



WEEKLY LABOUR BULLETIN

**Commercial Farmers Union Bulletin #22
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COMMON PROCEDURAL MISTAKES THAT LEAD TO LABOUR DISPUTES: PART 3 - DISCIPLINARY PROCEEDINGS

INTRODUCTION

This week's bulletin focuses on how labour disputes can arise from mistakes made during disciplinary proceedings. In many labour disputes, employers have a legitimate reason for taking disciplinary action but fail to follow the proper procedure prescribed by the Labour Act and the Code of Conduct contained in S.I. 41 of 2022. A procedurally defective disciplinary process may result in disciplinary action being successfully challenged, even where the employee committed the misconduct.

Below are some of the most common procedural mistakes made during disciplinary proceedings.

DISMISSING AN EMPLOYEE WITHOUT FOLLOWING THE CODE OF CONDUCT

One of the most common mistakes employers make is summarily dismissing an employee immediately after misconduct has been discovered without conducting the proper disciplinary procedure. Whether the allegation involves theft, absenteeism, insubordination, negligence, or any other act of misconduct, employers should remember that dismissal is not automatic. Before dismissal can be effected, the disciplinary procedure prescribed by the Code of Conduct in SI 41 of 2022 must be followed (*see CFU bulletin 8 on disciplinary procedure for more detail*).

The disciplinary process exists to ensure fairness to both the employer and the employee. Failure to comply with the prescribed procedure may expose the employer to legal challenge and may result in the dismissal being set aside because of procedural unfairness.

Employers should therefore resist the temptation to dismiss employees "on the spot" and instead ensure that disciplinary proceedings are conducted in accordance with the Code of Conduct.

FAILURE TO PROPERLY CHARGE EMPLOYEES

A disciplinary hearing begins with a properly formulated charge. A common mistake is to inform an employee verbally that they are being disciplined

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without clearly setting out the allegation against them. This often creates confusion and may later become a point of dispute.

Employees should be informed of the allegations in sufficient detail to enable them to understand the case they are required to answer. For record purposes, the charge should be reduced to writing, emphasising the importance of record keeping.

The categories of misconduct contained in **Appendix I** of the Code of Conduct provide the framework upon which disciplinary charges should be based. Employers should therefore ensure that the charge corresponds with the appropriate category of misconduct and is supported by the facts of the case. Poorly drafted, vague, or incorrect charges may undermine disciplinary proceedings and result in disciplinary decisions being challenged.

FAILURE TO GIVE EMPLOYEES AN OPPORTUNITY TO BE HEARD

Perhaps the most fundamental principle of procedural fairness is that an employee must be given an opportunity to be heard before a disciplinary decision is made. This principle, commonly referred to as the ***audi alteram partem*** rule, requires that an employee be afforded a reasonable opportunity to respond to the allegations before any disciplinary sanction is imposed.

Giving an employee an opportunity to be heard involves more than simply asking for an explanation. The employee should:

- Be informed of the allegations against them;
- Be given sufficient time to prepare a response where appropriate;
- Be allowed to present their version of events;
- Be permitted to call relevant witnesses where necessary; and
- Be allowed representation where the Code of Conduct permits.

Disciplinary action taken without observing these requirements is frequently challenged as being procedurally unfair.

DELAYS IN INSTITUTING DISCIPLINARY PROCEEDINGS

Another common mistake is allowing disciplinary matters to remain unresolved for long periods after the misconduct has been discovered. Unnecessary delays may weaken the employer's case and create the impression that the misconduct was not regarded as sufficiently serious at the time it occurred. Delays may also make it more difficult to locate witnesses or obtain reliable evidence.

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While every matter should be properly investigated before charges are laid, disciplinary proceedings should generally be instituted as soon as reasonably practicable after the alleged misconduct comes to the employer's attention. The disciplinary process should be concluded within fourteen (14) working days of the start of the employee's suspension, if any, or thirty (30) working days of the commencement of the investigation, whichever comes earlier.

Prompt action not only strengthens the employer's case but also promotes confidence in workplace discipline.

PRACTICAL TIPS FOR EMPLOYERS

To minimise the risk of labour disputes arising from disciplinary proceedings:

- Follow the disciplinary procedure prescribed by the applicable Code of Conduct in S.I 41 of 2022 before imposing dismissal.
- Ensure disciplinary charges are clear, specific, and reduced to writing.
- Base charges on the categories of misconduct contained in Appendix I of the Code of Conduct.
- Give employees a genuine opportunity to be heard before making disciplinary decisions.
- Keep proper records of all disciplinary proceedings.
- Institute disciplinary proceedings as soon as reasonably practicable after misconduct is discovered.

CONCLUSION

Many disciplinary decisions are challenged not because the employer lacked a valid reason to take action, but because the correct procedure was not followed. Employers who comply with the disciplinary procedures prescribed by the Labour Act and the Code of Conduct in S.I 41 of 2022, properly formulate charges, respect an employee's right to be heard, and deal with misconduct promptly are far less likely to face successful procedural challenges.

Disclaimer: This article is issued to serve as a general guide to farmers and does not substitute legal advice that may be required to address a particular situation with peculiar circumstances.

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