CHAPTER TWO : THEORETICAL EXPOSITION OF DISCIPLINE

2.1 INTRODUCTION

Institutional rules and regulations regulate the behaviour of employees within any particular institution. Prohibited actions by the employees will prompt the supervisor to lodge a formal complaint of misconduct against the employee concerned with the sole purpose of enforcing discipline. The purpose and objectives of disciplining employees are usually contained among others in the institutional rules and regulations.

The main purpose of this chapter is to give a theoretical exposition of discipline. Firstly, a brief description will be given as to how the literature which is referred to in this dissertation was obtained. This will be followed by mentioning the types of information sources which were consulted and the means of accessing them. In order to achieve this objective it is necessary to define various concepts which will shed light on the concept "discipline" itself. Discipline will be defined in order to indicate different views held by different authors about its definition. The ultimate aim is to have one definition of discipline which will be referred to in the rest of the dissertation.

An analysis of the purpose and objectives of disciplining employees will serve as a frame of reference for managers who have to discipline their employees. It is important for the researcher to always keep in mind the purpose and objectives of disciplining subordinates. Disciplining employees will be unsuccesful unless a specific goal is kept in mind. The rules and regulations of institutions differ in the same way as the reasons for their existence. Based on these reasons, employers may adopt either one of two approaches to discipline namely, the traditional approach and the modern approach. It is necessary to describe both approaches to come to a theoretical understanding of discipline. Both approaches will be described in the light of the definition of discipline.

This will be followed by a description of categories of misconduct and penalties. The purpos
e is to

introduce the reader to the various categories of misconduct as well as the guidelines to be followed in dealing with those misconducts.

The typical roles of the various role players during the disciplinary process will be described. The role players referred to here are members (employees), their representatives, the employer and trade unions. Furthermore, a description of a typical disciplinary process will be given. Through this the various stages of the disciplinary process will be traced. The various disciplinary sanctions which employers may impose on employees found guilty of misconduct will be identified. It is also important to describe the remedial steps which can be invoked by employees who are not satisfied with a disciplinary sanction imposed on them. At the end of this chapter a number of conclusions will be given in which the researcher will objectively summarise the arguments about the concepts of discipline and the disciplinary process.

2.2 LITERATURE REVIEW METHODOLOGY

The literature on the concepts of "discipline" and "disciplinary process" were consulted to understand the theoretical background. An exposition of this background is important in that it can be used as a foundation for the application of discipline. Literature from 1982 was consulted and compared to recent literature to see how discipline has developed through the years. Recent literature was then reviewed to determine the influence of the present labour

laws. On the basis of various definitions of the theories of discipline, one definition was formulated which will be used in the rest of the dissertation.

Books, journal articles, newspapers and magazines were used as sources of information for this dissertation. Library catalogues, South African studies CD-ROMs, Internet search engines and directories were used to access books. Indexes to South African periodicals and the Internet were used to access journals. South African media, Internet and the South African Studies were used to access dissertations. The emphasis of this part of the study was on the determinants of discipline and the disciplinary process as applicable to both the military and non-military environments. In reviewing the literature the researcher wanted to have a clear understanding of discipline as presently applied.

2.3 DEFINING DISCIPLINE

According to Andrews (1985:220) discipline refers to a behaviour pattern of a public official which coincides with the prescriptions of law, regulations or other statutory stipulations. Discipline is defined as the shaping of a subordinate's behaviour to motivate him to act in a particular way in order to ensure the achievement of the set institutional goals (Kroon 1990:11). According to Powell (1996:285) discipline is defined as training aimed at improving physical powers, strengthening self-control and producing obedience.

For this dissertation one can therefore define discipline as the moulding and regulating of the behaviour of subordinates through prescribed directives such as rules and regulations in order to achieve institutional goals.

2.4 PURPOSE AND OBJECTIVES OF DISCIPLINE

Most institutions have drawn up a code of conduct which considers certain behaviour as unwarranted and should an employee omit or commit such an act he/she will be guilty of misconduct. It is through such a code of conduct that institutions try to maintain discipline in their working relationships with their employees. Kroon (1995:171) believes that the aim of discipline is to eliminate undesirable behaviour by an action which has unpleasant consequences, but which has educational value. This view regards discipline as a negative activity which must be undertaken by supervisors to discourage a repetition of unwarranted acts by employees. Therefore it regards discipline as an end in itself rather than a means to an end.

According to Grossett (1999:21) the purpose of discipline under the labour law is regarded as corrective rather than punitive. For instance, in a parent-child relationship the parent will always correct and guide the child not to commit or repeat unpleasant behaviour. It will never be the objective of the parent to inflict pain on the child following undesirable behaviour. As Marker (2000:18) pointed out that when children know what their parents expect from them, they feel more secure. In an employer-

employee relationship the employer will try to mould the behaviour of the employee so that it conforms to the prevailing rules and regulations of the institution by enforcing discipline. The employer will however, in a lenient manner, impose disciplinary sanctions upon employees who misbehave in order to prevent a repetition of the undesirable conduct in future.

The function of discipline in the work place is to ensure that employees contribute effectively and efficiently to the goals of the institution (Grossett 1995:12). Since an employer and employee have a contractual bond, the employer, through discipline, will monitor and control the behaviour of the employee so that the goals and objectives of the institution are adhered to.

By monitoring and controlling employees' behaviour the employer will immediately investigate any alleged misconduct by an employee and impose a sanction if indeed a misconduct is proven. This is supported by Kroon (1995:172) when he pointed out that discipline sometimes

implies that an employer denies an employee a valued reward.

Grossett (1999:21) maintains that the employer has the right to ensure that an employee adheres to reasonable standards of efficiency and conduct. The only way through which an employer may ensure that employees' conduct conform to the required standards, is to enforce discipline. It may therefore be argued that institutions tend to realise their objectives and goals by *inter alia*, maintaining discipline in the working environment.

2.5 APPROACHES TO DISCIPLINE

Although the literature has shown the existence of different approaches to the disciplining of subordinates, two approaches, namely the traditional approach (also referred to as the progressive approach) and the modern approach (also referred to as the corrective approach) are described below.

2.5.1 Traditional approach: progressive approach

Zack and Bloch (in Asherman 1982:528) described progressive discipline as a system of escalated penalties made known to employees in advance and imposed with increasing severity for repeated infractions. In an institution whereby this system is in place, employees may work in fear of being negatively disciplined should they misbehave, as there is a strict adherence to institutional rules and regulations. It seems that in terms of this approach the circumstances under which the employee committed the misconduct are not considered. According to Rycroft and Jordaan (1992:178) this old style of discipline is by nature authoritarian and paternalistic.

The master-servant relationship in the working environment will mean that the supervisor

will give orders which may not be questioned by subordinates. This will be a one-way communication method, that is, from top to bottom. According to Asher (1983:12) the punitive aspects of traditional discipline remain permanently fixed in the minds of most employees. On the other hand, Asherman (1982:529) pointed out that if the employee fails to change, more serious disciplinary action follows. Therefore, the employee's fear of a heavier penalty should in theory motivate him/her strongly toward change. According to Asherman (1982:528) progressive discipline has, among others, three common characteristics namely punitive discipline, negative feedback and labeling of behaviour. Based on this statement it may seem that in terms of punitive discipline no attempt is made by the supervisor to listen to the cause of the misconduct so that a reasonable decision, that is whether to impose a sanction or not, may be taken. Once the institutional rule or regulation has been broken, punishment is imposed.

The application of punitive measures following each and every transgression will result in an institution manned with too many demotivated and demoralised employees who will become unproductive in the long run. In instances where the institution tries to limit the process of punitive discipline, the end result will be that the entire disciplinary process will be characterised by inconsistencies, as what has been done to one employee will not be done to the others. Asherman (1982:529) is of the opinion that, under these circumstances, the disciplinary process is not designed to change the employee, but instead to remove him/her from the institution, thereby making the manager's life easier. It may, therefore be sufficient to state that employees under these conditions do not have labour rights, namely the right to fair labour practice and the right to be fairly heard, for example at a departmental hearing.

Supervisors using progressive discipline generally provide feedback only when an employee's performance is below standard (Asherman 1982:529). Supervisors do not say anything about their subordinates' behaviour when they are satisfied with their work performance or when targets are met. Daniels (2000:101) stated very clearly that feedback is information about performance that allows an individual to adjust his/her performance. There is no way that an employee may adjust or improve if he/she has not been told to improve. In most instances, the

only time when the supervisor can give feedback to the subordinates is when work performance has deteriorated and calls for punitive measures which may disregard previous positive work performance.

Too often feedback is only given when an employee is doing something wrong and not what he/she is doing right (Capozolli 1997:17). In many instances employees work in fear due to not being sure if they are still working or behaving within the institutional rules and regulations.

Asherman (1982:589) believes that managers also tend to label employees rather than describe their unacceptable behaviour. Should an employee commit a misconduct at a certain stage, chances are that the employee will be labelled as a culprit and keep that label. Even if such an employee corrects that behaviour by acting positively and responsibly, other people's perceptions of the employee may not change. If employees are always criticised, they will soon get the impression that they do not matter, as only the things they do wrong are recognised (Ströh 2001:66). This means the relationship between a supervisor and a subordinate can be permanently marred by ill-feeling.

Labeling is insidious, for employees carry their labels with them from department to department (Asherman 1982:529). In other words labels attached to employees may

remain with those employees for a very long time and in some instances may affect their future prospects of employment as the very same supervisor may be the subordinate's reference.

New developments in the political and social environment, outside the labour environment have made it necessary to bring about changes in the labour laws and subsequently in the working relationships especially between employers and employees. Therefore a movement away from the progressive approach to discipline towards the corrective approach was necessary.

2.5.2 Modern approach: corrective approach

Modern employment practices require a more enlightened approach to the formulation of standards for the maintenance of discipline, one that places the emphasis on corrective discipline (Rycroft & Jordaan 1992:179). In corrective discipline, both the employee and the supervisor share the responsibility for solving the problem. This view holds that employees are not seen as objects but rather as subjects which may bring about considerable changes in the workplace, more especially in productivity. The fact that a problem has emerged does not mean that the employee is a problem and therefore has to be punished. It should rather be viewed as a challenge facing both the employee and the supervisor. It may be possible that an employee has committed a misconduct, for example reporting late for duty and be so charged. There may be circumstances beyond this employee's control which may have caused him/her to act in that particular way. Those factors should be considered as problems and need to be addressed by both the supervisor and the employee concerned. On the same note, Asherman (1982:530) believes that the employee's behaviour will improve for a time when disciplinary action is taken.

Corrective discipline does not reject the application of disciplinary sanctions, however, it maintains that a disciplinary sanction should be aimed at correcting the employee's behaviour and not to remove him/her from the institution. Rycroft and Jordaan (1992:182) also pointed out that it is only the employee's behaviour that requires correction. This can be posed as a challenge to the supervisor who does not have to waste

time in dealing with the employee, rather than the unwanted behaviour. In corrective discipline, however, disciplinary sanctions are stimuli for change by moulding the behaviour of the employee and are not simply punishment or steps towards the termination of service (Asherman 1982:531).

Cameron (1984:39) believes that the purpose of disciplinary sanction is to give the employee a clear indication of what required behaviour is and what the results of continued misconduct are. One could therefore compare corrective discipline with the reformative theory of punishment of which the purpose is, according to Snyman (1989:22), to reform the offender so that he/she may become a normal law-abiding member of the community once again. The only thing which

the employer does not want is the kind of behaviour that is punishable by the rules and regulations. If the employee refrains from committing these offences, he/she will remain in the service of the employer.

2.6 CLASSIFICATION OF MISCONDUCT AND PENALTIES

In order for employees to have confidence in the disciplinary system of the institution, there must be consistency in all dealings with the employee. For example, if a warning for sleeping on duty was imposed on employee A, then employee B should also be warned for the same misconduct under the same circumstances. However, if employee B should continue sleeping on duty, further action should be taken. Grossett (1999:21) pointed out that the punishment meted out to the employee should be commensurate with the severity of the misconduct committed by the employee.

It is common knowledge that human beings can and are capable of making mistakes. In order to minimise such common natural mistakes during the disciplinary process, it is be advisable to have a clear policy which may prescribe minimum sentences for all the misconducts. It may further be necessary to categorise all the offences so that, for example, it may be known in advance that when an employee has committed a certain offence what the penalty will be considering the circumstances. However, the prescription of sentences and the categorisation of misconduct, should only serve as a guideline to presiding officers and therefore each case should still be judged on its own merits. Grossett (1999:22) suggests that offences should be classified into:

- minor offences: for example, coming late to work, deliberately working slowly
- serious offences: for example, absenteeism, abusing sick leave
- very serious offences: for example, being under the influence of liquor while on or off duty
- dismissible offences: for example, fraud and theft.

After offences have been classified as such, sentences or disciplinary measures have to be assigned to each and every offence in each category. This may have certain advantages, such as serving as a deterrent to employees to commit a misconduct and to perform in such a way that the required standards are met.

Secondly, the morale of the employees will be improved in that inconsistencies in terms of imposing disciplinary measures will be reduced as much as possible. For instance, misconduct may be classified as shown in table 1 below.

Table 1. Schematic representation of the classification of misconduct and disciplinary sanctions

	1ST OFFENCE	2ND OFFENCE	3RD OFFENCE	4TH OFFENCE
MINOR	VERBAL WARNING	WRITTEN WARNING	FINAL WRITTEN WARNING	DISMISSAL
SERIOUS	WRITTEN WARNING	FINAL WRITTEN WARNING	DISMISSAL	
VERY SERIOUS	FINAL WRITTEN WARNING	DISMISSAL		
DISMISSIBLE	DISMISSAL			

Source: Grossett (1999:23)

According to Grossett (1999:22) the classification as shown in table 1 should serve as a guideline to presiding officers during disciplinary hearings. The disciplinary sanctions as shown in the above table, with the exception of verbal and written warnings will only be imposed on an employee after a formal disciplinary hearing and if the employee was found guilty of misconduct.

Once an offence has been correctly classified, it is then a relatively easy task to decide on

the disciplinary actions available to the presiding officers (Grossett 1999:220). According to Roux, Brynard, Botes and Fourie (1997:125) the more standards, procedures, rules and policies there are, the less discretion will be allowed. The classification of misconducts should not serve the purpose of prejudging every case, but should be an attempt to control the presiding officers' discretion and limit inconsistencies during the disciplinary process.

2.7 ROLE PLAYERS DURING THE DISCIPLINARY PROCESS

The disciplinary process is initiated by an alleged committed misconduct. Thereafter various role players are involved in the process. Role players who may take part during the disciplinary process are usually from within the institution, for example the employer, shop stewards and the employees themselves. Role players who are from outside the institution are for example, defense lawyers and civilian witnesses. The duties, rights and obligations of these role players need an in depth discussion.

2.7.1 Employee

An employee of an institution has a dual role to play during the disciplinary process. An employee may play a role during the disciplinary process as a representative (shop steward) and as an accused.

2.7.1.1 Representative

According to Slabbert and Swanepoel (1998:91) employees who act as shop stewards, will remain employees of the institution and their position is regulated accordingly by the employment contract. Here the representatives have the very same rights and privileges as their fellow co-workers. They therefore have a dual role with regard to the disciplinary process, because they have an obligation towards the institution and the trade union.

Employees who have accepted a position within their trade union, have to comply with the constitution of the trade union and carry out their duties satisfactorily. In the event where shop stewards contravene the employer's rules and regulations, they will be charged with misconduct.

2.7.1.2 Accused

An accused has certain rights which he/she has to exercise during the disciplinary process. For example, Bendix (1996:364) stated that the accused must be informed, in the language which is understandable to him/her, of the charge being investigated against him/her. During an investigation of an alleged misconduct, the investigating officer may use the accused's own language when interviewing him/her. Even if the accused understands another language, he/she has the right to demand that the language he/she understands best be used. Piron and Piron (1992:16) stated that in the event where an accused has difficulties in understanding the language used during the disciplinary hearing, that accused has the right to the services of an interpreter. It is also the responsibility of the accused to ensure that his/her rights are respected by the employer during the disciplinary process.

2.7.2 Employer

The employer is regulating the employment relationship by enforcing discipline upon employees who act contrary to the employer's rules and regulations. According to Gerber, Nel and Van Wyk (1998:357) it is through disciplining that the employer wants to ensure that individual employees contribute effectively and efficiently to the goals of the institution. The role of the employer during the disciplinary process will be undertaken by supervisors and presiding officers.

2.7.2.1 Supervisor

The supervisor is the person who is in physical contact with the employee on a daily basis. The first person to notice or suspect that an alleged misconduct has been committed is him/her. Being fully conversant with the rules and regulations of the employer, he/she has to enforce discipline upon an employee who misbehaves. Rautenbach (1994:18) believes that written policies promote appropriate delegation of authority and avoids management by exception. One could state that the supervisor is there to execute the "law", meaning that, whatever policy is in place, he/she has to see to it that it is adhered to. If ever an employee has contravened a certain policy, the supervisor must bring that to the attention of the employer. It is then the duty of the supervisor to document infractions and bring them to the attention of the employer (Thibault, Lynch & McBride 1998:234). Supervisors should have the power to address certain situations on the spot as they arise, without having to report them. For instance, if an employee arrives late for duty for the first time, the supervisor should deal with that situation immediately without having to report it to someone else. If this misconduct is reported it may happen that it is only finalised a few days later, and the employee may suffer psychologically and during that time he/she may be demotivated. Anderson (2000:169) pointed out that the one situation where a supervisor does not need counseling, is when he/she has to warn a subordinate for a minor infraction. One could therefore state that supervisors should also informally reprimand employees who misbehaved without any documentation.

According to Rautenbach (1994:20) management often adheres too rigidly to a code, losing the natural perspective of common sense and fairness. Policies serve only as guidelines, and therefore they can not anticipate any future state of affairs. It is not suggested that supervisors should condone the breaking of certain rules and regulations. The point is supervisors should deal with each situation individually, and after that decide whether it should be reported or not. According to Lussier (1997:560) the supervisor is a coach when disciplining. A coach is someone who, upon witnessing deviations from original instructions, gives guidance on the spot, and gives praise for any positive action.

2.7.2.2 Presiding officer

According to Piron and Piron (1992:21) presiding officers may adopt one of the two commonly known approaches to discipline during the disciplinary process, namely an adversarial approach or an inquisitorial approach.

In the adversarial approach the presiding officer assumes a fairly passive role throughout the proceedings. He/she makes procedural rulings , and ultimately makes a finding and imposes a sanction. The inquisitorial approach is characterised by the fact that the presiding officer takes a far more active role in the proceedings (Piron & Piron 1992:21). In terms of the inquisitorial approach the presiding officer will question both the accused and the witnesses at length with a view to establishing the truth. In this case the presiding officer enters the playground and becomes a participant as well. This implies that the presiding officer will no longer conduct the disciplinary hearing as objectively as possible, but there is a possibility that he/she will become subjective. Once the presiding officer takes such a stand it may be obvious that the employee will no longer receive a fair hearing as the presiding officer will already have been prejudiced before making a decision.

Rautenbach (1994:24) stated that presiding officers have an unfortunate tendency to seek a

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the employee guilty of misconduct even before the conclusion of the disciplinary hearing, which suggests further that employees are not presumed to be innocent until the contrary is proven. In a situation like this one could ask himself/herself as to whether the presiding officers were trained to act in this way or if it is only a result of an organisational specific subculture. A presiding officer who is already subjective or have a negative attitude towards the employee will undoubtly find the employee guilty even though there is no evidence to support this verdict. For instance, Senge, Ross, Smith, Roberts and Kleiner (1994:28) pointed out that mental models are images, assumptions and stories which we carry in our minds of ourselves, other people and every aspect of the world. Too often
guilt appears to be determined solely by reason of the fact that a particular person was

charged with a particular misconduct (Rautenbach 1994:24). It may well be that presiding officers may have wrong assumptions only because they paid heed to stories about employees who appear before them.

2.7.3 Trade unions

The trade union creates a channel for the employee whereby he/she can make himself/herself heard and through which he/she can convey his/her needs and desires to others (Slabbert & Swanepoel 1998:95). One could state that trade union officials are "experts" in the field of negotiating with the employer on issues affecting their members in the workplace. An employee does not have the knowledge of negotiating with his/her employer, and more importantly the voice of an employee is not as strong as that of a collective body, which is his/her trade union. The objectives of a trade union are among others, to protect and promote the particular goals or interests of individual workers or a group of workers. Finnemore and Van Rensburg (1999:4) stated that trade unions in the public sector have gained strength under the new dispensation. This might be quite true given the fact that the South African labour laws are now recognising the existence of the trade unions, and that is why the employer no longer implements unilateral decisions in the workplace. As far as the role of a trade union during the disciplinary process is concerned, it should ensure that the disciplinary process is both procedurally and substantively fair.

According to Slabbert and Swanepoel (1998:95) trade unions ensure that job security is guaranteed or at least fair treatment takes place, during the disciplinary hearing and they also ensure that unfair dismissals do not take place. This means that the trade union guards against the imposition of disciplinary sanctions which are not commensurate with the misconduct committed by the employee. Maybe that is why Trollip and Gon (1992:37) believe that in workplace situations a trade union is neither an uninvolved nor an innocent bystander. Even if an employee has allegedly committed a serious misconduct , it is the duty of a trade union to represent him/her during the disciplinary hearing, present mitigating circumstances and eventually seek a lenient sanction should the employee be found guilty.

On the other hand, Cameron (1984:39) pointed out that the objective role of a trade union is to ensure that discipline is fully warranted, and that all factors are taken into account before it is instituted. Furthermore, Barker (1999:281) stated that trade unions in Republic if south Africa (South Africa) are probably no longer seen as a vehicle for

liberation and a weapon against all oppression as they concentrate more on workplace and socio-economic issues. Considering all these facts, it might be stated that the role of a trade union during the disciplinary process is to ensure that the employer does not abuse his powers or act arbitrarily when instituting disciplinary action. The trade union has to guard against any inconsistency which may occur during the disciplinary process.

For instance, the South African Police Union (Sapu) and the Police, Prisons and Civil Rights Union (Popcru) are some of the recognised trade unions in the SAPS. These trade unions provide their members with legal representation to assist them during the disciplinary process. These legal representatives are qualified attorneys and advocates.
They are also in a position to guard against the employer ill-treating their members. The active role of the legal representative will obviously be played during the disciplinary hearing, whereby he/she may challenge any evidence presented by the employer by asking for clarification or further information (Cameron 1984:39). During the disciplinary hearing the legal representative, just as in a court of law, has to cross-examine witnesses called by the employer, and ensure that the correct procedure is followed and that only admissible evidence is presented. On the other hand, the prosecution may also cross-examine any defense witnesses.

In cases where a disciplinary officer recommends disciplinary sanction which is appropriate to the committed misconduct, the union may advance information that is valuable in reaching disciplinary decisions (Cameron 1984:39). After both parties have presented their evidence, they have to convince the presiding officer that a certain finding,
guilty or not guilty, is suitable in the given circumstances. The union, through its representative, has to advance reasons as to why the employee should not be found guilty of the misconduct he/she is charged with.

2.8 DISCIPLINARY PROCESS

The disciplinary process may be divided into five distinguishable steps, namely committed

misconduct, investigation, disciplinary hearing, imposition of a disciplinary sanction and appeal. In order for the disciplinary process to achieve its desired objectives each step in the process has to be completed fairly before proceeding to the next step. For instance the employer should not investigate an employee if there is no misconduct committed. The steps are described below with the exception of the last step which will be described in section 2.9.

2.8.1 Committed misconduct

It is incumbent upon the employee to conduct himself/herself generally in accordance with the accepted practice and policy of the employer (Grossett 1999:12). Usually the employer's policy will state the actions an employee should engage in advance. For instance, the policy may state that all employees should wear a full uniform when reporting for duty; motor vehicles should be booked in and out when used by employees for any trip
taken, or employees refrain from consuming alcohol before reporting for duty and while on duty. An employee who acts contrary to this policy will therefore be committing a misconduct and the employer has to institute a disciplinary process.

Fox, Van Wyk, and Fourie (1998:28) believe that the rules and regulations in the SAPS as provided by its head office are often seen as limitations put on station commissioners (supervisors) to force them not to ignore misconducts when committed by employees. It therefore seems that when an alleged misconduct is performed, the supervisor will have no option but to proceed with the disciplinary process as it has been invited by the employee.

Furthermore, Grossett (1999:12) stated that an employee who commits an act of serious misconduct during the currency of a contract of service, commits a breach of that contract. It will depend on the employer's disciplinary policy as to which action to take after an employee has committed a misconduct. According to Robbins (2000:20) discipline is not

only the employer's right and prerogative, but is fundamentally the employer's responsibility. In order for the employer to make an informed decision as to whether to charge or not to charge

an employee with a misconduct, he/she should undertake a thorough investigation.

2.8.2 Investigation

Bendix (1996:358) believes that any transgression allegedly committed by an employee has to be investigated. An investigation is designed to gather facts (Piron & Piron 1992:8). An investigation should be done as objectively as possible.

The investigator should obtain all the facts pertaining to the alleged misconduct even if they should favour the employee. In the event where the employer sifts the facts related to the alleged misconduct by only concentrating on those facts which support the alleged misconduct, it can be suggested that the employer is in favour of punishing the employee concerned, hence the traditional approach to discipline. According to Harrison (1982:6) an effective supervisor investigates in such a way that he/she is certain that no factor is overlooked which would be of importance. Investigation also enables the employer to make a considered decision concerning the disciplinary sanction to be imposed (Grossett 1999:27). These are certain things which may not be achieved should an alleged misconduct not be thoroughly investigated. Firstly, an employee may be charged with the wrong charges which may be difficult to prove during the disciplinary hearing resulting in his/her acquittal. According to Grossett (1999:27) an investigation is a vehicle for putting charges before the employee. Secondly, it may be that during the disciplinary hearing the presiding officer experiences difficulties in imposing an appropriate sanction due to the lack of evidence to support the charge.

On the other hand, Fox *et al* (1998:34) stated that most managers in the SAPS have been trained to be forceful, articulate and always to have answers to a problem. However, Du Toit et al, (1998:228) believe that an employer needs to question and examine each and every problem or situation carefully, rather than to jump to conclusions. Even if the

alleged misconduct might be serious it does not mean that it is conclusive proof that an

employee has indeed committed it. It is only through an investigation that the alleged misconduct may be proved, and the presiding officer placed in a position to reach a guilty verdict and impose an appropriate sanction thereafter.

Bendix (1996:358) is of the opinion that an employee is entitled to know that an investigation is being conducted against him/her. Furthermore, no worker should be forced to make a statement, although it can be pointed out to him/her that his/her unexplained conduct may well result in a hearing (Piron & Piron 1992:9). It can sometimes happen that an employee has committed a misconduct and be unaware of it, and therefore by informing him/her about the pending investigation, the presiding officer, may well assist him/her to refrain from committing the same misconduct again.

Subsequently the objective of the disciplinary process may have achieved its objective while still under investigation. Depending on the seriousness of the misconduct and the employer's disciplinary code, it may be unnecessary to hold a disciplinary hearing.

Conversely, the employer may suspend an employee pending a disciplinary investigation. The employer decides on this under certain circumstances for example, when the employee is alleged to have committed a serious misconduct. According to Basson, Christianson, Garbers, Le Roux, Mischke and Strydom (2000:261) there is preventative suspension in terms of which disciplinary charges are being investigated against an employee and the employer wants to suspend the employee pending the outcome of the disciplinary enquiry. The employer's disciplinary policy should be clear as to when suspension pending disciplinary investigation is to be imposed. Lack of clarity on this issue may render this practice inconsistent in the future.

Robbins (2000:117) pointed out that where an offence by an employee is regarded as serious, such an employee may be suspended from duty temporarily without loss of emoluments pending an investigation of the case. Seemingly, this practice adheres for example, to the provisions of Chapter 2 of the *Constitution of the Republic of South*

Africa, 1996 which provides that any person has the right to be presumed innocent until the contrary has been proved. On the other hand, the reason for suspension is usually said to be to remove the employee from the workplace so that he/she does not interfere with the investigation (Basson et al 2000:262). In the event whereby senior employees are the object of a disciplinary investigation it may be possible that they may for example destroy evidence, intimidate witnesses or abuse their positions by influencing their juniors to make statements in their favour. It may therefore be appropriate to temporarily suspend them until the investigation is completed. Thibault *et al.* (1998:235) also believe that immediate suspension with or without pay before the commencement of a departmental investigation occurs only if the officer is deemed to be a threat to the public and co-workers. Basson *et al.* (2000:263) believe that the employer must continue remunerating the employee during the course of the suspension, and if remuneration was stopped, it would be in breach of the employment contract.

Suspending the employee from duty as well as his/her salary seems to be a way of punishing that particular employee. Dennis (1999:11) stated that the more annoyed employers are with employees, the harsher they are on implementing suspension and in most instances without remuneration or benefits. Such instances may be common in an institution whereby the disciplinary policy is not clear as to which misconducts may result in temporary suspensions.

There might be problems regarding a temporary suspension pending disciplinary investigation without remuneration. Firstly, the employee will be without any income for the duration of the disciplinary investigation. Employees with responsibilities for example, those who are married and/or have to pay bonds on their houses will struggle and will be severely punished or may even lose their assets. Secondly, the employee concerned often returns with a more negative attitude than he/she had before action was taken against him/her (Andrews 1985:227). Furthermore, Basson *et al* (2000:263) stated that suspension without pay is only generally possible if the employee consents or if this is provided for by the contract of employment itself. It is sometimes doubtful if it ever occurs that an employee may consent to a suspension without remuneration pending an

investigation. In the event where during the investigation all the necessary facts were gathered to prove that a misconduct has been committed, it may be necessary to hold a disciplinary hearing.

2.8.3 Disciplinary hearing

The holding of a disciplinary hearing may depend on various aspects, such as the seriousness of the misconduct and the disciplinary policy of the employer. For instance, when an employee has reported late for duty for the first time he/she may be warned verbally by his/her supervisor without having to hold a disciplinary hearing. However,
the seriousness of the misconduct may differ from one institution to the other. Piron and Piron (1992:8) stated that rushing into disciplinary hearings at the first sign of unexplained conduct raises the tension in industrial relations and creates a disciplinarian atmosphere. When a supervisor becomes aware of an alleged misconduct he/she should attend to it immediately. That may include seeking an explanation from the employee concerned so that the same misconduct is not repeated, or as Daniels (2000:101) believes, that the employee will be allowed to adjust his/her performance. Reserving to address the
undesired situation at a later stage may have negative consequences, for example, the alleged misconduct may be repeated again, and if the disciplinary hearing is to be convened, the employee's morale would already have been affected negatively because of the uncertainty at the outcome of the disciplinary hearing.

On the other hand, Rautenbach (1994:23) pointed out that reliance on the strict letter of the law without reference to humanity has often been the employer's downfall. It is not suggested that supervisors should disregard the employer's disciplinary policy, however, they should attempt to deal with situations of misconduct on the spot without referring

them to their seniors. In situations where the employee's conduct has become unbearable and the supervisor's efforts to bring the employee's conduct to the required standard of discipline fails, disciplinary investigation should then be instituted with a view of referring the

matter for a disciplinary hearing. Lussier (1997:559) stated that discipline focuses on changing future behaviour. Any attempt made by the supervisor when he/she becomes aware of an alleged misconduct must be to focus on changing the unwanted behaviour of the employee, or in other words corrective discipline. When an employee fails to change, stricter disciplinary measures should be imposed on him/her so that he/she could be forced to change.

According to Ledden (1992:29) the presiding officer must disclose at the commencement of the enquiry, all the essential allegations/charges made against the employee. Thereafter the employer's case is presented, that is the charges are read out to the accused employee, after which he/she is allowed to plea (Bendix 1996:359). The procedure to be followed from here, that is during the disciplinary process, is exactly the same as the one followed in a court of law, that is, the disciplinary officer leads evidence whereupon the employee may cross-examine witnesses and challenge any evidence. Craig (1994:309) pointed out that the overriding obligation is to provide the applicant with a fair hearing and a fair opportunity to controvert the charge. This includes the opportunity to challenge any evidence produced during the disciplinary hearing and the cross-examination of witnesses who testify for the employer. Thereafter, the employee may also lead evidence in support of his/her case, and they can then be cross-examined by the disciplinary officer.

It may sometimes happen that an employee, unintentionally, fails to attend a disciplinary hearing. The employer's disciplinary policy may be of great importance as it can determine what the next step will be. In a court of law for example, usually the magistrate/judge will issue a warrant for the arrest of the accused who has failed to appear before the court. According to Bendix (1996:364) a disciplinary action would be regarded as procedurally unfair if the employee was not given the opportunity to state his/her case. When an employee cannot appear during a disciplinary hearing, the only option available to the presiding officer is to postpone the disciplinary hearing to a certain future date in order to give the employee a further chance to be present. The golden rule is not to proceed with a hearing in the absence of the person subjected

to a disciplinary hearing even if the
notification warned: "The hearing shall proceed in your absence" (Rautenbach 1994:23).

Institutions which have adopted a progressive approach to discipline may usually not have a problem in postponing disciplinary hearings due to the absence of the employee. Where absences from disciplinary hearings and undue delays become endemic, they can be handled with appropriate warnings. This should be done in advance before adopting a hard-line approach. To unions and employees it should be stated that continuing and repetitive slothfulness will not be tolerated (Rautenbach 1994:23). Employees who deliberately and continually delay or fail to attend disciplinary hearings should not blame the presiding officer who continue with the disciplinary hearing in their absence. The employees should also not blame the presiding officer for finding them guilty of misconduct *in absentia* because the only evidence before him/her would have been that of the employer (through witnesses). Bendix (1996:345) also pointed out that in cases where the employee repeatedly refused to attend, a hearing may be held *in absentia*.

The circumstances under which the employee is unable to attend the disciplinary hearing must not be overlooked. It must be understood that written procedures should be approached as guidelines only and not as the law of the Medes and Persians (Rautenbach 1994:23). Presiding officers should weigh the failure of the employees to attend individually rather than relying on the disciplinary policy. Furthermore, it is suggested that presiding officers should approach disciplinary sanctions only as guidelines and they should impose them appropriately considering each case individually.

2.8.4 Disciplinary sanctions

Formal disciplinary sanctions are usually laid down in laws and regulations. Cameron (1984:39) believes that the objectives of disciplinary sanctions are correction, with a clear warning on what is required and the consequences of non-compliance. The type of

disciplinary sanction to be meted out depends on the severity of the transgression.

Grossett (1999:57) believes that some disciplinary sanctions, such as warning, once imposed should be valid for a certain period only and should not be considered once their period of validity have expired. Disciplinary sanctions normally applied are warning,

transfer, demotion, suspension and dismissal. The SAPS disciplinary regulations also make provision for disciplinary sanctions which may be imposed on employees found guilty of misconduct. Some disciplinary sanctions, namely warning, transfer, demotion, suspension and dismissal are described below.

2.8.4.1 Warning

Warning as a form of disciplinary measure may be meted out on an employee found guilty of a minor offence such as arriving late for work. Warnings are generally classified into three categories namely, oral warning, verbal warning and written warning (Grossett 1995:19). According to Grossett (1999:48) an oral warning generally constitutes the first stage of a disciplinary action and is aimed at correcting minor instances of misconduct, such as sleeping on duty rather than serving as a formal warning. Supervisors may immediately, after an instance of a minor misconduct had been noticed, orally warn the employee concerned. This type of warning takes place on the spot and is carried out by the immediate supervisor, and no documentation of the warning takes place, that is, no record of that will be placed in the employee's file. Though the period of validity for an oral warning may differ from one institution to the other, Piron and Piron (1992:99) have stated that the court in the Wooltru case has expressed the view that an oral warning is usually valid for three months.

Kroon (1995:172) stated that this is the slightest form of disciplining and should be given privately and informally. Usually supervisors are the people applying this type of disciplinary measure. In most instances it may be found that the employee has committed

a minor transgression, for example returning two minutes late after tea time. That does not require the intervention of the employer nor the holding of a departmental hearing. Written documentation of a verbal warning is placed in the employee's personal file for the supervisor to keep a record of such a warning issued (Grossett 1999:48). It will be the duty of the employee to refrain from engaging again in the same misbehaviour. According to Grossett (1999:48) the purpose of a verbal warning is to initiate and facilitate the correction of misconduct or inadequate performance and as a general principle it is valid

for a maximum period of six months. Written warnings are graded into written, severe written and final written warnings (Piron & Piron 1992:47). This grading system may be effective and reduce inconsistencies during the imposition of sanctions and only if the misconducts are well classified, as already referred to above. Supervisors may not be left guessing as to whether to issue a mere warning or a severe written warning.

Written warnings may be appropriate for misconducts such as arriving late for work. Andrews (1985:226) stated that a written warning follows on a verbal warning, while on the other hand, Piron and Piron (1992:47) believe that written warnings are usually not given after full hearings. Employees who continue with misconducts, such as being under the influence of alcohol while on duty and sleeping on duty, place themselves on the brink of being dismissed.

Instead of the employer dismissing the employee, a final written warning may be appropriate with the purpose of shaping the attitude of the employee and giving him or her a last chance to show a full commitment towards the institutional goals. The possibility of drastic disciplinary measures which will follow on the failure of the employee to respect the laid down rules and regulations, are normally explained in the written warning. Bendix (1996:358) believes that written warnings are not effective for an indefinite period and usually expire after six to twelve months.

2.8.4.2 Transfer

Transfer in itself is usually not a disciplinary measure, although it may have a disciplinary implication (Piron & Piron 1992:35). Depending on the prevailing circumstances, transfer may have positive and negative implications. The positive effect of a transfer may be to the advantage of the employee, under certain circumstances. For example, when an employee always reports late for duty due to the fact that he/she is staying far away from the work place, a transfer may seem to be the appropriate solution to the problem. However, it is not suggested that the employer should change its policy to favour the personal circumstances of the employee concerned. Where the prevailing circumstances are beyond the employee's control and there are no other means to resolve them, then transfer may be appropriate if that may help to solve the employee's problem. Negative implications of a transfer as a disciplinary measure may include, among others, when the employee is transferred from one department to another without his/her consent and without taking his/her personal circumstances into account.

Disciplinary sanctions are imposed in order to correct the unwarranted behaviour of an employee. Transferring an employee should be a sanction through which the employer believes the employee will change his/her behaviour so as to maintain the existing relationship. Transfer should serve as a corrective mechanism to create and maintain a productive, responsive workplace (Cascio 1998:534). The employer should ask himself/herself as to whether the employee will be productive if transferred from for example, one unit/station to another. If not, and the employer still transfers the employee, such a transfer will serve as a punishment to the employee and therefore their relationship will never be healthy.

On the other hand, Gerber *et al* (1998:124) stated that transfer is associated with a change in level of skill, responsibility, status or compensation. The negative implication of a transfer as a disciplinary measure is that the employee will lose his/her status. This may result in the employee having a low morale or becoming unproductive.

Grossett (1999:63) maintains that a transfer as a disciplinary measure should only be considered if the employee's performance or general misconduct is not a problem and there is a clash of personalities between the employee and his or her supervisor, which may be removed through a transfer. Transferring the employee because he/she has personal differences with the supervisor will only be a solution if the employee is not the cause of the differences. On the other hand, should it be that the supervisor, in one or the other way, contributes to the personality clash and the employee is ultimately transferred, the institution will not have achieved anything through the transfer of the employee, as the same situation may arise again, this time involving another employee. Piron and Piron
(1992:55) pointed out that a transfer as a disciplinary measure may be useful in cases such

as assault and sexual harassment. When transferring the employee under these circumstances, the employer terminates the employment relationship and give the employee another chance of entering into a new one with another supervisor, should
he/she be transferred to another department within the same institution. It may seem from the above that transfer as a disciplinary measure is valid for an indefinite period as the employee will be permanently removed.

2.8.4.3 Demotion

Demotion means that the employee is removed from his/her present status and salary scale/notch to one lower down on the institution's grading system (Piron & Piron 1992:52). Carrel, Elbert, Hatfield, Grobler, Marx & Van der Schyf (1996:239) believe
that the reassignment of an employee to a lower job with less pay involving fewer skills and responsibilities is known as demotion. When an employer imposes demotion as sanction on an employee it reflects the fact that the employer still wants to maintain the services of the employee. Demotion will only serve as a corrective measure to an employee who regrets committing the said misconduct. Carrel *et al* (1996:239) pointed out that demotion will not improve the behaviour of an employee who has a long record of poor work habits. Employees

who are still prepared to maintain their relationship with
their employers may at last fully realise what demotion entails and change their behaviour.

Cascio (1998:359) believes that demotions occur infrequently since they tend to be accompanied by problems of employee apathy, depression, and inefficiency that can undermine the morale of a work group.

It may seem that demotion serves as a deterrent to other employees not to commit the same misconduct or behave in a manner that could lead to demotion . However, there may be a negative side to it as well. The concerned employee, or his/her co-workers, may be demoralised to such an extent that productivity declines more especially because of financial problems encountered. It is important to note that demotion is not always an effective way to handle disciplinary problems (Carrel *et al* 1996:239).

On the other hand, Piron and Piron (1992:53) stated that demotion as a disciplinary measure is not permanent as the employee may in the future be considered suitable for promotion again. The employer may indeed be acting in good faith when he demotes the
employee so as to allow him/her to readjust to the required expectations. One could state that the employer will be giving the employee a second chance to prove himself/herself and that the employment relationship is still important to the employer.

2.8.4.4 Suspension

Suspension is appropriate where previous warnings have failed or where the transgression is serious enough to warrant a more severe penalty than a further warning (Rycroft & Jordaan 1992:182). A clear policy on how and when suspension is appropriate may be to the advantage of both the employer and the employee alike. The most important and useful step will be the classification of misconduct and instances under which suspension may be imposed. This should only serve as a guideline in order to limit inconsistencies.

Piron and Piron (1992:50) believe that suspension without pay is the alternative which is more frequently considered than dismissal. It will always depend on the institutional disciplinary policy whether suspension should be with or without salary. In most instances whereby the employer regards the misconduct as serious, it will not be an unfair labour practice to suspend an employee without salary. Grossett (1999:60) is of the opinion that suspension without pay amounts to the withholding of both work and pay. The employer may withhold benefits if the employee has committed a misconduct which is serious. Should the employee be allowed to work pending the investigation, it will seem that the employer condones such action or is turning a blind eye on it. Employers normally want to apply punitive suspension without pay (Basson *et al* 2000:263). Withholding employee's pay while on suspension will not achieve positive results and will invariably make the employee more negative when he/she returns for work. However, one advantage of temporary suspension without pay is that employees are aware that the disciplinary measures are taken seriously (Andrews 1985:227).

It seems that employers regard suspension without salary as a fruitful exercise to the employee too because he/she will have to think twice before repeating the misdemeanour in future and on his/her return the employer will have a more dedicated and disciplined employee than ever before. Campbell (1985:166) puts it clearly that suspension provides an opportunity for reflection and decision-making for both the employee and the employer. While on suspension the employee has to decide whether he/she wants to continue working for the employer or not. On the other hand while the employee is on suspension, the employer has to maintain the standard of work at the level at which it was before the employee was suspended. In normal circumstances the validity period for suspension, as a sanction, will be determined by the disciplinary code of the employer. It can be suggested that it should not be longer than one month, more especially when it is without salary, as the longer it takes the more the employee may be negatively inclined towards his/her work.

2.8.4.5 Dismissal

According to Andrews (1985:227) dismissal is considered as a last resort in disciplining employees and implies a break in service. As a general rule misconduct or accumulated instances thereof, will be sufficiently serious to justify dismissal if it rendered the continued relationship between employer and employee intolerable (Du Plessis, Fouché & Van Wyk 1998:282). As already mentioned , other disciplinary measures which were imposed on an employee served only as a warning that non-compliance or disobedience to institutional rules and regulations may result in severe sanctions.

Once the employer dismisses an employee, it marks the beginning of a permanent ending of their relationship. The decision to dismiss should have been the only option available to the employer. Piron and Piron (1992:49) believe that in the event where it is unavoidable that different departmental hearings are chaired by different chairpersons, they must all have the same penalty policy. It is however doubtful if this may ever be possible in the SAPS due to the lack of a clear penalty policy which prescribes minimum sanctions for misconducts. A clear penalty policy will especially be of great assistance to the SAPS to maintain consistency and ensure that similar cases are treated in the same manner under the same circumstances.

Rycroft and Jordaan (1992:202) are of the opinion that the imposition of a sanction is and must always be a matter of discretion. Exercising discretion without having to obey any form of control is like giving someone a blank cheque to fill in any amount he/she wants. Discretion should be exercised within certain prescriptions which will be used as yardsticks to ascertain whether presiding officers are acting within their boundaries.
Baxter (1984:90) pointed out that discretion should be confined and structured by legal rules which prescribe the action of officials and their rights in advance. For instance, Joubert (1999:260) stated that the wider the discretion, the less consistent the sentences will be. This supports the argument that indeed certain control measures are necessary in order to limit or control the discretionary powers of the trial officers.

The purpose of automatic dismissals as contemplated by for example, section 36(1) of the *Police Act*, 1995 seems to be that the employer is not prepared to pay an employee who is not available to render his/her services to the institution. By so doing the relationship between the employer and the employee is then permanently terminated.

It may however be re-established if the employer, after receiving representations from the employee for consideration for possible re-employment, decides in the employee's favour. Israelstam (2001:17) stated that the courts of law are usually of the opinion that the employer will be committing an unfair labour practice by failing to hold an inquiry before terminating the employment as a result of desertion.

The procedure as prescribed by the statutes (which does not form part of this study) should be followed by an employer before terminating an employment relationship as a result of desertion.

2.9 REMEDIES FOR DISSATISFIED EMPLOYEES

At the conclusion of the disciplinary hearing the presiding officer will normally impose a disciplinary sanction which will be commensurate with the committed misconduct. When an employee is not satisfied with the imposed disciplinary sanction he/she must challenge it through the recognised institutions. Channels to be followed by the employee if not satisfied by a disciplinary sanction are determined by the disciplinary procedure of the institution. The role of the recognised institutions namely the Commission for Conciliation, Mediation and Arbitration (CCMA) and bargaining councils in remedying unsatisfactory disciplinary sanction is described below. Furthermore, the fifth step during the disciplinary process *to wit* appeal will also be considered.

2.9.1 Commission for Conciliation, Mediation and Arbitration (CCMA)

The CCMA was set up as a cheap , quick and user-friendly forum to resolve labour disputes (Wilson 2000:44). Furthermore, for example, the *Labour Relations Act, 1995* provides that the CCMA is empowered to resolve any dispute referred to it. Both the employer and the employee may refer any dispute to the CCMA to be resolved. Du Plessis *et al* (1998:313) stated that the CCMA may on request also assist an employee or employer who is a party to a dispute by arranging for advice or assistance by a legal practitioner. This service may be of great help more especially to those employees who lack the knowledge of the procedures and/or route to be followed in resolving labour disputes. Bendix (1996:517) also pointed out that the CCMA may, if so requested, provide advice regarding procedures in terms of the *Labour Relations Act, 1995* to assist any party to a dispute in obtaining legal advice, assistance or representation.

Most of the disputes referred to the CCMA are those which originated from unfair dismissals as alleged by the employees. Disputes may be referred to the CCMA for conciliation and, if necessary arbitration (Du Plessis et al 1998:314). When a party to a dispute is not satisfied with the outcome of the conciliation, the dispute may be arbitrated only if both parties consent to it. An arbitration award as issued by the CCMA is binding

to both parties and therefore final. According to Du Plessis *et al* (1998:315) legal representation is not permitted in conciliation proceedings. As far as the fairness of a dismissal relating to the conduct of an employee is concerned, the parties are not entitled to legal representation (Du Plessis *et al* 1998:316)

Bargaining councils may be accredited by the CCMA in order to have the powers to resolve labour disputes.

2.9.2 Bargaining councils

According to Swanepoel (1999:245) bargaining councils are established voluntarily by registered trade unions and employers' organisations, and have wide-ranging powers to be involved in dispute resolution.

The bargaining councils are established, for example to ease the workload of the CCMA and they attempt to resolve labour disputes as quickly as possible. Essentially, the bargaining councils are accredited to deal with disputes of interests and disputes relating to dismissals (Bendix 1996:518). Furthermore, Du Plessis et al (1998:172) stated that, among others, the powers and functions of a bargaining council are to prevent and resolve labour disputes. A bargaining council, one could state, is empowered to be pro-active in the workplace as far as the conclusion of agreements is concerned, which may prevent an unhealthy working relationship between the employer and the employee to develop.

For instance, in terms of section 35 and schedule 1 of the *Labour Relations Act, 1995* a bargaining council for the public service as a whole has been established and is known as the Public Service Co-ordinating Bargaining Council (PSCBC). According to Du Plessis *et al* (1998:376) this council may perform all functions of a bargaining council. The state as an employer and all the public sector trade unions therefore, make use of this council to resolve internal labour disputes. The PSCBC may designate a sector in the public service for the establishment of a bargaining council (Du Plessis *et al* 1998:376). In the SAPS for example, such a bargaining council has been established and is known as the Safety and Security Sectoral Bargaining Council (SSSBC). This council has the same powers of a bargaining council to resolve labour disputes, but in this case only those which occur within the SAPS.

Besides referring labour disputes to the institutions referred to above, an employee in the SAPS who is dissatisf

ied with a disciplinary sanction may also appeal against such a sanction.

2.9.3 Appeal

Piron and Piron (1992:175) are of the opinion that in most cases the internal disputes procedure must be used before the dismissal can be taken any further. Institutional disciplinary procedures may differ from one institution to another in this regard. Some institutions may require that an employee must first seek a remedy from within the institution itself and thereafter, if not satisfied, approach outsiders to seek a remedy to the problem like a dispute. Bendix (1996:362) is of the opinion that the possibility of a mistaken decision should be accepted by those involved in implementing a disciplinary procedure and that appeals should be accepted. This is a very important point in that, for example with regard to ill-experienced presiding officers in the SAPS, wrong decisions should be expected and sometimes they could result in unfair dismissals. As a result employees who are faced with such situations have to be afforded the opportunity to seek a remedy against such decisions because chances are that another person may reach a different conclusion. In most instances a review and appeal are remedies available to the employee. Joubert (1999:293) stated that when a person challenges the correctness of his/her conviction and/or sentence an appeal should be lodged, whereas when an irregularity during the proceedings is in question, the person should seek relief by way of review.

According to Du Plessis *et al* (1998:284) the purpose of an appeal is to establish whether an alternative sanction to dismissal, for example suspension without salary, could or should be imposed in the circumstances. When an employee lodges an appeal against his/her dismissal, he/she believes that another neutral person may uphold the appeal and the dismissal sanction subsequently be turned down and/or be replaced with another sanction. It is important that the person acting as chairman at the appeal hearing be totally unbiased (Du Plessis *et al* 1998:284). The chairperson at the appeal hearing must only concentrate on the evidence presented to him/her without being partial. After weighing the evidence, the chairperson should then decide as to whether he/she concurs with the decision of the presiding officer or not. The employee should be notified in writing of the outcome of his/her appeal (Du Plessis *et al* 1998:284).

On the other hand, Tshwete (2000:5) stated that an employee who is dismissed must be informed of the right to refer a dismissal dispute to the CCMA or bargaining council for conciliation and, Iris (1998:224) stated further that a collective bargaining agreement will normally provide for a mechanism to resolve disputes. The SAPS disciplinary regulations are however not clear on the issue of the role of collective bargaining in resolving disputes like dismissals that originated from disciplinary hearings. Therefore employees have no option but to utilise the services of the Appeals Authority when they challenge any disciplinary measure.

2.10 CONCLUSION

This literature overview has shown that discipline moulds and regulates the behaviour of personnel. Although various approaches by institutions to discipline can be followed, the two approaches that are most generally followed are the traditional approach (progressive discipline) and the modern approach (corrective discipline).

The literature has also shown that management may classify misconducts into categories of

serious misconducts and less serious misconducts in advance. The significance of this classification is that personnel tasked with the maintenance of discipline in the workplace will already have guidelines with regard to minor and serious misconducts and be able to deal with them accordingly. The literature has also shown that in cases where the management has classified the misconducts in advance, inconsistencies during the

disciplinary process are minimised.

Role players during the disciplinary process, as shown by the literature overview, are of assistance to the employees, as they contribute to encourage the employees to respect the employers' rules and regulations. Furthermore, it was shown that role players like the trade unions also complement the employer in the motivation of the employees to respect the existing rules.

As far as the disciplinary process is concerned, the literature has shown that the emphasis should always be placed on disciplining the employee alleged to have committed a misconduct. In the first place, the alleged committed misconduct should already have been recognised as a misconduct before charging the employee with it. Secondly, the investigation surrounding the alleged misconduct should be undertaken as objectively as possible, and with the employee being aware of it. Thirdly, during the disciplinary hearing, the employee should be made aware of his/her rights which should also be respected. Fourthly, the literature study has shown that in the event whereby the presiding officer has decided that an employee is guilty of a misconduct, the disciplinary sanction applied should also commensurate with the committed misconduct.

The disciplinary policy should be clear on the remedies which are available to an employee who is not satisfied with the imposed disciplinary sanction. As shown by the literature study, it is the employee's right to seek remedy against a disciplinary sanction to which he/she does not agree.