are allowed to put their case first. Assuming that the management listens to the union's opening statement it can get valuable information about the union's bargaining range.
- If, however, management has not prepared its case thoroughly, the union side can use its opening statement to define the terms of the argument and thereby compel management to concentrate on those issues on which union negotiators want to emphasize and exploit.



THE OPENING MOVES CONT

- The obvious dangers in the opening stage of the process are first, that the initial union's demand (ideal settlement) may be pitched at a level far beyond management's fall back settlement that the negotiations fail to get off the ground, and second, that management in making its reply and counter-offer puts all its cards on the table.



SEEKING AGREEMENT

- In entering the third and final stage of negotiation, two factors should already have emerged. First, the union side have realized that even if it has not formally conceded that Ideal settlement is not going to be advanced and that the likely area of settlement is now founded by its Realistic settlement and Fall back settlement



SEEKING AGREEMENT CONT

- Secondly, the desire for a negotiated settlement must still be present on both sides. This implies that management must be prepared to move some way towards the union's bargaining range, if indeed it has not already done so.
- By this stage, however, it will be clear to both sides which of the two will need to make the biggest concessions. It is therefore incumbent on the other side to allow this movement to occur with the minimum loss of face.



CLOSING THE NEGOTIATIONS

- If agreement on one or more substantive issues has not been reached and the gap between the two sides is still significant, management must make it clear that its final offer is final.
- If the negotiations are approaching breakdown, management must consider the implications and assess the likelihood of sanctions being imposed by the union side. If by contrast, agreement has been reached, it is important that both sides clearly understand what the agreement means.



DEFERMENT AND CAUCUSES

- If an agreement is not being reached on an issue, it would be better to defer it and come to it later.
- If there are differences of opinion on an issue, one side may call for a caucus.



AFTER AGREEMENT

- Preparation and compilation
- Brief, well-written, business-like
- Clear and concise
- Avoid ambiguities
- Accurate account of what happened
- No bias, malice
- Sign the agreement
- Make copies available to all stakeholders
employer, union, labour department and National
Labour Commission



CONCLUSION

- Collective bargaining is an effective and efficient vehicle for conflict management and conflict resolution.



MANAGING REDUNDANCIES SUCCESSFULLY

- What is redundancy?
- Redundancy occurs where an undertaking undergoes any of the specified processes such as major changes in production ,programme ,organization , structure or technology , arrangements or amalgamation(merger) of an undertaking that are likely to entail terminations of employment of workers in the undertaking



Successful procedure

- 1. Inform all the workers of the establishment or organization the need for the redundancy preferably at a staff durbar. Follow it up with a circular or in the organization's newsletter outlining the reasons for the exercise, the selection criteria ,the targeted number of workers to be affected and the planned or projected date or commencement of the exercise etc.



- 2.write to the Chief Labour Officer and copy to the General Secretary of the National Union concerned and the local union and the senior staff association or the group of workers as the case may be, at least three months before the intended exercise indicating the number of workers to be affected, the selection criteria ,redundancy pay if agreed and the date of the exercise



- 3. Negotiate with the National union through the Standing Negotiating Committee if there is a union or association or representatives of the group of workers to be affected and sign an MOU to that effect indicating the agreed 'redundancy pay' and the redundancy package.
- The amount or quantum and the mode and terms of redundancy payment are all subject to negotiation between the parties
- Arbitration at NLC to resolve disputed quantum and payment terms



- Redundancy payment as compensation paid out to employees whose jobs have disappeared or their services are no longer needed or have suffered some diminution in their terms and conditions ,due some major changes ,structure ,organization or upon amalgamation or merger among others



- 4. submit copy of the MOU or agreement to the Chief Labour Officer and follow up on the earlier notice



- 5. Organize an orientation or counselling session for the affected workers and treat relevant topics like business opportunities outside formal work , entrepreneurship , investment opportunities etc
- Ideally HR or top management should have one on one meetings with the affected workers and thank them for the past services and wish them well in their future endeavours . Indicate how you will have wished they remain in the service but they had to exit because their jobs fallen off , no longer exist or for operational reasons etc



- 6.draft individual letters to the affected workers and attached their cheques for the redundancy pay or package they are entitled to following the negotiations
- Get affected workers to acknowledge receipt of their cheques and to sign off indicating that the company or organization has no further commitment to them apart from their redundancy package



- Issue a certificate of service to the workers affected
- Review the exercise and ideally undertake an employee opinion survey to ascertain the opinion of remaining workers on management handling of the exercise



Exceptions to redundancy pay

- No redundancy pay for the following :
- Workers engaged for a specified period of time and specific work
- Worker on probation
- Casual workers



TEMPORARY & CASUAL WORKERS

- Casual worker-definition
- A casual worker is defined by the Labour Act as a worker engaged on a work which is seasonal or intermittent and not for a continuous period of more than 6 months and whose remuneration is calculated on a daily basis
- Note that the labour Act permits daily , weekly and monthly contracts



Casual workers

- It means that though the work for which casual workers shall be employed may be season ,intermittent, and would not be continuous for 6 months and the remuneration is calculated on daily basis ,the worker is not paid daily , but weekly ,then he would be deemed to have a weekly contract of employment



- Similarly , if the remuneration is aggregated for a month then he would be deemed to have a monthly contract of employment
- The Labour Act provides that the employment of a casual worker need not be in writing.
- I would however, strongly recommend that where that casual worker's employment would not be terminated at the end of each day of work, i.e. where he would not be paid his wages at the end of the day, his contract of employment must be in writing. Further, casual worker shall:



- Be given equal pay for work of equal value for each day worked in the that organization.
- Have access to medical facility available to workers of that organization
- Entitled to be paid for overtime work.
- To full minimum remuneration for each day on which the worker attends work, whether or not the weather prevents the worker from carrying on his or her normal work and whether it is possible or not to arranging alternative work for the worker on each such day.



- A temporal worker is defined on the section 78 of the Act at page 30 as a worker who is employed for continuous period of not less than one month and is not a permanent worker or employed for work that is seasonal in character.
- Section 75(1) provides that a temporary worker who is employed by the same employer for a continuous period of six months and more shall be as treated as a permanent worker.



- The terms and conditions of employment of a temporary worker shall be as provided for by the Act:

- ❖ Minimum wage

- ❖ Hours of work

- ❖ Rest Period

- ❖ Night Work

- ❖ Sick Leave



- In addition, a temporary worker is entitled to be paid overtime work and also full pay for every day that he turns up for but is unable to work because of wet weather or other disruptions which is not his fault.
- The Act provides that temporary and casual works shall be paid full remuneration for every public holiday.



- Where a temporary worker or casual worker on works on public holiday he would be paid in addition the full wage that he would be entitled to if the day had not been a public holiday.
- In other words, a temporary or casual worker who works on a public holiday would be entitled to two times his daily wage.



Temporary and casual labour

- Where the temporary worker or casual worker is aggrieved at the treatment of his employer, he can complain to the National Labour Commission (NLC)
- Where the NLC finds the complain justified it may order the employer to pay such sum as it appears to the Commission to be due to the temporary or casual worker and the Commission may also specify the time by which payment should be effected
- The decision of the NLC shall be final



OPERATIONS OF NATIONAL LABOUR COMMISSION(NLC)

- The national labour commission idea was mooted by the social partners to be established as an independent entity to help resolve labour disputes without government intervention
- The commission is composed of two reps each from Government , Organized Labour and Employers organizations.
- The chairperson shall be nominated by the employers organization and organized labour



Qualification of members

- Members of the commission shall be knowledgeable in labour-management relations but the chairperson shall in addition ,be knowledgeable in industrial relations
- Members of the commission shall not be office holders of a political party



Tenure of office

- Members of the commission shall hold office for a period of four years and are eligible for re-appointment after the expiration of their tenure of office/Membership of the Commission is not full time



Functions of the commission

- To facilitate the settlement of industrial disputes
- To settle industrial disputes
- To investigate labour related complaints, in particular unfair labour practices and take steps ,as it considers necessary to prevent labour disputes
- To maintain a database of qualified persons to serve as mediators and arbitrators



Functions of the commission

- To promote effective labour coo-operation between labour and management and
- To perform any other function conferred on it under the labour Act and any other enactment



Powers of the Commission

- The commission has the following powers
- a) receive complaints from workers, trade unions and employers, or employers' organizations
- -on industrial disagreements and
- -allegation of infringement of any requirements of the Labour Act and regulations made under it



Powers of the Commission

- b) require an employer to furnish information and statistics concerning the employment of its workers and the terms and conditions of employment of its workers in a form and manner the commission considers necessary and
- c) require a trade union or any workers organization to provide such information as the Commission considers necessary



Powers of the Commission

d) Notify employers and employers' organizations or workers and trade unions in cases of contravention of the Labour Act and regulations made under it and direct them to rectify any default or irregularities

In settling disputes the Commission shall have the powers of a High Court in respect of

-enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise



Powers of the Commission

- -compelling the production of document ;and
- -the issue of a commission or request to examine witnesses abroad
- The commission shall in respect of its proceedings enjoy the same privileges and immunities pertaining to proceedings in the High Court
- The order of the Commission shall take effect as if it were made by a High Court



- In exercising its adjudicating and dispute settlement function, the Commission shall not be subject to the control or direction of any person or authority
- A person aggrieved by an order , direction or decision made or given by the Commission under section 133 may within 14 days of the making or giving of the order appeal to the Court of Appeal



Settlement of industrial disputes

- If there is an industrial dispute parties are obliged or under obligation to settle the dispute through negotiation
- If no settlement is reached after 7 days either of the parties or both may refer the dispute to the NLC for the appointment of mediator
- NLC to request all parties to resolve the matter through mediation within 3 days if the commission thinks that the parties have exhausted the procedures in their CBA



- If the dispute is resolved terms of the mediation agreement will be signed
- If the dispute is not resolved a deadlock will be declared by the mediator and referred to the NLC
- If the mediation fails and the dispute is reported to the NLC the commission shall with the consent of the parties refer the dispute to an arbitrator or arbitration panel for voluntary arbitration



- The parties to an industrial dispute shall within 3 days after the appointment of the arbitrator submit to the arbitrator or the arbitration panel in writing a statement of the issues or questions in dispute signed by one or more of the parties or reps
- The arbitrator shall as soon as possible appoint a time and place for the hearing and notify the parties



- If the party fails to appear before the arbitrator after the expiration of seven days after being so notified the arbitrator shall proceed to hear and determine the dispute
- The decision of the arbitrator or a majority of the arbitrators shall constitute the award and shall be binding on all parties
- The arbitrator shall communicate the award in writing to the parties and the commission within 72 hours after the award has been made except where the commission is the arbitrator



- Aggrieved workers can file a complaint at the NLC
- The NLC will submit the complaint to the employer for their response
- The NLC may constitute a panel of mediators to look into the matter



Disciplinary matters

- What is discipline?
- A state of order based on submission to rules and authority
- Discipline must be seen as perhaps an instrument for exacting an unquestionable respect for and obedience to all lawful authorities and commands a necessary pre-requisite for the survival of the organization



- An organization cannot aim at performing efficiently with an indiscipline bunch of personnel
- Discipline may involve a formal punishment but it is concerned with attitude more than deeds
- As leaders it is appropriate that you adopt positive attitude towards discipline which will reflect on your subordinates



Purpose of discipline

- To make easy coordination of efforts
- Develop self control and character
- Foster orderliness and efficiency
- Enforce obedience to rules and regulations



Issues compelling discipline

- Absenteeism
- Vacation of post
- Negligence
- Misconduct
- Fraud
- Breach of official rules
- Corruption
- Poor ethical behaviour



Issues compelling discipline

- Sexual harassment
- Incompetence
- Malingering
- Insubordination (disobeying instruction)
- Destroying company property
- Assaulting other employees
- Stealing/theft



Who manages discipline?

- Usually supervisors
- Managers
- Disciplinary committees
- Union executives
- Tom management
- Board



Principles

- Hot-stove rule
- The basis of the hot-stove rule is that when applying discipline at the workplace ,it should be directed against the act and not the person.
- The main key point of the Hot-stove rule are as follows:



1.immediacy

- This refers to the time lag between employee misconduct and discipline .An employee discipline is more likely to be effective ,if it is administered as soon as possible . However, depending on the gravity of the case, Managers may want to investigate and get to the bottom of the issue.
- While this is recommended ,if this takes a long time, the import of the disciplinary measure would have been lost



2.Advanced warning

- Employees should be given advanced warning .In other words , they should be made to know the consequences of their misconduct .It is a good practice when employees are made to sign documents indicating that they have been duly warned about infractions and misconduct



3.Consistency

- The issue of consistency in employee discipline by management is a critical element.
- Managers should endeavor to be consistent at all times when administering discipline . Inconsistency on the part of management could result in the following:
- Lower morale
- Lead to employee grievance
- Pollute the work environment
- Diminish the respect employees have for management



- It must be noted , however ,that being consistent does not mean that such factors as length of service, work record , past infractions , past warning etc should not be taken into consideration
- The above clearly point to the characteristics of a hot-stove which are described below:



- The hot-stove burns immediately . Disciplinary policy should be administered quickly. There should be no question of cause and effect.
- The hot-stove consistently burns everyone that touches it. Discipline should be consistent
- The hot-stove gives warning and so should discipline
- The hot-stove burns everyone in the same manner regardless of who they are . Discipline must be impartial.



The need for self-composure

- It is important that managers maintain self-composure when administering discipline.
- Anger and unnecessary argument do not create conducive atmosphere for effective employee grievance management
- Remove employee personality out of the equation . It is important to remember that personalities should not be of concern
- Employees should be made to believe that disciplinary action taken against them is on account of their behavior or misconduct and not their personalities



Administer discipline in private

- Employee discipline must be administered in private except in a situation of serious violations and misconduct



Document misconduct & infractions

- Managers should ensure that infractions are duly documented in personnel files and let them even sign



Thoroughly investigate

- It is advisable to thoroughly investigate the alleged infractions ,interview witnesses, obtain the employees version ,come to a conclusion as to whether the alleged offence has been committed or not



Determine the appropriate discipline

- Issues to consider in determining the appropriate discipline include the following:
- Personnel records-concern with length of service, past disciplinary record past performance
- Nature of the offence
- Compare the present situation of the offence with measures taken against employees who committed similar offences in the past



- Take into consideration existing rules and regulations
- Disciplinary policies in the organization
- The existing collective bargaining agreement(CBA)
- Has the employee received any corrective discipline in the past



- Applying corrective discipline at the workplace implies that the following sequence is the order:
- Oral warning
- Written warning
- Suspension
- Discharge



Conclusion on discipline

- However, the gravity of the offence may warrant outright dismissal if even it is the very first offence committed by the employee



Grievances/disputes-Grievance handling

- Introduction
- The nature of the workplace is that from time to time complaints and disputes will arise relative to application or interpretation of the collective agreement or terms and conditions of service
- To address this reality most collective agreements or conditions of service contains provisions for grievance procedure by which a dispute arising between the employer and the employee or union may be resolved



What is a grievance

- Grievance may be a genuine or imaginary feelings of dissatisfaction or injustice which an employee experiences about his job and its nature , about the management policies and procedures
- It may be defined as any work related dispute arising out of the interpretation ,application , administration or alleged violation of the specific terms of the collective agreement



Types of grievances

- 1.individual grievances-An individual grievance is a complaint brought forward by a single employee which decision affects that specific employee
- 2.group grievance-a group grievance is a complaint brought forward which concerns more than one employee grieving the same alleged violation and usually brought by the union and involves the effect of management action on two or more employees under the same collective agreement or conditions of service.



- 3.policy grievance-a policy grievance is a dispute involving a question of general application or interpretation of any article of the collective agreement or conditions of service rather than the direct management action involving a particular employee . For example , the process by which a position is posted may be viewed by the union as a violation of the collective agreement and therefore they wish to challenge it.



Effects from unresolved grievances

- Lower the morale and efficiency of the employees
- Unattended grievances results in frustration
- Dissatisfaction
- Discontentment
- Low productivity
- Lack of interest in work
- Absenteeism



Causes/sources of grievances

- Grievances may result from the following factors:
- Improper working conditions such as strict production standards ,unsafe workplace , bad relationship with managers etc
- Irrational management policies such as overtime, transfers , demotions ,inappropriate salary structure etc
- Violation of organizational rules and practices



promotion

- Lack of promotion opportunities
- Those who think they should have been promoted and are not
- Procedure for promotion must be clearly spelt out



Annual increments

- Employee fail to relate the non-award of increment to their inefficiencies
- Employees denied increment feel threatened
- Employees treat it as hatred from managers or supervisors; "they don't like us"
- Affects relationship with and attitude towards manager or supervisor



- Infringement of long standing custom or tradition
- Abuse of sick leave privileges
- Overtime payment
- Medical
- Loans
- Protective clothing



Benefits of grievance process

- To become effective at managing one's way through the grievance procedure, an awareness of the five major benefits
- 1.stabilization of daily employee relations
- 2.democracy in the workplace
- 3.open discussion of issues and improved communications between the employer-employee
- 4.allows for interpretation of the collective agreement/conditions of service
- 5.provides the option to submit the problem to a neutral third party



Formal grievance procedure

- Step 1
- In the event of a grievance, the employee should as a first step, take the matter up with the immediate supervisor or manager
- If the aggrieved employee does not obtain satisfaction, he or she may ask his or her shop steward or local union secretary to present his or her case



- Step 2.
- If the matter remains unresolved, the shop steward or local secretary will take the matter up with the manager
- Step 3
- If the matter remains unresolved, the local secretary will inform the regional industrial relations officer of the national union who will arrange to meet the management reps to settle the dispute



- Step 4
- If after step 3, the matter still remains unresolved, it is referred to the General Secretary of the national union. The union will summon the standing Negotiating Committee to meet and to endeavor to reach agreement



- Step 5
- If the committee fails to resolve the matter by negotiation within 7 days after the dispute the committee or either party by agreement may refer the dispute to the National Labour Commission for the appointment of a mediator
- The settlement agreement between the parties shall be recorded in writing and signed by the mediator and the parties in dispute



- Step 6
- When at the end of the mediation proceedings no agreement is reached ,the mediator shall immediately declare the dispute unresolved and refer the matter in dispute to the Commission
- This is the last step prior to arbitration and management's final opportunity to negotiate a settlement with the union



- Step 7
- This is the final step of the grievance procedure is arbitration. Both parties select the arbitrator before who the union and management advocates present their case and evidence to hearing. The arbitrator examines the evidence and makes a ruling which is final and binding on both parties



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