

CHAPTER FIVE: PREFERRED POWERS AND OBLIGATIONS OF ROLE PLAYERS DURING THE DISCIPLINARY PROCESS

5.1 INTRODUCTION

The role players in the disciplinary process, as identified in section 2.7, are amongst others, the employer, employees and trade unions. With regard to the disciplinary process in the SAPS, the role players and their powers and obligations are outlined in the various institutional rules and regulations. All the role players in the disciplinary process are supposed to act within these prescribed limits. It has been stated in chapter one of this dissertation that the purpose of this study is to determine how members of the SAPS in the North Rand area of the Gauteng Province perceive and prefer the disciplinary process. The powers and obligations of the role players namely the employer (as represented by supervisor and presiding officer) employees and trade unions will be described. The purpose of this chapter is to determine the way in which employees perceive and prefer the powers and obligations of the role players.

5.2 POWERS AND OBLIGATIONS OF ROLE PLAYERS

During the disciplinary process every role player should exercise his/her powers as prescribed in any given directive. Regulation 1, regulation 10, and regulation 11(1) of the SAPS Disciplinary Regulations (disciplinary regulations) spell out the powers and obligations of the employer, employee and the trade unions as represented by the shop stewards respectively. These role players are obliged to see to it that no other player is exceeding the limits to the detriment of the other.

5.2.1 Employer

It is the duty of the employer to maintain discipline in the workplace. The employer may not overlook any incident of misconduct as committed by an employee. During the disciplinary process the powers and obligations of the employer are exercised by, among

others, supervisors and presiding officers (South Africa 1996b).

5.2.1.1 Supervisor

The supervisor is the first person to notice that his/her subordinate has misbehaved or broke an institutional rule. The supervisor is then obliged to call the subordinate to order, that is to bring the employee's conduct to an acceptable standard. The institutional directives should always be followed when reprimanding the employee. Paragraph 7(2)(a) of the SAPS Disciplinary Regulations National Instruction Guideline, 2000 (guideline) prescribes that when a supervisor has a reasonable suspicion that an employee under his/her command has committed a misconduct, the supervisor must immediately take steps to rectify it. This paragraph states further that a supervisor who fails to comply with this directive commits a misconduct. In terms of this provision the supervisor has to bring any incident of misconduct to the attention of the employer. It is however suggested that supervisors should be given the opportunity to deal with certain misconducts which are not serious in order to correct the unwarranted behaviour of the employee as soon as possible after the incident.

5.2.1.2 Presiding officer

In terms of the guideline read with regulation 5(1) of the disciplinary regulations, all police officials with the rank of captain are designated as disciplinary officers. The role of a disciplinary officer in the SAPS may be equivalent to that of a prosecutor in a court of law. The disciplinary officer also leads the evidence and cross-examines the accused and his/her witnesses.

On the other hand, regulation 6(3) of the disciplinary regulations provides that police officials of the rank of superintendent and above are designated as presiding officers during the disciplinary process. Among others, in terms of clause 26(a) of Standing Order (General) 111 of the SAPS (SOG), the presiding officer must explain to the accused his/her rights which include the right to call witnesses, to be assisted by a representative

or testify in person during the disciplinary hearing (South African Police Service 1994b). A presiding officer has the power to suspend an employee who has failed to appear before the disciplinary hearing [disciplinary regulation 10(5)(a)(i)], to make a finding at the conclusion of a disciplinary hearing, and in the event of the employee found guilty the presiding officer must impose an appropriate sanction [disciplinary regulation 11 (10)(6)]. Bendix (1996:359) has also stated that the presiding officer should make a decision only after all the evidence has been heard. Furthermore, regulation 14(7) of the disciplinary regulations prescribes that a presiding officer has the power to convict a witness and a legal representative who is in contempt of the disciplinary hearing.

In exercising their powers, disciplinary officers and presiding officers should take cognisance of chapter 8 section 24(1)(g)(iii) of the *Police Act, 1995* which provides that the minister (SAPS) may make regulations regarding the provisions of the *Criminal Procedure Act, 51 of 1977* that shall apply *mutatis mutantis* to the disciplinary proceedings. For example, the following sections of the *Criminal Procedure Act, 1977* are applicable to the disciplinary proceedings: section 213 (handing of statements), sections 81,83 and 84 (drawing up of charge sheets), and section 224 (judicial notice). Section 297 (suspension or postponement of sentence), and sections 265 to 269 (possible verdicts), are however not applicable to the disciplinary proceedings.

It is a common fact that even though the disciplinary officer and the presiding officer may exercise their powers as expected, employees will still have different preferences. The preferences of the members regarding the powers and obligations of the trial officers are presented in table 5-1.

Table 5-1: Preferred powers and obligations of disciplinary officers and presiding officers

Question No.	Item	Scaled responses	Number (N)	%
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4	Disciplinary officers should have legal qualifications	Definitely Yes	97	52,7
		Yes	76	41,3
		No	9	4,9
		Definitely No	2	1,1
		Total	184	100,0
5	Presiding officers should have legal qualifications	Definitely Yes	98	53,0
		Yes	78	42,2
		No	7	3,8
		Definitely No	2	1,1
		Total	185	100,0
9	Do you know the duties of the Appeals Authority	Yes	50	27,5
		No	132	72,5
		Total	186	100,0
20	Presiding officers should be able to make judgement and impose appropriate sanctions	Strongly Agree	49	27,1
		Agree	94	51,9
		Disagree	22	12,2
		Strongly Disagree	16	8,8
		Total	181	100,0
21	Presiding officers should be able to make judgement and recommendations about appropriate sanctions	Strongly Agree	43	23,8
		Agree	107	59,1
		Disagree	22	12,2
		Strongly Disagree	9	5,0
		Total	181	100,0

Table 5-1: Preferred powers and obligations of disciplinary officers and presiding officers

(continued)

Question No.	Item	Scaled responses	Number (N)	%
22	Disciplinary sanctions should be imposed by	Presiding officers	66	36,1
		Station commissioner	51	27,9
		Area commissioner	25	13,7
		Provincial commissioner	33	18,0
		Total	183	100,0

A great majority of the respondents (94%) agreed that disciplinary officers should have legal qualifications. Although 10 percentage points lower than the total sample, the 84% of the captains which also prefer that disciplinary officers should have legal qualifications, is a strong indication of their preference in this regard. On the other hand the 60% members of the Public Servants Association (PSA) which believe that disciplinary officers should not have legal qualifications, is considerable lower than the preference of the total sample. It should be noted that in terms of the SAPS Interim Promotion Policy, 1994 (promotion policy) promotion to the rank of captain is not entirely based on academic qualifications only. The promotion policy prescribes that an employee with 2 (two) years of service in the SAPS, suitable for promotion and depending on the availability of funds, will be considered for promotion to the rank of captain. This implies that there are captains in the SAPS without any formal qualifications who are playing a role as disciplinary officers during the disciplinary process.

95% of the respondents believe that presiding officers should have legal qualifications. Only 5% believe that presiding officers should not have legal qualifications. 91% members of both Police and Prisons Civil Rights Union (Popcru) and South African Police Union (Sapu) have indicated that presiding officers should have legal qualifications whereas only 60% of the PSA members hold this opinion. Of the captains and inspectors 90% and 96,3% respectively, believe presiding officers should have legal qualifications.

It seems thus that the respondents, with the exception of PSA members, were in strong agreement on this answer.

Presiding officers are important role players during the disciplinary process in that, among others, they have to ensure that employees have fair trials. It is expected from the presiding officers to apply the directives which are applicable to the disciplinary process. At least those presiding officers who may have been exposed to legal principles during their academic studies may apply this legal background during the disciplinary process.

The high percentage of the respondents who believe that presiding officers should have legal qualifications is a strong indication that legal qualifications should be a prerequisite in the appointment of presiding officers. Furthermore, it should also be noted that promotion from the rank of captain to the rank of superintendent is not based on any formal qualifications.

Of the respondents who answered question 20, 82,9% agreed that presiding officers should be able to make judgements and impose appropriate sanctions, while 17,2% disagreed. This item is in accordance with the position as it now stands in the SAPS, that is, that presiding officers should make judgement and impose appropriate sanctions. Question 21 was included in order to determine how the members would prefer a situation where presiding officers make judgements and make only recommendations about appropriate sanctions. A total of 82,9% of the respondents agreed whereas 17,1% members disagreed. It seems that the respondents did not understand the difference between the two questions.

It is suspected that most of the respondents do not know the powers of the role players, especially those of the presiding officers. This supposition is confirmed by the fact that only 27,5% of the respondents indicated that they know the duties of the Appeals Authority (question 9). It seems, however, that the more senior respondents are more informed as 52,6% of the captain respondents answered that they know the duties of the Appeals Authority.

When the respondents were asked (question 22) who should impose disciplinary sanctions, only 36,1% indicated the presiding officer. It means that 63,9% of the respondents are not in favour of the existing practice where the presiding officer imposes disciplinary sanctions. 27,9% of them prefer that disciplinary sanctions should be imposed by the station commissioner while 13,7% of them prefer the provincial commissioner. The responses to question 22 may be due to dissatisfaction with the way that presiding officers impose disciplinary sanctions. However, responses to e.g. question 9 support this researcher's belief that the responses to question 22 can be contributed to a lack of knowledge of the system.

5.2.2 Employee

According to Slabbert and Swanepoel (1998:91) an employee has a dual role with regard to the disciplinary process because the employee has an obligation towards the institution and the trade union. The employee's obligation towards the institution is that of abiding by its rules and regulations, and be a disciplined employee at all times. The employee's obligation towards his/her trade union is that of upholding the trade union's constitution, and among others protecting the labour rights of his/her fellow union members. The provisions of clause 5(14) of the Sapu constitution, 1993 provide that shop stewards are under the obligation to assist members during interviews with the employer. Chapter 14 clause 23(2) of the Popcru constitution, 1989 provides that it is the duty of the shop stewards to defend the individual and collective membership interests at the institution. It must be noted that in practice the duty of the shop steward among others, is to represent fellow employees during the disciplinary hearings.

Even though the SAPS disciplinary regulations acknowledge the role which shop stewards should play during the disciplinary process, there are still some reservations. In terms of paragraph 11(1)(b) of the disciplinary regulations assistance by a representative during the disciplinary process does not mean that the employee concerned is entitled to insist that the representative must be a specific individual. Employees may end up being represented by their fellow colleagues who may not be conversant with the disciplinary

process. The preferences of the members about the role of shop stewards during the disciplinary proceedings are presented in table 5-2 below.

Table 5-2 : Perceived powers and obligations of shop stewards

Question No.	Item	Scaled responses	Number (N)	%
1	Presence of shop stewards during initial disciplinary interview necessary	Definitely Yes	93	50,5
		Yes	77	41,8
		No	8	4,3
		Definitely No	6	3,3
		Total	184	100,0
2	Prefer representation of trade union member during initial disciplinary interviews	Definitely No	90	48,6
		Yes	78	42,2
		No	11	5,9
		Definitely No	6	3,2
		Total	185	100,0
3	Participation of shop stewards in deliberations during initial disciplinary interview	Definitely Yes	77	42,1
		Yes	88	48,1
		No	14	7,7
		Definitely No	4	2,2
		Total	183	100,0

92,3% of the respondents indicated that it is necessary for shop stewards to be present during the initial disciplinary interview. Of the respondents who are captains, 63,1% indicated that it is necessary for shop stewards to be present during the initial disciplinary interview. The perceptions of the members regarding question 1 support the present situation in the SAPS where shop stewards are allowed to be present during the initial disciplinary interview.

It must be noted however that the SAPS disciplinary regulations do not permit the representation of an employee by a legal practitioner during the initial disciplinary interview. Employees may represent each other during the initial disciplinary interview even though they are not shop stewards. 90,8% of the respondents indicated that they prefer a trade union member to represent a fellow union member during the initial disciplinary interview. 57,9% of the respondents who are captains as compared to 94,3% of the inspectors have indicated that they would prefer a trade union member to represent a fellow union member during the initial disciplinary interview. It seems that the members do not know that not every union member has been trained by his/her trade union to deal with disciplinary matters only the shop stewards. Furthermore, from my own observation, it seems that the employer does not know that it is not every union member who has been trained to handle disciplinary matters. Despite the fact that shop stewards are usually trained to handle disciplinary matters, the regulations prohibit an employee to insist that his/her representative be a specific individual such as a shop steward.

90,2% of the respondents believe that it is necessary that shop stewards are allowed to fully participate in the deliberations during the initial disciplinary interview (question 3). In terms of the disciplinary regulations, the duty of a representative is to see to it that the disciplinary procedures are followed [guideline 11(1)(d)]. However, it seems that as representatives, they only have observer status because they can not make objections or dispute any matter of concern. No less than 96,7% of the respondents who are Popcru members have agreed with the statement as well as 60% of them who are PSA members .

5.2.3 Trade unions

In terms of clause 3(1) of the Sapu constitution,1993, it is the duty of the union to advance and protect the socio-economic and labour interests and rights of the members of the union. On the same note, clause 7(3)(7) of the Popcru constitution, 1989, provides that it is the duty of the

union to protect the employment security of members, to advance their employment prospects and generally to do things that will serve the interests of members socially and otherwise in their individual and collective capacities. The interests of the

members in their working environment are looked after by their respective trade unions. Furthermore, in practice employees are being assisted by legal representatives during the disciplinary process. Preferences of the employees regarding the role that legal representatives play during the disciplinary process are reflected in table 5-3 below

Table 5-3 : Perceived role of legal representatives.

Question No.	Item	Scaled responses	Number (N)	%
15	Legal representation should be allowed during initial disciplinary interview	Strongly Agree	108	59,3
		Agree	61	33,5
		Disagree	11	6,0
		Strongly Disagree	2	1,1
		Total	182	100,0

A total of 92,8% of the respondents believe that a legal representative should be allowed to represent employees during initial disciplinary interview. Of the respondents who are captains, 79% strongly agree with the statement. In terms of the disciplinary regulations the definition of a representative excludes a legal representative (attorney or advocate) during the initial disciplinary interview. Legal representatives are only allowed during disciplinary hearings. It is assumed that the preferences of the members regarding legal representation during an initial disciplinary interview is a strong indication that they need assistance from the initial stages of the disciplinary process. Employees should be warned that what ever they may say during the initial disciplinary interview may at a later stage be used against them.

5.3 CONCLUSION

The powers and obligations of the role players during the disciplinary process as perceived and preferred by the respondents were described. The preferences of the members indicated that they agree with the fact that disciplinary officers and presiding officers

should have legal qualifications. Even though situations of misconduct are not always the same, it is submitted that presiding officers might reach the same decision in the same circumstances if they have legal qualifications. The prevailing conditions in the SAPS are that presiding officers must impose appropriate sanctions. The preferences of the employees differ with this situation. A relatively small percentage of the employees (36,1%) prefer that presiding officers should impose appropriate sanctions.

A large percentage of the employees also prefer that legal representation should be allowed during the initial disciplinary interview. Furthermore, most of the employees believe that shop stewards should fully participate in the deliberations during the initial disciplinary interview.

It was surprising to find that a very high percentage of the employees do not know the duties of the Appeals Authority. This is a strong indication that the members are not conversant with the whole disciplinary process. The employer and trade unions should educate members about it. Educating the members about the disciplinary process may be a pro-active step towards sustaining a harmonious relationship with the employer. The employer should therefore not ignore the preferences of the employee regarding the disciplinary process.

The disciplinary process consists of various steps of which investigation is one. In the following chapter the preferred process of investigation will be described.

