

## **CHAPTER SIX: PREFERRED PROCESS OF INVESTIGATION INTO MISCONDUCT**

### **6.1 INTRODUCTION**

It was indicated in chapter 2 that an employer and employee are in a very close and friendly relationship. Such a relationship is controlled by existing rules and regulations which need to be adhered to in order for the relationship to be sustained. Termination of an employment relationship is caused by, among others, breaking of prevailing rules and regulations by the employee. In the event where an employee is alleged to have damaged the relationship by committing a misconduct, the employer has to institute the disciplinary process. It is through investigations that the employer can come to the conclusion that a misconduct had indeed been committed by the employee.

The purpose of this chapter is to give a description of the respondents' preferences with regard to the process of investigation into misconduct. Misconduct as reason for a disciplinary investigation and disciplinary interview will be described in this chapter. This will be followed by the description of the respondent,s preferences and perceptions regarding the disciplinary investigation and the preferences of the respondents with regard to the employer,s decision to charge an employee. A conclusion will be reached at the end of the chapter.

### **6.2 MISCONDUCT AS REASON FOR A DISCIPLINARY INVESTIGATION**

A disciplinary investigation is usually caused by an alleged misconduct or unacceptable behaviour. According to Bittel and Newstrom (1990:376) disciplinary actions should meet two criteria, namely prior notification of what constitutes unacceptable behaviour and prior notification of what the penalties for this behaviour will be. In every institution there is a

disciplinary code which stipulates what will constitute internal

misconduct, and also a list of disciplinary measures which may be imposed. Once an action or omission has been identified as a misconduct, it should always be treated as such. As far as discipline is concerned, an infringement of a rule gives an employer the right to institute a disciplinary action against the offender (Grogan 2000:94).

In the disciplinary regulations of the SAPS mention is made of various actions and omissions which are considered as misconduct. Example of misconduct in the SAPS are sleeping on duty [regulation 18(20)], performing an act or failing to perform an act which constitutes an offence [regulation 18 (3)], being under the influence of liquor or drugs whilst off duty in a public place and behaving in a manner which is detrimental to the interest of the service [regulation 18(17)]. Bittel and Newstrom (1990:368) are of the opinion that supervisors must learn to administer discipline and written prescribed institutional policies firmly, but sensitively. Immediate supervisors are people who are in daily contact with the employees and are the first people to notice incidents of misconduct and therefore must initiate disciplinary actions. However, Grogan (2000:92) stated that all disciplinary systems should lay down reasonable rules which are applied fairly and consistently.

In the event where a supervisor suspects or is satisfied that a misconduct has been committed, he/she should gather evidence depending on what is prescribed by the institutional disciplinary policy.

### **6.3 DISCIPLINARY INTERVIEW**

According to Bittel and Newstrom (1990:368) a supervisor should state the disciplinary problem and ask the employee for his/her view of the problem during a disciplinary interview. The disciplinary interview is the formal way of informing the employee that he/she may be investigated. The employee is required to respond to the allegations - something that an employee is entitled to (Bendix 1996:358).

As this is still a preliminary part of the disciplinary procedure, it is necessary for the

investigating officer to recognise the difference between interviewing and interrogation.

According to Anderson (2000:112) suspects are usually interrogated while witnesses are interviewed.

When a commander suspects that an employee has committed a misconduct which, in his/her opinion is not serious, in terms of regulation 8 of the disciplinary regulations of the SAPS (South Africa 1996b) the commander shall ask the investigating officer to interview the employee concerned with a view to ascertaining and addressing the cause of such misconduct. The purpose of the interview is seemingly to determine the reason why the employee has committed the alleged misconduct and to bring about steps to prevent a recurrence thereof.

Regulation 8(5)(d) of the disciplinary regulations provides that a copy of the report must be handed to the employee concerned after the conclusion of the disciplinary investigation upon which he/she has 14 days to respond (South Africa 1996b). The 14 days period excludes Saturdays, Sundays and Public holidays [South Africa 2000: paragraph 12(3)]. The collection of evidence before confronting the employee with the allegations opens questions to be answered by the employee. Faced with allegations the employee should then counteract them or make admissions about them. Grossett (1999:27) believes that investigation is a vehicle for putting charges before the employee. Even in a court of law for example, it is after thorough investigation that an accused is brought before the court to answer specific charges. It is also common during police criminal investigations that suspects are interviewed before being charged. According to Bittel and Newstrom (1990:368) in order for an interview to be fruitful, a supervisor must listen to the employee's explanation with the intent of understanding before evaluating the employee's point of view. Furthermore, Anderson (2000:112) stated that questions should be less personal and be reserved for less personal interchanges when the correctness of information is the main

focus.

Supervisors should refrain from being prejudiced against employees during disciplinary interviews so that they do not deviate from addressing the problem in question. In

terms of regulation 1(1) of the disciplinary regulations during disciplinary interviews, employees have the right to be represented by either a colleague or a shop steward, but not a legal representative. However, paragraph 11(1)(b) of the guideline (South Africa 2000) provides that assistance by a representative does not mean that the employee concerned is entitled to insist that the representative must be a specific individual. The result of a disciplinary interview will afford the employer the opportunity to decide which appropriate action to take under the circumstances.

#### **6.4 PREFERENCES AND PERCEPTIONS WITH REGARD TO DISCIPLINARY INVESTIGATION**

If a disciplinary interview shows the need for more information on the case, a full-blown investigation will most probably be necessary to gather evidence for the purpose of confirming or disproving the alleged committed misconduct. The disciplinary policies of some institutions do not make explicitly provision for a disciplinary interview as a separate stage in the disciplinary process. Depending on the institutional disciplinary policy, an investigation sometimes follow immediately after a misconduct has been reported. For instance, section 21(1)(a) of the *Public Service Act, 1994* provides that when an officer is accused of a misconduct another officer is appointed to investigate the matter and obtain evidence in order to determine whether there are grounds for a charge of misconduct against the former. Regulation 5 of the disciplinary regulations also provides that supervisors should investigate incidents of misconduct immediately when becoming aware of them. The purpose of the investigation amongst others, is to substantiate the allegations made against the concerned employee. For example, in criminal investigations, before

police detectives could charge a suspect of any crime , they should gather as much evidence as possible in order to connect a suspect with the crime committed. It is sometimes possible that no thorough investigation has been done which normally results in the accused being not charged due to a lack of evidence.

Bendix (1996:358) believes that any transgression allegedly committed by an employee has to be investigated. On the other hand, Bittel and Newstrom (1990:369) pointed

out that no one can make a decision without all the facts, or at least all that can be reasonably gathered. In order for a supervisor to make a reasonable decision he/she should be in possession of all the relevant facts. Making a decision based on insufficient information may result in the decision-maker regretting the decision taken. It is therefore important and advisable to gather as much information and evidence as possible to support the allegations of misconduct. Regulation 8(5) of the disciplinary regulations maintains that the purpose of investigation is to take statements from persons who may reasonably be expected to be able to give evidence and to preserve such evidence. Furthermore, Harrison (1982:6) pointed out that the effective supervisor investigates to be certain that he/she has not overlooked a factor which could destroy the effectiveness of the penalty. By collecting evidence the supervisor wants to address the root cause of the misconduct and help mould the behaviour of the employee where possible. For instance if an employee is allegedly found sleeping on duty, an investigation is initiated. The supervisor should for example find out the reason why the employee has slept or if he/she is suffering from any kind of illness or whether he/she is experiencing a family problem. After the root cause of the problem has been identified then a remedy may be determined to help the employee refrain from committing the same misconduct in the future. Supervisors should address the cause of the misconduct instead of just proving that misconduct occurred . Whatever action is to be taken by the supervisor, must be based on genuine evidence free from biased and discrimination (Bittel & Newstrom 1990:372).

According to Fox *et al* (1999:34) most supervisors in the SAPS have been trained to

articulate and always have answers to a problem. It might be correct that some police officials still have the attitude they had before the founding of the SAPS in 1994. If such a situation still exists it should be addressed by the employer by way of retraining the employees. It is accepted that a misconduct will remain a misconduct. Supervisors should however approach each situation independently and regard it as unique because the root causes of misconduct may not be the same.

Supervisors need to carefully question and examine each and every problem or

situation, rather than jump to conclusion (Du Toit et al 1998:28). Investigations into misconduct should however not be prolonged as the employee may repeat the misconduct, being unaware of it or he/she can be demotivated and develop a negative attitude towards the institution because of the ongoing disciplinary investigation.

It is standard practice in institutions that employees are suspended pending disciplinary investigations. Whether a suspended employee is entitled to his/her salary will depend on the disciplinary policy of the institution. Paragraph 22(5)(c)(vii) of the guideline provides that the purpose of suspension is to enable the SAPS to investigate a charge of misconduct while the employee is temporarily removed from work so that he/she cannot interfere with the investigation.

Furthermore, regulation 15(6) of the discipline regulations provide that even though the suspended employee is entitled to a salary, specific stipulations may be made to the effect that such an employee should not be entitled to a salary. Grogan (2000:102) believes that suspension pending disciplinary investigation is acceptable, provided that the employer believes that such an action is necessary for good administration and continues to pay the employee. It is submitted that suspending an employee without salary pending disciplinary investigation amounts to punishment and unfair labour practice. Paragraph 22(7) of the guideline provides that suspension pending disciplinary investigation shall continue until when uplifted or the employee's employment being terminated or he/she is dismissed. This

provision provides that such a suspension must be reviewed every 90 days. The preferences and perceptions of the employees regarding disciplinary investigations are shown in table 6-1.

Table 6-1: Preferences and perceptions of the disciplinary investigation

Question No.	Item	Scaled responses	Number (N)	%
7	Race is taken into account when suspension is decided upon	Definitely Yes	57	30,8
		Yes	53	28,6
		No	32	17,3
		Definitely No	43	23,2
		Total	185	100

Table 6-1: Preferences and perceptions of the disciplinary investigation (continued)

Question No.	Item	Scaled responses	Number (N)	%
--------------	------	------------------	------------	---

8	Departmental investigations are concluded within the prescribed time frame	Definitely Yes	43	23,6
		Yes	85	46,7
		No	34	18,7
		Definitely No	20	11,0
		Total	182	100,0
11	Investigators of alleged misconduct conduct their investigations fairly	Strongly Agree	37	20,2
		Agree	64	35,5
		Disagree	58	31,7
		Strongly Disagree	24	13,1
		Total	183	100,0
19	Investigations into alleged misconduct are completed in the following time frame...	One month	62	33,7
		Two months	59	32,1
		Longer than two months	45	24,5
		Longer than 12 months	18	9,8
		Total	184	100,0
27	Suspension pending disciplinary investigation should be with	Full salary	130	71,0
		Half salary	39	21,3
		Without salary	14	7,7
		Total	183	100,0

Table 6-1: Preferences and perceptions of the disciplinary investigation (continued)

Question No.	Item	Scaled responses	Number (N)	%
28	Suspension pending disciplinary investigation should be for	One month	100	54,9
		Duration of investigation	82	45,1
		Total	182	100,0

A total of 70,3% of the respondents who answered question 8, indicated that disciplinary investigations are concluded within the prescribed time frame. Only 29,7% indicated that the time frame was not adhered to. One could therefore come to the conclusion that the respondents' perception is that the SAPS adheres to the prescribed time frame within which disciplinary investigations should be completed.

As far as the fairness of investigators of misconduct is concerned (question 11), 55,2% indicated that investigators of misconduct conduct their investigations fairly as compared to 44,8% who disagree.

Where question 8 was of a too general nature to determine objectively whether disciplinary investigations are concluded in the prescribed time frame, question 19 is of a more specific nature. 33,7% of the respondents indicated that investigations of misconduct are completed within one month. Therefore, a total of 65,8% agreed that investigations are completed within 90 days (3 months), which is the prescribed time frame within which disciplinary investigations should be completed in the SAPS.

On question 27, 71% of the respondents indicated that they would prefer suspension to be with full salary pending disciplinary investigations. 21,3% preferred suspension pending disciplinary investigation to be with half salary. On the other hand, 7,7% of the respondents preferred suspension pending disciplinary investigation to be without salary. Suspending an employee without salary pending disciplinary investigations is tantamount to dismissal. The employee will suffer serious financial losses, and may

also lose for example, his/her property and civil court judgements may be made against him/her. The fact that an employee is being charged with a dismissible misconduct for example, is not a conclusive proof that the employee is already guilty. The decision to suspend without salary pending disciplinary investigations, it is submitted, will therefore be taken prematurely and shall be detrimental to the family life of an employee.

Of the respondents who answered question 27, 76,5% of the males preferred suspension pending disciplinary investigation to be with full salary. Only 50,0% of the females preferred suspension pending disciplinary investigations to be with full salary, whereas those women who preferred suspension pending disciplinary investigation to be with half salary on the one hand and those who prefer it to be without salary on the other hand were both 25,0%. 45,4% of the respondents from the White population group who responded, indicated they prefer suspension pending disciplinary investigation to be with full salary. Of the respondents from the African population group, 78,1 % preferred suspension pending disciplinary investigations to be with full salary. The majority of the respondents seem to hold the idea that even though an employee is alleged to have committed a misconduct, he/she is still innocent and should continue receiving his/her salary until proven guilty. An analysis of the results of question 27 indicates a few patterns in the responses to the question:

Firstly, it shows that females and males have different perceptions and preferences regarding suspension with or without full salary pending disciplinary investigation. Furthermore, population group also shows to be a predictor of the responses as there are considerable differences in the responses between black and white respondents. I could not find any reasonable explanation for this.

Respondents on the rank of captain are shown to be indecisive on this matter. No less than 36,8% of them preferred suspension pending disciplinary investigation to be without salary, 31,6% preferred suspension with full salary and a further 31,6%

preferred suspension with half salary.

With regard to the duration of the suspension, 54,9% of the respondents preferred that suspension pending disciplinary investigations should be one month, as compared to 45,1% who preferred that it should be for the duration of the investigation. An overwhelming majority of the respondents who are captains, 89,5% preferred suspension pending disciplinary investigations to be for the duration of the investigation. As far as union affiliation is concerned 63,7% of the employees who belong to POPCRU, preferred suspension pending disciplinary investigation to be for one month. However, 53,2 % of the employees who belong to SAPU, preferred suspension pending disciplinary investigation to be for the duration of investigation. 60,3% of the African population group preferred suspension pending disciplinary investigation to be for one month, whereas 75,0% of the White population group preferred it to be for the duration of investigation.

An analysis of the responses according to gender, has shown that 65,6% of the female respondents preferred suspension pending disciplinary investigations to be for the duration of investigation. 58,8% of the male respondents preferred suspension pending disciplinary investigation to be for one month.

It is common practice that the accused, at the conclusion of the investigation, answer to the allegations against him/her. During my daily conversation with my colleagues at work I have realised that they have different perceptions regarding the way in which suspensions pending disciplinary investigations are decided upon. They perceive that race plays a role when the suspension of an employee alleged to have committed a misconduct is decided upon. Question 7 was therefore included in the questionnaire to determine the perceptions of the employees regarding this issue.

No less than 59,4% of the respondents perceive that race is taken into account when suspension is decided upon. On this question the two gender groups are more or less in agreement as 61% of the male respondents and 56% of the female respondents do

believe that race is taken into account. As far as population groups are concerned, there are considerable differences in their responses as only 25% of the White respondents believe that race is taken into account when suspension is decided upon, compared to 68% of the African respondents. The conflicting beliefs of the respondents across the colour line serve to indicate that race plays a role in the respondents' perceptions of the way there is decided upon suspension. Furthermore, the survey has shown that seniority may also be a predictor of the respondents' responses to this question as 100% of the constable respondents, 65% of the sergeant respondents, 62% of the inspector respondents and only 26% of the captain respondents believe that race is taken into account when suspension is decided upon.

## **6.5 PREFERRED DECISION TO CHARGE AN EMPLOYEE**

The decision to charge an employee with misconduct is taken after an investigation has been concluded and which suggests that there is a *prima facie* case against the employee. In terms of section 21(1) of the *Public Service Act, 1994* for example, the investigating officer shall, after the conclusion of the investigation of an alleged misconduct, inform the head of the department whether the member should be charged or not. The role of the investigating officer in the Public Service therefore is to advise the head of the department regarding decision-making pertaining to disciplinary charges. In the SAPS the procedure is different. In section 6.4 above it was stated that after the conclusion of the disciplinary investigation a copy of the report should be handed over to the employee concerned. The very same report is also handed over to a disciplinary officer who in terms of paragraph 10(1) of the guidelines, has to consider it and decide whether or not to charge the employee. In the SAPS investigations are normally done by investigators from the stations where the alleged misconduct took place. At the conclusion of the investigation at the station or where the misconduct took place the report (commonly known as a disciplinary docket in the SAPS) is referred to the area commissioner for a decision. In terms of paragraph 5 of the guidelines the area commissioner is the disciplinary officer, and should he/she decide to charge an employee

with a misconduct he/she appoints a disciplinary official

to convene a hearing (South Africa 2000). The preferences of the employees regarding the decision to charge an employee with misconduct are shown in table 6-2.

Table 6-2: Preferences with regard to the decision to charge

Question No.	Item	Scaled responses	Number (N)	%
18	Final decision whether or not to charge an employee should be vested in the:	Investigating officer	37	20,2
		Station commissioner	74	40,4
		Disciplinary officer	37	20,2
		Unsure	17	9,3
		Other	18	9,8
		Total	183	100,0
24	Disciplinary investigations should be conducted by investigators from	Members' station	80	43,5
		Neighbouring station	35	19,0
		Area headquarters	62	33,7
		Other	7	3,8
		Total	184	100,0

The survey shows that only 20,2% of the respondents are in favour of the *status quo*, namely that the disciplinary officer takes the final decision to charge or not to charge an employee. Another 20,2% of the respondents prefer that the investigating officer should be vested with the power whether or not to charge an employee with a misconduct. However, 40,4% of the respondents prefer the station commissioner to be vested with the final decision whether or not an employee should be charged. The rest (nearly 20%) preferred either someone else or were unsure.

If the final decision about whether or not to charge an employee with misconduct is vested with the station commissioner, it will have mixed results. On a positive note, that will alleviate the backlog of disciplinary cases and will lead to speedy finalisation of these cases at the lower level. Employees will become aware of their inappropriate

behaviour and refrain from engaging themselves in such behaviour again. On the negative side, employees may start complaining of supervisors favouring some employees at the expense of others.

The perceived objectivity of investigators is another crucial issue as 43,5% of the respondents preferred that the disciplinary investigations should be conducted by investigators from the members' station. The majority of the respondents prefer that investigators are not from their own station: 33,7% preferred investigators to be from the area headquarters and 19% preferred them to be from neighbouring stations. In terms of population groups, 49% of the Africans preferred that investigations should be conducted by investigators from the members' station. On the other hand, 61% of the respondents from the White population group preferred that investigators should be from the area headquarters. A total of 4% of the respondents did not prefer any of the scaled responses.

## **6.6 CONCLUSION**

The survey shows that a relatively high percentage of the respondents (70,3%) hold the perception that disciplinary investigations are concluded within the prescribed time frame. As far as the fairness of the investigators into misconduct is concerned, 44,8% of the respondents indicated that the investigators into misconduct conduct their investigations unfairly.

The respondents were asked to indicate their preferences regarding suspension pending disciplinary investigation. Three options were given to them to choose from, namely that

suspension pending disciplinary suspension should be with full salary, half salary or without salary. 71% of the respondents indicated that they preferred suspension pending disciplinary investigation to be with full salary, whereas a relatively small percentage of the respondents (21%) indicated that they preferred suspension pending disciplinary investigation to be with half salary. Only 7,7% of the respondents have indicated that they preferred suspension pending disciplinary investigation to be

without salary.

The survey shows that 76,5% of the male respondents indicated that they preferred suspension pending disciplinary investigation to be with full salary compared

to  
50  
%

of the female respondents. As far as the preferences of the respondents according to their racial group is concerned, 45,4% of the respondents from the white population group indicated that they preferred suspension pending disciplinary investigation to be with full salary compared to 78,1% of the respondents from the African population group. The survey shows further that a relatively high percentage of the respondents (75,0%) of the respondents from the White population group preferred suspension pending disciplinary investigation to be for the duration of the investigation compared to 60,3 of the respondents from the African population group. The survey shows that female respondents (65,6%) preferred suspension pending disciplinary suspension to be for the duration of the investigation compared to 58,8% of the male respondents.

Although the survey shows that 40,5% of the respondents hold the perception that

rac  
e is  
not  
take  
n  
into  
acc  
ount  
whe  
n  
sus  
pen  
sion  
is  
deci  
ded  
upo  
n, a

rela  
tivel  
y  
high  
per  
cent  
age  
of  
the  
resp  
ond  
ents  
(59,  
4%)  
hold  
the  
per  
cept  
ion  
that  
rac  
e is  
take  
n  
into  
acc  
ount  
. 25  
%  
of  
the

resp  
ond  
ents  
fro  
m  
the  
Whi  
te  
pop  
ulati  
on  
gro  
up  
hold  
the  
per  
cept  
ion  
that  
rac  
e is  
not  
take  
n  
into  
acc  
ount  
whe  
n  
sus  
pen  
sion

is  
deci  
ded  
upo  
n  
whe  
reas  
68  
%  
of  
the  
resp  
ond  
ents  
fro  
m  
the  
Afri  
can  
pop  
ulati  
on  
gro  
up  
hold  
the  
per  
cept  
ion  
that  
rac  
e is

take  
n  
into  
acc  
ount  
whe  
n  
sus  
pent  
ion  
is  
deci  
ded  
upo  
n.

A relatively small percentage of the respondents (40,4%) indicated that they preferred the final decision whether or not to charge an employee with a misconduct to be vested in the station commissioner compared to an equal percentage of the respondents (20,2%) who preferred the investigating or the disciplinary officer.

In the SAPS, the current practice is that disciplinary investigations are being conducted by investigators from the members' station. However, a not convincing percentage of the respondents (43,5%) indicated that they are in favour of the *status quo*. 33,7% of

the respondents preferred disciplinary investigations to be conducted by investigators from the area headquarters whereas 19,0% of the respondents preferred investigators to be from the neighbouring station.