

CHAPTER SEVEN: PREFERRED DISCIPLINARY PROCESS

7.1 INTRODUCTION

After a decision has been taken to charge an employee with misconduct, a disciplinary hearing is normally convened. The purpose of a disciplinary hearing, amongst others, is to put forward the charges against the employee, to afford the employee the opportunity to refute the allegations against him/her, and to determine the appropriate action at the conclusion of the hearing. The disciplinary process should not be complicated or be delayed intentionally by the employer. This could lead to the employee being demotivated due to the uncertainties of future employment. The employer should adhere to the time frame within which the disciplinary processes should be finalised and should not allow employees to delay the finalisation of the disciplinary process deliberately. During the disciplinary process parties should concentrate only on what is placed before them with no external influences in order to reach a reasonable and fair decision. The purpose of this chapter is to determine the perceptions and preferences of the employees regarding the convening of a disciplinary hearing, the decision of the presiding officer regarding the guilt or otherwise of the employee and the imposing of a disciplinary sanction on the employee found guilty.

7.2 CONVENING A DISCIPLINARY HEARING

In a court of law for instance, the accused is brought before the court to answer to the charges which will be put to him/her. Amongst others, the methods which are used to bring the accused before the court are a written notice, bail and a summons. A copy of the charge sheet is usually served on the accused. Information which appears on such copies is usually the place of the trial, date, time and the particulars of the charge.

In the SAPS the procedure is different. The procedure starts with a disciplinary interview with the employee alleged to have committed a misconduct. Such an interview takes place one or two days after the incident, then the results are handed over to the station

commander to decide whether or not the case should be sent for a disciplinary hearing (South African Police Service National Instruction Guideline 2000). The procedure might take a little longer. However, if immediate commanders had the power to deal with misconduct, it might be shorter.

A written notice, in the SAPS, is also served on the employee who has to appear before a disciplinary hearing. Such a written notice will also state the place where the disciplinary hearing will be convened, date, time and the particulars of the charge which the employee will be facing. The written notice is issued by the disciplinary officer who will be prosecuting in the disciplinary hearing. Regulation 9(1) of the disciplinary regulations provides further that a written notice that is served on the employee shall stipulate the consequences of failing to honour the notice. The consequences for failing to honour a written notice are prescribed in regulation 10 of the disciplinary regulations and are an immediate suspension without salary. Bendix (1996:359) believes that the notification served on an employee shall allow the employee sufficient time to prepare his/her case, and should clearly state the reason for the hearing. In the SAPS, the place where the hearing is to be held, is determined by the disciplinary official (the "prosecutor") of the disciplinary case concerned. In table 7-1 below, the preferences of the employees regarding the place where disciplinary hearings are to be held are shown.

Table 7-1: Preferences of employees regarding places where disciplinary hearings should be held

Question No.	Item	Scaled responses	Number (N)	%
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23	Disciplinary hearings should be held at	Station where misconduct was committed	84	46,2
		Neighbouring station	32	17,6
		Area headquarters	57	31,3
		Other	9	4,9
		Total	182	100,0

46,2% of the respondents preferred that disciplinary hearings should be held at the station where the misconduct was committed. Neighbouring stations and area head quarters as places where disciplinary hearings should be held were preferred by 17,6% and 31,3% of the respondents respectively.

One of the reasons why most of the respondents preferred the station where the misconduct was committed may be due to the lack of infrastructure, for instance transport, and money. It is the employee's responsibility to see to it that he/she appears before the disciplinary hearing at the place, on the date and time as scheduled in the charge sheet. From my observation in the SAPS, the accused are not offered transport to attend disciplinary hearings wherever they might be scheduled to convene. Failure of the accused to attend a disciplinary hearing due to lack of transport and money may not be considered by the presiding officer as a reasonable excuse, but will result in charges of further misconduct as prescribed by regulation 10 of the disciplinary regulations.

Again, population group has shown to be a strong predictor of the preferences of the respondents. Of the African population group, 53,8% preferred disciplinary hearings to be at the station where the misconduct was committed. On the other hand, only 17,9 % of the White respondents preferred disciplinary hearings to be held at the station where the misconduct was committed, while 71,4% preferred it to be at the area headquarters. Furthermore, 68% of the respondents based at the area headquarters, prefer disciplinary hearings to be held at the area

headquarters. The availability or lack of availability of transport may be a reason for the responses, but it could not be determined with certainty.

From the above it shows that the respondents in general have mixed preferences with regard to the place where a disciplinary hearing should take place, although population group and to a lesser extent station may be a predictor of their responses.

7.3 PREFERRED DISCIPLINARY HEARING

According to Craig (1994:309) the overriding obligation of the employer is to provide the

applicant with a fair hearing and a fair opportunity to controvert the charge. Du Plessis *et al* (1998:298) also stated that it has become common practice to afford an employee an opportunity to state his/her case at a disciplinary hearing. Furthermore, Grogan (1998:141) believes that the *audi altram partem* rule in the employment context means that an employer cannot take disciplinary action against employees without giving them a fair hearing. It should however be mentioned that neither the *Police Act, 1995* nor the disciplinary regulations, makes any explicit reference to the employees' being presumed innocent until the contrary has been proved. However, the regulations determine that, at the commencement of the disciplinary hearing, the presiding officer should inform the employee of his/her rights, which among others include the right to representation, to call witnesses, and to have an interpreter (South African Police Service National Instruction Guideline 2000).

As far as representation is concerned, section 14(4)(a) of the *Labour Relations Act, 1995* gives union representatives the right to assist employees in disciplinary hearings, at their request. Finnemore (1999:114) also stated that protecting the job security of employees has become a major task of most unions.

It is commonly accepted that the presiding officer should be fair and unbiased during disciplinary

hearings. The administrative law's rule against bias requires that the presiding officer should not only be impartial, but there should also be no grounds for suspecting that his/her decision might be shaped by extraneous factors (Grogan 1998:144). In instances where presiding officers are biased, disciplinary hearings might be characterised by inconsistencies, employees found guilty even though the evidence do not support that, and decisions and sanctions overturned on appeal. Preferences of employees with regard to disciplinary hearings are shown in table 7-2.

Table 7-2: Preferences of employees regarding disciplinary hearings

Question No.	Item	Scaled responses	Number (N)	%
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12	Rank should be considered in the appointment of disciplinary officers	Strongly Agree	36	19,4
		Agree	55	29,4
		Disagree	48	25,8
		Strongly Disagree	47	25,3
		Total	186	100,0
29(1)	During the disciplinary process the accused are treated as follows:	Equally (def)	62	56,4
		Equally (approx)	16	14,5
		Unequally (approx)	17	15,5
		Unequally (def)	15	13,6
		Total	110	100,0
29(2)	During the disciplinary process the accused are treated as follows:	Fairly (def)	24	27,0
		Fairly (approx)	23	25,8
		Unfairly (approx)	13	14,6
		Unfairly (def)	29	32,6
		Total	89	100,0
29(3)	During the disciplinary process the accused are treated as follows:	Partially (def)	10	18,5
		Partially (mostly)	10	18,5
		Impartially (mostly)	17	31,5
		Impartially (def)	17	31,5
		Total	54	100,0

Table 7-2: Preferences of employees regarding disciplinary hearings (continued)

Question No.	Item	Scaled responses	Number (N)	%
32	Employee's rights are respected during the disciplinary process	Always	91	51,4
		Almost always	22	12,4
		Almost never	15	8,5
		Never	49	27,7
		Total	177	100,0

According to the disciplinary regulations (South African Police Service National Instruction Guideline 2000) area commissioners are designated as disciplinary officers whereas captains are designated as disciplinary officials. It is the duty of the disciplinary officer to decide whether or not to charge an employee with a misconduct, whereas the duty of the disciplinary official is to prosecute the charged employee following the decision of the disciplinary officer (area commissioner).

The survey shows that the respondents were not in agreement on the importance of rank in the appointment of disciplinary officers. Only 49% of the respondents preferred that rank should be considered in the appointment of disciplinary officers, whereas 51% did not prefer it. It seems however that gender may be a predictor of the responses as 44,6% of the male respondents compared to 66,7% of the female respondents preferred rank to be taken into account in the appointment of disciplinary officers.

Another predictor is population group as only 42% of the respondents from the African population group preferred rank to be considered in the appointment of disciplinary officers compared to 82% of the respondents from the White population group. The above shows that, with the exception of hite and female respondents, the majority of respondents are not in favour of the provisions of the disciplinary regulations stipulating that rank should be a deciding factor in the appointment of disciplinary officers.

The treatment of accused in disciplinary hearings is generally accepted to be crucial for

positive perceptions about the disciplinary system. In question 29 the respondents were asked how they perceive the disciplinary process with regard to equality, fairness and impartiality. The majority of the respondents, namely 71% perceived that the accused are treated equally [question 29(1)] during the disciplinary process. Furthermore, 63% of the respondents perceived that the accused are treated impartially [question 29(3)]. However, only 53% respondents perceived that employees are treated fairly during the disciplinary process [question 29 (2)]. Generally, it seems that the perceptions of the employees regarding the treatment of the accused during the disciplinary process are positive.

Of the respondents who answered question 32, no less than 64% perceived that the rights of the employees are always respected during the disciplinary process. Gender and population group seem to be predictors in this regard as 66% of the male respondents perceive that employees' rights are respected during the disciplinary process compared to 54,8% of the female respondents. Furthermore only 18% of the employees from the White population group compared to 59% of the respondents from the African population group perceived that employees' rights are respected during the disciplinary process. Furthermore 82% of the employees based at the area office indicated that employees' rights are always respected during the disciplinary process. Although the majority of respondents and especially those who were based at the area office, were of the opinion that the rights of employees are respected during the disciplinary process, it seems that women do not feel as strong about this matter as men and that the overwhelming majority of White respondents felt quite the opposite.

7.4 DECISION OF THE PRESIDING OFFICER

According to Grogan (1998:145), the guilt of the accused employee should be determined on the evidence, without reference to the employee's disciplinary record when the presiding officer makes a decision. Du Plessis *et al* (1998:298) stated that the chairperson at the enquiry must be unbiased and not prejudge the case. Presiding officers should not take sides during the disciplinary hearing and should remain as objective as possible. It

should only be after the evidence has been considered that a final decision may be

announced.

Regulation 11(10) of the disciplinary regulations prescribes that at the conclusion of the hearing, the presiding officer shall make a finding and in the event where the employee is found guilty, he/she will then decide on an appropriate disciplinary sanction to be imposed. In a court of law for example, the state has to prove its case beyond a reasonable doubt for an accused to be found guilty of the crime. In terms of regulation 11(7) of the disciplinary investigations the burden of proof during disciplinary hearings has to be discharged on a balance of probability. The preferences of the employees regarding the outcomes of a disciplinary hearing are shown in table 7-3.

Table 7-3: Preferences of employees regarding the outcomes of a disciplinary hearing

Question No.	Item	Scaled responses	Number (N)	%
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	59,0
		Disagree	22	12,2
		Strongly Disagree	9	5,0
		Total	181	100,0

A comparison of the results of questions 20 and 21 shows that the respondents treated the two questions more or less equal as 79% preferred that presiding officers should make judgement

and impose appropriate sanctions (question 20) compared to 83% who indicated that they prefer presiding officers to make judgement and recommendations about appropriate sanctions (question 21). The disciplinary regulations make provision for

presiding officers to make judgements and to impose appropriate sanctions - more than to make judgements and recommendations about appropriate sanctions.

In chapter four of this dissertation it was discussed that the respondents prefer presiding officers to have legal qualifications (question 4). The response to question 4 confirms my non-scientific observation that several employees preferred presiding officers to have legal qualifications. Question 21 was included in the questionnaire to determine whether the respondents would prefer a situation where presiding officer will make judgements and recommend (to someone else, be it the station commissioner or the area commissioner) an appropriate disciplinary sanction. It is evident that the respondents did not understand the difference between the two questions and consequently supported both the options. The person to whom a recommendation is made may either impose the recommended disciplinary sanction or substitute it with another one as he/she deems fit. Question 22 which will be analysed in chapter eight of this dissertation was included as a follow-up to question 21.

7.5 IMPOSING DISCIPLINARY SANCTION

Disciplinary sanctions to be imposed on the employee who is found guilty of a misconduct may differ in terms of the type of misconduct committed and from one institution to the other. Types of disciplinary sanctions include warnings, demotions, fines, suspension, and dismissal. Having found the employee guilty of a misconduct the presiding officer should impose a disciplinary sanction which is commensurate to the misconduct committed. In institutions like the SAPS, where different presiding officers are used, it is possible that alike cases may not be treated alike. According to Du Plessis *et al* (1998:298) when a presiding officer eventually decides upon a sanction, he/she must take care that the case before him/her is treated consistently with

like cases in the past. Unless misconducts have been classified and relevant sanctions made known in advance, it is doubtful whether consistency may prevail.

Regulation 11(10) of the disciplinary regulations also provides that after the presiding

officer has found the employee guilty of misconduct, he/she should determine the disciplinary sanction to be imposed (South Africa 1996b).

The presiding officer must determine the nature and extent of the guilt and impose the appropriate penalties (Bittel & Newstrom 1990:375). In a court of law, for example, it is normally said that the magistrate/judge has considered the seriousness of the crime and the interests of the community before sentencing the accused. During the disciplinary hearing the presiding officer should among others, consider the interests of the institution, the extent to which the image of the institution has been damaged or affected and, the personal circumstances of the employee. Bendix (1996:359) believes that before the presiding officer could impose a disciplinary sanction, the personal circumstances of the employee and any mitigating and aggravating circumstances have to be taken into account. Furthermore, Du Plessis *et al* (1998:298) stated that the service record and other surrounding circumstances of the employee must be considered in relation to the disciplinary sanction. In considering the employment record of an employee the presiding officer will be able to see whether or not the employee has a history of committing misconduct and therefore determine an appropriate sanction. In the event where the personal circumstances and/or service record of the employee are not considered, the disciplinary sanction to be imposed may not be able to mould the employee's behaviour, and a recurrence of a similar or another misconduct may not be overruled. According to Bittel and Newstrom (1990:375) the objective of discipline is for wayward employees to develop their own self-control so that they are not drawn over the line that separates acceptable from unacceptable behaviour. Furthermore, the imposition of disciplinary sanctions should give consideration of past and improved performance. The perceptions of the employees regarding the imposition of disciplinary sanctions are shown in table 7-4 .

Table 7-4: Perceptions of employees regarding the imposition of disciplinary sanctions

Question No.	Item	Scaled responses	Number (N)	%
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14	Presiding officers consider all mitigating circumstances before imposing disciplinary sanctions	Strongly Agree	49	27,2
		Agree	84	46,7
		Disagree	29	16,1
		Strongly Disagree	18	10,0
		Total	180	100,0
16	It is better to transfer an employee than to suspend him/her	Strongly Agree	107	57,8
		Agree	43	23,2
		Disagree	19	10,3
		Strongly Disagree	16	8,6
		Total	185	100,0
17	It is better to demote an employee than to dismiss him/her	Strongly Agree	90	48,6
		Agree	60	32,4
		Disagree	20	10,8
		Strongly Disagree	15	8,1
		Total	185	100,0
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
		Other	8	4,4
		Total	183	100

Table 7-4: Perceptions of employees regarding the imposition of disciplinary sanctions

(continued)

Question No.	Item	Scaled responses	Number (N)	%
25	Warning as a disciplinary measure should be imposed by	Immediate commander	87	47,3
		Investigating officer	21	11,4
		Station commissioner	66	35,9
		Other	10	5,4
		Total	184	100,0
26	Transfer as a disciplinary measure should be	Temporary	115	63,2
		Permanent	67	36,8
		Total	182	100,0

The survey shows that 74% of the respondents perceive that presiding officers consider all mitigating circumstances before imposing disciplinary sanctions. Respondents of the various population groups appear to be in agreement on this as 75% of the respondents from the White population group, 67% of the respondents from the Asian population group and 73% of the respondents from the African population group agreed with the statement. The same level of agreement occurs between the various ranks as 79% of the sergeants and 75% of the constables agreed with the statement in question 14. It is convincing proof that the employees are satisfied with the efforts taken by presiding officers before imposing disciplinary sanctions.

As far as disciplinary sanctions are concerned, 81% of the respondents preferred that an employee be transferred rather than be suspended (question 16). The SAPS disciplinary regulations (South Africa 1996b) do not prescribe suspension as a disciplinary measure, but transfer is prescribed as one. In most instances in the SAPS, employees are suspended from duty pending disciplinary investigations. Furthermore, even though transfer is prescribed as a disciplinary measure, employees are also transferred to other stations

pending disciplinary investigations. The respondents have however indicated that an employee should rather be transferred than be suspended from duty.

Furthermore, 81% of the respondents preferred that an employee be demoted rather than dismissed. Both demotion and dismissal are prescribed as disciplinary sanctions in the SAPS. When an employee is demoted to a lower rank, there are normally financial implications, meaning that his/her salary notch will also be reduced accordingly. However, at least a demoted employee is guaranteed a salary every month, but an employee who is dismissed has no salary. It is on the basis of this that the respondents in question 17 preferred demotion to dismissal, which is commonly referred to as an industrial death sentence. On the other hand, 58% of the respondents who are captains disagreed with the statement in question 17.

In terms of the SAPS disciplinary regulations, disciplinary sanctions are imposed by the presiding officer of each disciplinary hearing. It is further prescribed that minor misconducts should be dealt with at the lower level without having being referred for a disciplinary hearing. However, misconducts in the SAPS are not classified as minor, serious and more serious offences. Consequently, supervisors are expected to use their own discretion when they have to view a misconduct as minor or serious. Disciplinary sanctions that are normally imposed at the lower level are verbal and written warnings. Employees have different preferences about which role players should impose a warning as a disciplinary measure. In response to question 25, 47% of the respondents indicated that they prefer warnings to be imposed by immediate commanders (shift commanders). I believe that when immediate commanders (shift commanders) are allowed to attend to minor misconducts at their level, employees will receive feedback immediately and modify their behaviour where necessary. The fact that 36% of the respondents preferred that warnings as a disciplinary sanction should be imposed by the station commissioner, is also an indication that they preferred this action at a level very near to the accused employee. Only 11,4% of the respondents prefer investigating officers to impose warnings as a disciplinary sanction.

In question 26, 63,2% of the respondents prefer transfer as a disciplinary sanction to be temporary, whereas 36,8% prefer it to be permanent. It is necessary that organisational disciplinary policy should contain guidelines regarding the validity period of a transfer as a disciplinary measure. The Disciplinary Regulations of the SAPS does not contain any such guidelines (South African Police Service National Instruction Guideline 2000). It is submitted that the permanent transfer of an employee is a permanent labelling and that the employee will be haunted by this verdict for as long as he/she is a member of the SAPS. Only 47% of the respondents who are captains who answered question 26 prefer transfer as a disciplinary sanction to be temporary. On the other hand, 62% of the inspectors and 79% of the sergeants prefer transfer to be temporary. It seems there is a correlation between the seniority of respondents and their preferences. The more relatively senior respondents tend to prefer transfers to be permanent whereas the relatively junior respondents prefer it to be temporary.

When an employee is transferred to a new place he/she has to adjust to the new environment, make new friends and get to know new commanders. This state of affair may take a very long time, and there is no guarantee that his/her behaviour might change.

Maybe it is because of these negative experiences that the sergeants and the inspectors prefer a transfer as a disciplinary sanction to be temporary.

7.6 CONCLUSION

The survey shows that a relatively high percentage of the respondents (46,2%) preferred disciplinary hearings to be held at the police station where the misconduct was committed whereas 17,6% and 31,3% of the respondents preferred the neighbouring police station and the area headquarters respectively.

Nearly 49% of the respondents preferred that rank should be considered in the appointment of disciplinary officers. Furthermore, 54,4% of the male respondents indicated that they preferred rank to be considered in the appointment of disciplinary officers compared to 68% of the female respondents. Only 42% of the respondents from

the African population group indicated that they preferred rank to be considered in the appointment of disciplinary officers compared to 82% of the respondents from the white population group.

As far as respecting the rights of the employees during the disciplinary process is concerned, 64% of the respondents hold the perception that employees' rights are respected. Only 18% of the respondents from the White population group perceived that employees' rights are respected during the disciplinary process, compared to 59% of the respondents from the African population group. The survey shows that 66% of the male respondents perceived that employees' rights are respected during the disciplinary process, compared to 54,8% of the male respondents.

The survey further shows that the respondents did not understand the difference between the role of the presiding officer making judgements and imposing appropriate sanctions (question 20) on the one hand, and the role of the presiding officer making judgements and recommendations about appropriate sanctions (question 21) on the other hand. The respondents (on average 78%) have indicated that they preferred both situations (ie the presiding officer performing both roles).

The survey shows that 74% of the respondents perceived presiding officers consider all the mitigating circumstances before imposing disciplinary sanctions. Respondents of the various population groups indicated that they are in agreement with the statement.

A relatively high percentage of the respondents (81%) preferred that an employee be transferred rather than be suspended. 63,2% of the respondents indicated that they preferred transfer as a disciplinary sanction to be temporary compared to 36,8% of the respondents who preferred transfer to be permanent. The survey also shows that 47% of the respondents who are captains preferred transfer to be temporary compared to 62% of the inspectors and 79% of the sergeants. One could therefore conclude that the preferences of the respondents differ according to their seniority.

Furthermore, the survey shows that the respondents (81%) preferred that an employee be demoted rather than being dismissed.

The survey further shows that 47% of the respondents preferred warning to be imposed by

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