

CHAPTER EIGHT: PREFERRED REMEDIES FOR DISSATISFIED EMPLOYEES

8.1 INTRODUCTION

It is in human nature that what may be satisfactory to one person will not be satisfactory to another. In certain situations it is possible that when differences arise third parties are approached to interfere. The believe is that third parties who know nothing about the prevailing situation may be objective and fair to both parties. In most cases employees in a working environment are the first to approach third parties requesting the reversal of earlier decisions which are not satisfactory to them. Remedies available for dissatisfied employees are described below. Before a conclusion is reached, perception and preferences regarding how they feel about the current disciplinary system will be determined.

8.2 PREFERRED REMEDIES FOR DISSATISFIED EMPLOYEES

The institutional disciplinary policy should always serve as a frame of reference as far as remedies for unsatisfied employees are concerned. Employees should then follow the correct channels in order to exhaust the recognised remedies. Three bodies which employees may approach to reconsider disciplinary sanctions imposed on them, are discussed below. They are the Commission for Conciliation, Mediation and Arbitration (CCMA), the Appeals Authority and the Bargaining council. Although the preferences and perceptions of the respondents were not tested about the CCMA and the Bargaining council, the functions of these institutions will be briefly discussed together with that of the Appeals Authority.

8.2.1 Commission for Conciliation, Mediation and Arbitration

According to Wilson (2000:44) the Commission for Conciliation, Mediation and

Arbitration (CCMA) was set up as a user-friendly forum to resolve labour disputes. The CCMA is, in most cases, approached by employees who are not satisfied with their dismissals and to challenge the dismissals. Bendix (1996:369) also pointed out that where an employee alleges he/she has been unfairly dismissed and the employer cites misconduct as a reason for such dismissal, the dismissal may be referred to the CCMA. The sole purpose of the employee who refers a dispute regarding dismissal to the CCMA is because he/she is unsatisfied. According to Grogan (1998:146) the CCMA with its simplified procedure serves as an adequate substitute for a domestic appeal. Knowledge of legal expertise or the assistance of legal representation is not a necessity when asking help from the CCMA.

Chapter VII section 141(1) of the *Labour Relations Act, 1995* states that the CCMA has the jurisdiction to arbitrate a dispute if a party to the dispute would otherwise be entitled to refer the dispute to the Labour Court for adjudication. The SAPS disciplinary regulations do not make any reference to the effect that employees may refer their disputes to the CCMA. It is however believed that, because the SAPS is not operating outside the parameters of the prevailing labour laws, its employees may utilise the services of the CCMA.

8.2.2 Appeals Authority

The employee must also be informed of his/her right to appeal against the decision to a higher tier of management (Du Plessis *et al* 1998:298). They went further by stating that the purpose of an appeal is to establish whether an alternative sanction to dismissal could or should be imposed in the circumstances. In a court of law for example,, the accused can lodge an appeal against the verdict and/or sentence.

The appeal should be lodged with the local division of the supreme court, and if still not satisfied, with the supreme court of appeal. Where there is a question of constitutional

interpretation, an appeal is then lodged with the constitutional court. The person taking this route in actual fact is saying that the next level of court will

reach a different decision from the one reached in the tribunal.

The *Labour Relations Act, 1995* in schedule 8 (Code of good practice: dismissal) makes no mention of the right of appeal. Maybe it is because CCMA has been established to deal with such appeals. On the other hand, regulation 13 of the disciplinary regulations prescribes that an employee may appeal against a finding and disciplinary sanction made by the presiding officer. Such an appeal shall be lodged with the Appeals Authority, which is a board of appeal consisting of serving or retired attorneys or magistrates appointed by the Minister of Safety and Security on contract for a specific period. In terms of regulation 13(1) of the disciplinary regulations the decision of the Appeals Authority shall be final and binding. This means that the employee may not approach any other institution of state to challenge the decision even though he/she is not satisfied with the decision of the Appeals Authority. Moabelo (2001) stated that the binding aspect of regulation 13(1) on employees will be taken to court by the SAPU for revision.

In chapter 5 of this dissertation, question 9 was analysed. Without repeating what was already stated, it is a worrying factor that 72,5% of the respondents indicated that they do not know the duties of the Appeals Authority. It may be that when employees do not challenge for instance their dismissals, it is due to the fact that they are not aware of the existence of such a body or, if they know that it exists, they do not know the reason for its existence.

Question 10 was asked as a follow-up to this question to determine the general perceptions of the employees regarding the current disciplinary system. The employees perceptions in this regard are shown in table 8-1.

Table 8-1: Perceptions of employees regarding the current disciplinary system

Question No.	Item	Scaled responses	Number (N)	%
10	How do you feel about the current disciplinary system	Very Positive	6	3,3
		Positive	42	23,1
		Negative	74	40,7
		Very Negative	60	33,0
		Total	182	100

26,4% of the respondents indicated that they feel positive about the current disciplinary system, whereas 74% feel negative. The employees already indicated that they do not know the duties of the Appeals Authority which is very important and is in a position to restore the confidence of the employees. Confidence may be restored when the employee knows for a fact that someone else who is neutral and objective has reviewed the whole case and has reached the same conclusion. Population group was a predictor of responses as 50% of the respondents from the White population group has indicated that they feel positive about the system as compared to 21% of the respondents from the African population group.

Seniority is also a predictor as 63,2% of the captains, compared to 76% of the inspectors indicated that they feel negative about the current disciplinary system. Furthermore, 64,3% of the respondents who are based at the area commissioner's office also indicated that they feel negative about the current disciplinary system. It seems that the majority of the respondents feel negative about the current disciplinary system. The fact that a higher number of officers also feel negative about the current

disciplinary system, indicates that there is something wrong with the disciplinary process.

8.2.3 Bargaining Councils

According to Bendix (1996:369) alleged unfair dismissals may be referred to

bargaining councils which have jurisdiction to hear the dispute. Furthermore, these bargaining councils should be registered by sector or area. Sectoral bargaining councils are decentralised in order to alleviate the workload of the central bargaining councils with their workload. In the department of safety and security, the Safety and Security Sectoral Bargaining Council (SSSBC) is a decentralised bargaining council to deal with disputes in the department. In terms of clause 5(d) and (e) of the SSSBC constitution, 1999, it is its function to prevent and resolve labour disputes in the sector. According to Du Toit (2000:11) SAPS employees have a choice of either referring their dismissal disputes to the Appeals Authority or to the council. Furthermore, Du Toit (2001) has mentioned that she has referred dismissal disputes to the SSSBC and the rulings were in her favour. Now the question arises if the employee can still refer his/her dismissal disputes to the Appeals Authority if not satisfied with the decision of the council? This directives in the SAPS do not answer this question.

8.3 CONCLUSION

The survey has shown that a relatively high percentage of the respondents (74%) feel negative about the current

ent
disc
iplin
ary
pro
ces
s.
The
per
cep
tion
s of
the
res
pon
den
ts
reg
ardi
ng
the
curr
ent
disc
iplin
ary
syst
em
acc
ordi
ng
to

pop
ulati
on
gro
up
diff
ere
d.
The
surv
ey
sho
ws
that
50
%
of
the
res
pon
den
ts
fro
m
the
Whi
te
pop
ulati
on
gro
up

hol
d
the

perception that they feel positive about the current disciplinary system whereas 79% of the respondents from the African population group hold the perception that they feel negative about the current disciplinary system. The survey also shows that even the captains (63,2%) and inspectors (76%) feel negative about the current disciplinary system. Conclusions on all the chapters in this dissertation are described in chapter nine and thereafter recommendations will be made. Areas for futher research will also be identified in the following chapter.