Initiating & Chairing a Disciplinary Hearing

REFERENCES:
- MCCARTHY
- COROBRIK
- MICOR
- AFROX
- AUTOZONE
- ORNICO
- ESKOM
- SARS
- PPC CEMENT
- NSK
- BURCHMORE'S
THE FOLLOWING GUIDELINES HAVE BEEN DRAWN UP TO ASSIST YOU IN YOUR PREPARATION FOR A DISCIPLINARY ENQUIRY:

A. COLLECTING THE EVIDENCE
DIRECT AND CIRCUMSTANTIAL EVIDENCE

TYPES OF EVIDENCE:
ORAL EVIDENCE: MAIN FORM OF EVIDENCE
REAL EVIDENCE:
REAL EVIDENCE IS EVIDENCE WHICH CAN BE PHYSICALLY INSPECTED OR SEEN AND INCLUDE:
- PHOTOGRAPHs
- COMPUTER PRINT-OUTS
- INSPECTIONS AT THE SCENE OF MISCONDUCT
- DOCUMENTARY EVIDENCE (i.e. CASH CONTROL SHEET/O.B. ENTRY): THE DOCUMENTS AUTHENTICITY MUST BE PROVED AND THE ORIGINAL DOCUMENT SHOULD IDEALLY BE PRODUCED.

SWORN AFFIDAVITS

HEARSAY, CHARACTER, AND SIMILAR FACT EVIDENCE

KEY POINTS FOR COLLECTING EVIDENCE:
- SPEAK TO WITNESSES AS SOON AFTER THE INCIDENT AS POSSIBLE
- WHERE NECESSARY ASK WITNESSES TO SUBMIT SWORN STATEMENTS, ESPECIALLY WHERE THERE MAY BE INTIMIDATION AT A LATER STAGE

A. COLLECT THE INFORMATION:
- ESTABLISH THE FACTS
- FIND OUT IF THERE ARE ANY WITNESSES
- OBTAIN STATEMENTS FROM WITNESSES (SIGNED AND DATED)
- QUESTION THE EMPLOYEE AND LISTEN TO THEIR VERSION OF THE INCIDENT AND TAKE A STATEMENT (WHERE NECESSARY)

B. VERIFY THE INFORMATION
- QUESTION AND CHECK WITNESSES' EVIDENCE
- EXAMINE ALL THE EVIDENCE AND DECIDE HOW MUCH IS FACT AND HOW MUCH IS SPECULATION, OPINION, OR HEARSAY

C. FORMULATE THE ALLEGATION

INITIATING & CHAIRING A DISCIPLINARY HEARING

COURSE CONTENT

GUIDELINES - INITIATOR/INVESTIGATING OFFICER
THE LABOUR RELATIONS ACT HAS PROVIDED EMPLOYERS WITH GUIDELINES IN CASES OF DISMISSAL FOR: MISCONDUCT; INCAPACITY: POOR WORK PERFORMANCE; INCAPACITY: ILL HEALTH OR INJURY; OPERATIONAL REQUIREMENT DISMISSALS.
TODAY WE WILL COVER MISCONDUCT.
THE CHAIRPERSON OF A DISCIPLINARY ENQUIRY WILL USE THESE GUIDELINES TO ENSURE THAT A FAIR AND JUST DECISION IS REACHED. AS INITIATOR, YOU NEED TO ASK THESE QUESTIONS FROM THE OUTSET BEFORE PROCEEDING WITH AN INVESTIGATION LEADING TO A DISCIPLINARY ENQUIRY.
• Keep a detailed record of who you spoke to, where and when
• Where possible, take statements in front of a witness who is not party to the incident
• Do not take statements from witnesses who are in a state of shock; do this later
• If a witness appears to be drugged or drunk, note this fact
• Collect any real evidence, have it authenticated if necessary and ensure it is secured so that it cannot be tampered with by anyone
• Do not forget to take a statement from the employee who is suspected of misconduct
• Look for corroborating evidence, especially of certain important facts
• Look for answers to issues raised by the evidence. E.g. The key for the cash draw is used in a theft. The employee responsible for the key keeps the key in a drawer with a broken lock. He says he has asked to have the drawer fixed several times. ……….. Find out why the drawer was not fixed; find out why he did not keep the key in a safer place; ……….. Find out who he asked

B. Evaluating the evidence

• Key points when evaluating evidence:
  • Do not accept statements at face value: Ask witness to go over it again and check that the two versions are similar
  • Ask questions such as: Where were you when it happened?
  • Did you actually see it happen?
  • What did you do after it happened?
  • When did it happen?
  • Verify probability, e.g. If the witness saw something, check eyesight and any obstacles in the way; if he heard something check hearing and noise levels at the scene
  • Probe any circumstantial evidence carefully and note it as such
  • Look for contradictions between different versions of the same witness’s story and between different witnesses’ stories
  • Verify the strength of any contrary evidence

Key points in assessing witness credibility

• Does the witness have a record of presenting false or inaccurate information?
• Does the witness have any reason to lie for or against the accused?
• Is there a case of previous bias or ill feelings against the accused by the witness, or vice versa?

• Explore the relationship between the witnesses and the accused, if any i.e., Total strangers, colleagues, boss - subordinate, family relation, emotionally involved now or before, etc.

• Is the witness a known user of drugs or alcohol?

• Would there be any benefit to the witness by testifying?

• Check the witness’s behaviour whilst he is telling his story. Is he reasonably calm and objective; or is he obviously nervous for no good reason; will not look you in the eye, starts to sweat when you question points, appears nervous, gets aggressive and so on?

• Is their evidence contradictory to other evidence which you may have?

C. Formulating the allegation:

In the formulation of the allegation you must consider two important aspects:

The accuracy of the allegation: If the allegation is vague, insubstantial or does not reflect the true concern, then the findings of the enquiry will be suspect.

The allegation must be clear: The employee charged must prepare their defence in terms of the allegation and therefore must know exactly what it is.

State carefully the nature of the offence, and a description of the incident and circumstances surrounding it i.e., all allegations must have a general clause followed by a specific - the general will refer to company rules and the specific to the goods or incident and the date.

Steps to follow before the enquiry to make sure you are well prepared:

• Label all documents

• Ensure your witnesses are well prepared and understand that they should only answer what is asked of them

• Go over the evidence and prepare the sequence of witnesses and presentation of physical evidence
YOUR ROLE AT THE DISCIPLINARY ENQUIRY:

- Explain the allegation against the employee and lead evidence in support of your case.
- Question the employee where necessary if you do not agree with his interpretation of the facts.
- Provide information which will assist the chairperson in reaching a decision regarding guilt, extenuating circumstances, the employee’s record and the appropriate penalty.

AT THE ENQUIRY:

- In order for you to “control” the witness, check details and ensure that you avoid inadmissible or irrelevant evidence, you should use the “question and answer” technique - specific questions are used to get specific answers.
- Try to avoid leading questions i.e. questions which suggest an answer or assume the existence of certain facts e.g. asking a witness if he saw the accused employee in the

APPRAISAL OF THE TRAINING APPROACH:

Our training approach focuses on a specific framework that ensures success, relevancy and implementation.

JHJ Training is a highly focused organisation whose directors have many years of collective experience in the structuring, organisation and marketing of strategic and specialised training programmes. Our objective and responsibility is to facilitate progress and development through organising training programmes that equip individuals with knowledge and skills.

We aim for professionalism, dynamic programs and an innovative approach through our training courses.