

**CONSTITUTIONAL
ASSEMBLY
ADMINISTRATION**

**Disciplinary &
Grievance
Procedures**

August 1995

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CONSTITUTIONAL ASSEMBLY ADMINISTRATION

DISCIPLINARY PROCEDURES

1. OBJECTIVES AND POLICY

- 1.1. The approach towards employment in this document is based on current thinking in the field of Employment Law. In terms of this approach, Employment is not simply a matter of contract. According to the new trend, employment creates a relationship - between the Employer and the Employee, Employee and her or his fellow Employees, and a relationship between the Employer, Employee/s and the workplace. Each are seen as a link in the chain.
- 1.2. Disciplinary procedures are needed to create order and discipline and to regulate the affairs and conduct of this relationship.
- 1.3. The emphasis throughout this document is on Corrective Discipline where the Employer shall first seek to determine whether the Employee, whose conduct is the cause for Disciplinary Action, cannot be corrected and rectified by means other than a penalty.
- 1.4. Dismissal will be the last resort and will be reserved for the most serious instances of indiscipline or poor work performance.
- 1.5. The most serious factor to be considered is the main interest and business of the Constitutional Assembly.

2. BEHAVIOUR WHICH MIGHT WARRANT DISCIPLINARY ACTION

- 2.1 Employee behaviour which might warrant disciplinary action is listed below in point 2.2 under appropriate headings. This list is however not exhaustive and should be seen as a general guideline of the code of standards expected of employees of the Constitutional Assembly.

- 2.1.1 The seriousness of misconduct must be considered in the light of all the circumstances surrounding the misconduct.

- 2.1.2 Any behaviour which signifies or implies a repudiation by the Employee of her or his lawful obligations under the contract of employment is likely to be seen as serious misconduct, since it goes to the root of the employment relationship.
- 2.1.3 Likewise, any offence which destroys the Employer's confidence in the Employee's integrity or suitability for the employment in question, is likely to be regarded as serious.
- 2.1.4 The overriding consideration is what is in the best interests of the Constitutional Assembly and its objectives.
- 2.1.5 The appropriate penalty for a particular misconduct, and the seriousness of the misconduct itself, will be determined by looking at the following factors :
- i The nature of the misconduct;
 - ii The position held by the person charged with misconduct;
 - iii The duties of such person;
 - iv The impact of the offence on the duties of the person;
 - v The impact and damage of the misconduct on the Employer;
 - vi The impact of the misconduct on fellow Employees; and
 - vii Whether or not it is the first time that the Employee has been charged with misconduct.

2.2 ALCOHOL AND DRUG ABUSE

- 2.2.1 Intoxication or drunkenness whilst on duty.
- 2.2.2 Unauthorised drinking of alcohol or administering illegal drugs on the premises of the Employer.

2.3 INSUBORDINATION/DISOBEDIENCE

This includes, but is not limited to:

- 2.3.1 Refusal to carry out instructions;
- 2.3.2 Display of insolence to a superior.

2.4 DISHONESTY

This includes :

- 2.4.1 Unauthorised possession or use of the property belonging to the

Employer.

2.4.2 Accepting or offering a bribe in the course of one's duties.

2.4.3 Falsifying Constitutional Assembly records.

2.4.4 Unauthorised dissemination of confidential Constitutional Assembly information.

2.5 VIOLENCE OR ABUSIVE BEHAVIOUR

This includes :

2.5.1 Assault, attempted assault, threats and intimidation.

2.5.2 Fighting or abusive behaviour.

2.6 DAMAGE TO OR WASTAGE OF EQUIPMENT AND MATERIALS OF THE EMPLOYER

This includes damage or wastage caused intentionally, negligently and through poor workmanship.

2.7 UNSATISFACTORY WORK PERFORMANCE

This includes:

- i Poor workmanship resulting from negligent and/or reckless performance of duty
- ii Neglect.

2.8 ABSENTEEISM

This includes:

2.8.1 Unauthorised absence from work.

2.8.2 Habitual absence from work.

2.8.3 Unauthorised absence from workplace whilst on duty.

2.8.4 Latecoming.

2.9 RUDENESS TO MEMBERS OF THE CONSTITUTIONAL ASSEMBLY OR THE PUBLIC

This is self-explanatory.

2.10 POLITICAL IMPARTIALITY

This includes intentionally or negligently prejudicing the interests of a particular political party in the constitution-making process whilst in the course of one's duties as an Employee of the Constitutional Assembly.

2.11 SLEEPING ON THE JOB

This is self-explanatory.

2.12 SEXUAL HARASSMENT

This shall be broadly contained in sexual conduct which is considered by the recipient to cause her or him discomfort, interfere with her or his work performance, or create an intimidating, hostile or offensive work environment.

2.13 RACIAL HARASSMENT

This shall include, but is not limited to conduct imposed upon an individual or group, because of race, colour, nationality or ethnicity and which causes the recipient/s to feel threatened, humiliated, patronised, harassed or interferes with their work performance, undermines their job security or creates an offensive work environment.

3. THE PROCEDURE

3.1 CORRECTIVE COUNSELLING

This is the first step to address unsatisfactory employee behaviour and must include the following :

3.1.1. Ensure that the employee is fully conversant with the transgression/behaviour that is unacceptable.

3.1.2 Determine from the employee the reasons for the transgressions.

- 3.1.3 Agree on action that would solve the problem.
- 3.1.4 Take the necessary steps to implement the agreed action.
- 3.1.5 Keep a record of all corrective counselling emanating from the above.

3.2 VERBAL WARNING

- 3.2.1 A Deputy/Head of Department may give an Employee a verbal warning after discussion with the Employee for the purpose of improving her or his conduct and must be given in the presence of the employee's Representative, if the Employee so wishes.
- 3.2.2 The Deputy/Head of Department must keep a record of the verbal warning which must state the reasons for the warning. Such verbal warning shall effectively indicate that further disciplinary action may take place if the matter in question is not satisfactorily resolved. It shall be of a limited and clearly stated duration, not exceeding three months.

3.3 WRITTEN WARNING

- 3.3.1 A written warning shall be given when attempts to improve performance by verbal warnings have failed, or when the misconduct is considered sufficiently serious to warrant a written warning.
- 3.3.2 The written warning shall state the nature of the misconduct . The factors or reasons for the warning shall be spelled out. It shall also specify that further disciplinary action will follow if there is no improvement or if there is a re-occurrence of the misconduct warned against. Any information about previous verbal warnings shall be recorded in the written warning.
- 3.3.3 The written warning shall be signed by the person issuing the warning, the Employee and the Employee's representative. The warning shall be placed in the Employee's personal file where it shall remain valid for three months from the date of issue. Where the Employee refuses to sign the written warning, that fact shall be noted on the warning.

3.4 DISCIPLINARY ENQUIRY

- 3.4.1 An Enquiry shall be held at all instances involving misconduct where

a penalty other than a warning can be imposed.

3.4.2 The Enquiry shall as far as possible be held promptly within 5 days of the occurrence of the conduct complained of.

3.4.3 The Employee affected shall be adequately informed of the pending Enquiry in a document headed Notice of Disciplinary Enquiry which shall advise of the following:

- i Nature and particulars of the relevant charges contemplated;
- ii Date, time and place of the enquiry;
- iii That the Employee is entitled to call witnesses to support her or his version;
- iv That the Employee can introduce documents to support her or his case provided that the authenticity of such documents shall be established;
- v That the Employee is entitled to be represented by any fellow Employee of her or his choice at the enquiry and that the Employee who accepts so to represent another shall not be victimized in any way for that reason;
- vi That the Employee or her or his representative on her or his behalf is entitled to cross-examine anyone who is called in to testify against the Employee;
- vii If the Employee wishes she or he can be provided with the services of an interpreter for one of the official languages in South Africa if no less than 36 hours notice is provided;
- viii The possible penalty that may be imposed if the Employee is found guilty;
- ix That the Employee's record of previous misconduct shall be considered when determining the question of the appropriate penalty to be imposed;
- x Who shall preside at the Enquiry and that the Employee may by giving reasons, object to that particular Presiding Officer; and
- xi That the proceedings shall be recorded.

3.4.4 The Notice of the Disciplinary Enquiry shall be delivered to the Employee who shall acknowledge receipt by signing her or his name on the notice. A copy of notice will be kept as proof of delivery of the notice.

3.4.5 In the case of an Employee who has been suspended pending the Enquiry, notice shall be effected by having the Notice dispatched by registered mail to the address of the Employee contained in the records of the Employer, as submitted by the Employee when she or he was employed by the Employer. In the event of such dispatch, the

date of the enquiry shall be calculated from the date of dispatch.

3.4.5 The Enquiry shall be presided over by a member of the Directorate.

4. PROCEEDINGS AT THE ENQUIRY

4.1 The Presiding Officer shall open the proceedings by introducing what the proceedings are about. She or he shall then put to the Employee what she or he is charged with. Once the Presiding Officer has established that the Employee understands what case she or he has to meet, the Presiding Officer shall then request the Employee to respond by stating whether or not she or he admits to the charges.

4.2 ADMISSION OF MISCONDUCT

4.2.1 Where the Employee admits to the charge/s of misconduct, the procedure is as follows :

- i The Presiding Officer shall establish if the Employee understands that her or his conduct is a transgression of the Code of Conduct of the Employer.
- ii If the answer is yes, the Presiding Officer shall examine why the Employee has committed such a transgression.
- iii If thereafter, the Presiding Officer is satisfied that the conduct warrants a finding of guilt she or he shall then advise the Employee and give them an opportunity to motivate if she or he wishes why they should not be found guilty.
- iv Thereafter, if the decision of the Presiding Officer is that the Employee shall be found guilty, she or he shall make an announcement and before deciding on the appropriate penalty shall allow the Employee to make their own representation regarding the question of an appropriate action.
- v The decision on the action shall be communicated to the Employee as well as the reasons for the action.
- vi The Employee will also be advised that they have a right to Appeal against the decision of this Enquiry.

4.3 DENIAL OF MISCONDUCT

Where the Employee denies the charges against them, the procedure is as follows :

- i The Presiding Officer shall call upon the person making the charge to present their case. Thereafter the Employee will be given an opportunity to cross-examine the person making the charge.
- ii The person making the charge will be allowed to call witnesses (one-by-one) who will also be cross-examined by the Employee if they so wish.
- iii Once the person making the charge is finished presenting their case, the Employee will be allowed to present their version and will be allowed to call witnesses, and be cross-examined by the person making the charge.

4.4 The Presiding Officer has the right to put questions of clarity to any of the parties. After such questioning, the Presiding Officer shall allow any party to ask questions that emanate from such questioning.

4.5 All proceedings shall be recorded.

4.6 Where the Employee has a Representative present, that Representative shall assume all the duties of the Employee, except that the Employee shall be required to personally respond to cross-examination where they have personally presented their case.

4.7 At the end of the presentation of both versions of the case and before a decision is made by the Presiding Officer, both the person making the charge and the Employee shall make submissions to the Presiding Officer regarding what appropriate decision to take. After such presentation, the Presiding Officer shall consider all the evidence and the submissions and shall then give out the decision. The Presiding Officer may at any time adjourn the Enquiry and give her or his decision at a later stage. In pronouncing the decision the Presiding Officer shall highlight what factors influenced her or his decision.

4.8 Where the Employee is found guilty of misconduct, then the Presiding Officer shall invite both the person making the charge and the Employee to make submissions as to the appropriate action to be taken. At this point the person making the charge shall introduce previous penalties if any against the Employee. The Employee shall equally introduce factors that she or he thinks

are relevant in mitigation of action against her or him.

- 4.9 Once the Presiding Officer has considered these submissions, she or he shall pronounce on action and advise of all the factors that were taken into account in deciding upon this action, providing that the Presiding Officer may adjourn the meeting if she or he considers it necessary and give the decision at a later stage.
- 4.10 The Employee shall be advised there and then that they have a right to lodge an Appeal/Review against the Presiding Officer's decision. They shall also be informed to whom they should make the appeal and the time limits within which to lodge the appeal.
- 4.11 The outcome of the Enquiry shall be made available to the Employee within three days of the Enquiry. The record of the Enquiry shall be made available, upon the request of the Employee.

5. APPEAL AND REVIEW

5.1 Every Employee against whom disciplinary action has been taken shall have a right to appeal and/or review against such decision.

5.2 APPEAL

The appeal can be based on the following grounds:

- i The procedure followed was unfair and contrary to the one set down;
- ii The finding of misconduct is unfair in that it is against the weight of evidence;
- iii The sanction imposed is either unfounded or too severe in the circumstances of the Appellant's case.

5.3 REVIEW

The review can be based on the following grounds:

- i The person who made the decision was biased against the Employee
or
- ii New facts have come to light which may affect the decision taken against the Employee.

5.4 PROCEDURE FOR APPEAL/REVIEW

- i The Appeal or Review shall be lodged to the Deputy Executive Director where the decision emanates from the Head of Department or to the Executive Director where the decision emanates from the Deputy Executive Director.
- ii The Employee shall indicate her or his intention to lodge the appeal or review by submitting a notice of such appeal or review within three days of such decision to the person against whose decision the appeal or review is lodged. A copy of the notice shall simultaneously be filed upon the person who shall determine the appeal or review.
- iii The person who shall preside over the appeal or review shall inform the Employee within three days of receiving the notice of appeal or review of the date on which the appeal or review will be heard.
- iv On appeal or review, the Presiding Officer shall call any evidence she or he deems relevant to assist her or him with the matter. The decision on appeal or review shall be made known to the Employee.
- v The Employee has a right to make a further appeal or review until all internal remedies are exhausted. In all cases, except for members of the Directorate, the decision of the Executive Director shall be final.
- vi If the Employee is still not satisfied the Employee shall have the right to take the matter either to the Industrial Court or the Conciliation Board whatever the case may be.

6. DISCIPLINARY SANCTION

6.1 DEMOTION OR TRANSFER

This shall be applicable in the following circumstances:

- i Where the Employee expressly agrees thereto; or
- ii Only after a fair and valid Disciplinary Enquiry.

6.2 SUSPENSION

This is applicable in the event of a serious disciplinary breach :

6.2.1 INTERIM SUSPENSION

This applies where the Employee is suspended pending the holding of a Disciplinary Enquiry into the alleged misconduct or criminal investigation. In this instance, such suspension shall be on full pay.

6.2.2 SUSPENSION AS AN INDEPENDENT SANCTION

- i This is appropriate where previous warnings have failed or where the transgression is serious enough to warrant a more severe action than a warning. This will only be imposed after a full, fair and valid Disciplinary Enquiry.
- ii Such suspension shall be without pay. It can also be for any period up to three months. Such suspension can only be imposed by a member of the Directorate.

6.3 DISMISSAL

6.3.1 This is applicable where the conduct complained of is serious as to warrant a penalty more severe than any of the ones specified above or where the Employee has previously been punished for misconduct and the imposition of any of the previously mentioned penalties is not appropriate.

6.3.2 Such dismissal shall be preceded by a full and fair Disciplinary Enquiry except in the following instances:

- i Where the Employee has waived her or his right to an Enquiry;
- ii Where the circumstances of the case are such that it would not be reasonably expected to afford the Employee the opportunity to be heard in a Disciplinary Enquiry

6.3.3 The only people who shall have the power to dismiss shall be the Executive Director and Deputy Executive Directors.

6.4 SCHEDULE OF OFFENCES

	First Step	Second Step	Third Step
Intoxication or drunkenness on duty	Summary dismissal		
Unauthorised drinking of alcohol or administering illegal drugs on the premises of the Employer	Disciplinary Enquiry		
Refusal to carry out instructions	Disciplinary Enquiry		
Display of insolence to a superior	Written Warning	Disciplinary Enquiry	
Unauthorised possession or use of property of the Employer	Disciplinary Enquiry		
Accepting or Offering a bribe in the course of one's duties	Disciplinary Enquiry		
Falsifying Constitutional Assembly records	Disciplinary Enquiry		
Unauthorised dissemination of confidential Constitutional Assembly records	Disciplinary Enquiry		
Assault, attempted assault, threats and intimidation	Disciplinary Enquiry		
Fighting or abusive behaviour	Written Warning	Disciplinary Enquiry	
Damage to or wastage of equipment and materials of the Employer	Written Warning	Disciplinary Enquiry	
Unsatisfactory Work Performance	Verbal Warning	Written Warning	Disciplinary Enquiry
Unauthorised absence from work	Verbal Warning	Written Warning	Disciplinary Enquiry
Habitual absence from work	Verbal Warning	Written Warning	Disciplinary Enquiry
Latecoming	Verbal Warning	Written Warning	Disciplinary Enquiry

	First Step	Second Step	Third Step
Rudeness to members of Constitutional Assembly or the Public	Written Warning	Disciplinary Enquiry	
Intentionally or negligently prejudicing the interests of a particular political party in the constitution making process whilst in the course of one's duties	Disciplinary Enquiry		
Sleeping on the Job	Verbal Warning	Written Warning	Disciplinary Enquiry
Sexual Harassment	Disciplinary Enquiry		
Racial Harassment	Disciplinary Enquiry		

7. MEMBERS OF THE DIRECTORATE

7.1 DEPUTY EXECUTIVE DIRECTORS

With regard to Deputy Executive Directors, the position is that warnings shall be issued by and Disciplinary Enquiries presided over by either the Executive Director or Chairperson or Deputy Chairperson of the Constitutional Assembly. Appeal or review shall be lodged with either the Chairperson or Deputy Chairperson of the Constitutional Assembly, depending against whose decision appeal or review is lodged.

7.2 EXECUTIVE DIRECTOR

In the case of the Executive Director, warnings shall be issued by and Enquiries presided over by either the Chairperson or Deputy Chairperson of the Constitutional Assembly. Appeal or review shall be lodged with the same, depending against whose decision appeal or review is lodged.

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CONSTITUTIONAL ASSEMBLY ADMINISTRATION

GRIEVANCE PROCEDURES

1. OBJECTIVE

The objective of the Grievance Procedures is to provide a formal channel for the communication of employee grievances to their superiors, and to allow for these to be settled as speedily as possible in the interest of sound human relations in the workplace. Through the Grievance Procedures, management wishes to improve morale and work satisfaction amongst all its employees.

2. DEFINITION

A grievance is any complaint, dissatisfaction or feeling of injustice by one or more employees at the workplace, arising from conditions of employment (excluding disciplinary matters) and the employment relationship.

3. POLICY STATEMENT

- 3.1 Staff members shall lodge grievances without any prejudice whatsoever to their employment.
- 3.2 Grievances shall be resolved at the earliest possible stage and as speedily as possible at the point where they originated.
- 3.3 Any staff member is entitled to the assistance of a fellow staff member she or he may choose or a representative from the staff in dealing with her or his case.
- 3.4 The purpose of the procedure is primarily to solve individual grievances. However, the procedure may be made applicable to the resolution of group grievances.
- 3.5 Grievances that occur as a result of disciplinary action taken by the supervisor shall be dealt with in terms of the appeal procedure set out in the disciplinary procedures.

4. STAGES OF PROCEDURE

4.1 FIRST STAGE : IMMEDIATE SUPERVISOR

- 4.1.1 A staff member with a grievance relating directly to her or his employment, must communicate it verbally to her or his immediate supervisor, or to the latter's supervisor in the case of a grievance against an immediate supervisor. She/he must make it clear to the supervisor that she/he is lodging a formal grievance.
- 4.1.2 The supervisor, must, to the best of her or his ability - listen to the staff member in private, encourage the staff member to express her/his grievance freely and openly and obtain all relevant facts and information relating to the grievance.
- 4.1.3 The supervisor must try to resolve the grievance as speedily as possible. They should also keep a record of the grievance and the steps taken to resolve it.
- 4.1.4 If the supervisor's decision is unacceptable to the staff member, the second stage of the procedure becomes effective. The supervisor must advise the staff member of the following stages of the grievance procedure and of her/his right to seek the assistance of a fellow staff member.

4.2 SECOND STAGE

- 4.2.1 The staff member should discuss her/his grievance with her/his representative.
- 4.2.2 With the assistance of the representative, the staff member should again verbally inform the immediate supervisor of the grievance. The supervisor should resolve this as soon as possible after receiving the report.
- 4.2.3 If the matter is resolved, it is the duty of the staff member's representative to ensure that the action agreed upon, is implemented.
- 4.2.4 If the decision of the supervisor is unacceptable to the staff member, the third stage becomes effective.

4.3 THIRD STAGE

- 4.3.1 If the grievance remains unresolved, and the staff member is still not satisfied, the supervisor must arrange a further meeting within three working days of receiving the report that the decision is unacceptable.
- 4.3.2 The aggrieved staff member, her/his representative if any, the supervisor, the staff member complained against and the Head of Department shall be present at the meeting.
- 4.3.3 Those present at the meeting must then attempt to resolve the issue and come to an agreement.

4.4 FOURTH STAGE

- 4.4.1 If the grievance still remains unresolved, and the staff member is still not satisfied, a meeting must be arranged as soon as possible by the Deputy Executive Director.
- 4.4.2 The staff member, her/his supervisor, the staff member's representative, the staff member complained against, the Head of Department and Deputy Executive Director shall be present at the meeting.
- 4.4.3 Those present at the meeting must attempt to resolve the issue and come to an agreement.

4.5 FIFTH STAGE

- 4.5.1 If the matter is still not resolved to the satisfaction of the staff member, a written report should be drawn up incorporating the following information:
- i the employee's report
 - ii the views of the Head of Department
 - iii the views of the Deputy Executive Director
 - iv the reasons for the staff member's rejection of these views.

This report should be signed by the aggrieved staff member and the Deputy Executive Director,

- 4.5.2 The report should be forwarded to the Executive Director, who must convene a meeting of the staff member and their representative, the Head of

Department, the Deputy Executive Director and the staff member complained against.

4.5.3 This shall be final internal forum for the handling of the grievance. All endeavours shall be made at this forum to resolve the grievance.

5. GENERAL

Notes should be kept at all stages of the procedure by all parties involved in addressing the grievance. This record should reflect the solutions that have been agreed. The supervisor, Deputy Head, Head of Department and/or the Directorate, whatever the case may be, shall ensure that there is compliance with the process agreed to, in addressing the grievance.

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CONSTITUTIONAL ASSEMBLY

INTERNAL MEMORANDUM

TO: ALL STAFF MEMBERS
DATE: 11 AUGUST 1995
FROM: EXECUTIVE DIRECTOR
RE: GRIEVANCE AND DISCIPLINARY PROCEDURES

To all staff members

Please find attached the finalised grievance and disciplinary procedures which take effect from today 11 August 1995.

We have circulated earlier drafts and received useful comments and suggestions from various departments. Some of these have been incorporated. The format has also been changed to try and make the document more "user friendly".

If there are any areas you are still unclear about, please approach your Head of Department for assistance.

The Heads of Department agreed last week that we need to draw up a brief Code of Conduct. A draft is being prepared and will be circulated soon for your comment.

We hope these procedures will go a long way towards creating a working environment of teamwork and harmony in our Administration.

Yours sincerely

HASSEN EBRAHIM
EXECUTIVE DIRECTOR

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You've made your mark



Now have your say
Now have your say

THE NEW CONSTITUTION

