

DISCIPLINARY PROCEDURE AND CODE

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1. INTRODUCTION

1.1 Establishing and maintaining positive and equitable discipline is a key responsibility of every Supervisor/Manager. A high standard of performance and behaviour is required of every employee. This is to be achieved by responsible self-discipline, sound Management / Supervisory practice and, if necessary, by the application of the Disciplinary Procedure and Code, as detailed below.

1.2 The Disciplinary Procedure and Code consists of the following elements:

1.2.1 The Disciplinary Procedure

1.2.2 The Disciplinary Code

1.2.3 The Disciplinary Appeal Procedure

1.2.4 A Counselling Procedure

1.3 The objective of the above elements is to implement a means whereby unacceptable behaviour and performance can be corrected in a positive and fair manner thereby improving the efficiency and effectiveness of an employee/s and Motla Utilities (Pty) Ltd. They are not to be viewed as a means of punishing employees.

1.4 The Disciplinary Procedure should not be used for incapacity i.e. an inability to meet inherent job requirements or meet performance standards due to either the lack of skills/knowledge or due to injury or ill health.

(See procedure and guidelines to be followed in incapacity cases as detailed on pages 25 to 27 inclusive and pages 38 to 49 inclusive in this document.)

2. POLICY

- 2.1 The Disciplinary Procedure and Code applies to all employees of Motla Utilities (Pty) Ltd irrespective of their position.
- 2.2 The Procedures and Code are to be made known to all employees and a copy shall, at all times be available at the office.
- 2.3 All Disciplinary action is to be handled and implemented on an internal basis.
- 2.4 Where appropriate, counselling or coaching or training and evaluation should be used as the first step to correct unacceptable behaviour.
- 2.5 Where counselling or coaching is not suitable, disciplinary action must be implemented in one of the following ways:
- 2.5.1 Progressive basis, i.e. informal (via a one-on-one meeting which is then recorded in writing) to formal action. (Hearing) This means is used to correct unacceptable performance or behaviour (misconduct) of a minor nature. e.g. loafing whilst on duty or lack of punctuality.
- 2.5.2 Formal action, for offences as e.g. defined in the Disciplinary Code, i.e. misconduct matters.
- 2.6 Employees have the right to appeal against any disciplinary action taken against them in terms of the Appeals Procedure in Clauses 6 and 7 on pages 16 to 18.

- 2.7 Misconduct means bad behaviour e.g. misappropriation of company monies and/or stock, use of abusive language, habitual absence from work or late coming etc.
Incapacity means an inability to meet inherent job requirements or performance standards due to a lack of knowledge or skills or due to injury or ill-health.
- 2.8 It is critical that a correct analysis and decision is made regarding an allegation against an employee as to whether it is Misconduct or Incapacity before rushing into e.g. a Disciplinary Hearing or issuing written warnings without holding a proper Hearing.
- 2.9 If an employee is to be suspended prior to a disciplinary hearing, consult with them in this regard and issue a letter of suspension. (Page 50 of this procedure).

3. **IMPLEMENTING A DISCIPLINARY HEARING**

- 3.1 A Disciplinary Hearing should be held in all cases by Managers / Supervisors where:
- 3.1.1 Counselling or coaching, followed by a verbal warning, for offences such as those listed at 4 (minor) in the Disciplinary Code have failed.
- 3.1.2 Any other offence or similar offence listed in the Code, excluding major misconduct, relating to the work situation is alleged to have been committed.
- 3.1.3 If major misconduct is alleged to have been committed, all such suspected offences should, in the first instance be reported to a General Manager or M.D. who will advise the Manager/ Supervisor of the most appropriate action to take.

- 3.2 The purpose of the Disciplinary Hearing is to:
- 3.2.1 Establish and consider the facts, evidence and circumstances in order to determine the innocence or guilt of the employee.
- 3.2.2 If an employee is found to be guilty of an offence, determine an appropriate sanction.

Attached as Annexure A is the “Code of Good Practice: Dismissal” (pages 19 to 27) and “Chairpersons Checklist: Hearings” (Annexure L: pages 51 to 61) which should be studied when deciding on non-guilt or guilt and an appropriate sanction.

4. THE DISCIPLINARY PROCESS

- 4.1 Stage one
- If an offence has been committed or is alleged to have been committed, the Manager / Supervisor will conduct a general investigation in order to establish facts and evidence.
 - Determine whether:
 - (i) Counselling and or coaching will be used, or
 - (ii) Issuing a verbal warning will suffice, or
 - (iii) Implementation of a Disciplinary Hearing is necessary.
- 4.2 Stage two
- Employee must be advised, in advance, that a Disciplinary Hearing is to be held. Annexure C (Notification of a Disciplinary Hearing and Charges Preferred) must always be used.

NOTE

- (i) Notice period: Employees have the right to be disciplined timeously, but also have the right to be given the time to prepare for the Hearing. It is generally advisable to give the employee 48 hours notice that the Hearing is to be held. In the event of Major misconduct that could result in dismissal a longer period should be allowed e.g. four (4) days.
Should the employee request a longer period and presents acceptable reason, this should be considered. Generally this additional period should not exceed an additional two days.
- (ii) A Proper Charge: Employees have the right to be told in writing of the full nature of the alleged offence. As such, the charge must be detailed and be formulated so that the employee can understand it and prepare a proper defence, i.e. insofar as the charge is concerned, full details must be entered on "Annexure C" and no additional charge/s introduced during the Disciplinary Hearing.
- (iii) Impartial Chairperson: The person acting as Chairperson of the Disciplinary Hearing should, where possible and given circumstances within the Company in terms of its limited number of Managerial / Supervisory employees, have no direct involvement or interest in the matter, and very importantly, should be capable of making a fair decision, without fear, favour or bias.
- (iv) Employee Representative: Employees have the right to be represented by another employee of Motla Utilities (Pty) Ltd (i.e. only from the particular Company they are employed by) of their choice. Representation of employees by outside person/s is not permitted. The employee representative must be present during the whole Hearing and must be allowed to participate fully in the Hearing.

- (v) Interpreter: The employee has the right to fully understand the proceedings. As such, he/she is entitled to an interpreter should he/she so choose. The Company is responsible for providing the interpreter. The employee representative should not be permitted to act as interpreter.

4.3 Stage three

- An employee charged with an alleged offence is entitled to a full, proper and unbiased Disciplinary Hearing.
- In order to achieve this, it is essential that the following Procedure be followed on the day of the Disciplinary Hearing:

- (i) An impartial Chairperson who may or may not be an employee of the Company is present, whose role is to conduct the Hearing, seek clarity, keep minutes of the proceedings (a non-participating secretary or tape recorder may be used), make a decision as to the guilt or non-guilt, and after consideration of relevant mitigating acts and circumstances issue an appropriate sanction.
- (ii) A Company initiator must be present in order to put the Company's case forward, support the case with evidence, facts, witnesses, and question the employee. The initiator will in most cases be the immediate Supervisor/Manager of the employee being charged.
- (iii) The employee must be present with a representative (if one was chosen), in order to defend him/herself by denying the case with evidence, facts, witnesses, cross-questioning management and its evidence, facts and witnesses.

Should an employee charged not attend the Hearing, dependant on reason for such absence, the Hearing may be held in his/her absence.

- (iv) Once the Company initiator and employee plus representative have fully concluded presenting their respective cases, the Chairperson should adjourn the Disciplinary Hearing to assess all the facts, evidence and circumstances in order to reach a decision of “guilty” or “not guilty”.
- (v) The Chairperson should then re-convene the Disciplinary Hearing with the initiator, the employee and the representative present, and state his/her decision and reason/s for the decision.

If the employee is found NOT GUILTY at this stage, the Disciplinary Hearing is closed and no further action is taken. If the employee is found GUILTY, the Chairperson must request the employee and his/her representative to put forward mitigating circumstances for consideration before he/she adjourns to decide on an appropriate penalty. Once these have been put forward, the Chairperson should again adjourn the Disciplinary Hearing.

- (vi) During the adjournment, the Chairperson should consider the mitigating circumstances put forward, search the Company records for further mitigating circumstances or warnings, which are of a similar nature, against the employee which are still valid, i.e. current, and decide on a sanction. NOTE: Before issuing the penalty/sanction, except in the case of a verbal warning and first warning, it must be checked with another Company Senior Manager.
- (vii) On re-convening the Disciplinary Hearing with the Company initiator and the employee and representative present, the Chairperson should advise the employee of the penalty/sanction imposed and the implications thereof. The Chairperson must then advise the employee of his/her right to appeal against the decision and/or sanction. In so doing, the Chairperson must ensure that he/she:

- advises the employee that should the appeal be lodged, it be lodged **within four working days**, be in writing, clearly state the reasons of the appeal, with whom it should be lodged and if necessary, provide the employee with an appeal form (see 'Annexure H: page 37).

NOTE:

It is incumbent on the Chairperson to ensure all documentation is properly completed, e.g. minutes, issuing of warning, employees Manager/Supervisor advised, pay office/personnel, advised etc.

Attached as Annexure B is the “Code of Good Practice: Dismissal” and “Chairpersons Checklist: Hearings” (Annexure L) which should be studied when deciding on non-guilt or guilt and an appropriate sanction.

5. Disciplinary Code

The following Code should be adhered to at all times. Clearly it cannot be all encompassing i.e. not every possible offence or breach can be listed in such a Code. Further, the sanctions/penalties recommended serve only as a guideline to a Chairperson. Employees must understand that charges not listed in the Code may be brought against them if so decided by the Company. Where any doubt/s exist, a General Manager or the M.D. is to be consulted in the first instance.

ANNEXURE A

SECTION: DISCIPLINARY PROCEDURE AND CODE

PAGE: 9/61

5.1 SCHEDULE OF OFFENCES AND POSSIBLE PENALTIES – DISCIPLINARY CODE

Note: Where an * appears at the end of a word see page 16 for definition.

NATURE OF OFFENCE	FIRST OFFENCE	SECOND OFFENCE	THIRD OFFENCE	FOURTH OFFENCE
<p>1. VERY SERIOUS Being under the influence of alcohol and/or other unauthorised substances whilst on duty.</p> <p>Note if the employee shows that he/she has a “drinking problem” this is to be treated as incapacity and the appropriate procedures followed.</p>	Dismissal			
Unauthorised possession and or unauthorised removal and or unauthorised use of any Company property	Dismissal			
Unauthorised use or carrying of dangerous weapons in the workplace	Dismissal			
Dishonest clocking/ attendance procedures/ clocking of another employees clock card	Dismissal			
Grossly offensive behaviour*	Dismissal			
Dereliction of duty*	Dismissal			
Gross negligence*	Dismissal			
Unauthorised and/or uncommunicated absence from work for a period of more than five working days without a sound and valid reason or being absent for shorter periods habitually	Dismissal			

NATURE OF OFFENCE	FIRST OFFENCE	SECOND OFFENCE	THIRD OFFENCE	FOURTH OFFENCE
Fighting and/or assault on Company premises or whilst on duty.	Dismissal			
Gross insubordination*	Dismissal			
Reckless disregard for policy resulting in damage to Company property or prejudice to the Company and/or harm or serious potential harm to human life.	Dismissal			
Fraud, forgery or any action that can be determined by the Company as a serious dishonest practice.	Dismissal			
Misappropriation of Company property or the property of other employees / or other persons attending at the Company.	Dismissal			
Incorrectly recording Meter readings and/or not recording them and/or estimating readings and recording them as true readings	Dismissal			
Failure to seal "demand" meters	Dismissal			
Deviating from an assigned route during working hours without authority whether in the Company's vehicle or not.	Dismissal			
Racial or sexual harassment	Dismissal			
Failure to comply with Safety and Security Policy NOTE: Dependant on the facts and circumstances a first breach of the policy could result in dismissal	Final written warning	Dismissal		

NATURE OF OFFENCE	FIRST OFFENCE	SECOND OFFENCE	THIRD OFFENCE	FOURTH OFFENCE
Failure to comply with the Racial or Sexual Harassment Policy NOTE: Dependant on the facts and circumstances a first breach of the policy could result in dismissal	Final written warning	Dismissal		
2. SERIOUS Refusal to carry out an authorised instruction in respect of normal work practice not involving physical risk and also not in conflict with any other instruction received.	Final written warning	Dismissal		
Unauthorised and / or uncommunicated absence for longer than 2 (two) days without a reasonable and or valid reason.	Final written warning	Dismissal		
Sleeping during working hours	Final written warning	Dismissal		
Failure to comply with fire and/or health and/or safety regulations	Final written warning	Dismissal		
Being in possession of liquor in the work place without permission	Final written warning	Dismissal		
Incitement to Strike	Final written warning	Dismissal		
Unauthorised absence of post without obtaining permission of manager/Supervisor	Final written warning	Dismissal		
Go slows	Final written warning	Dismissal		
Failure to comply with the Smoking Policy	Final written warning	Dismissal		
Dangerous "horseplay"*	Final written warning	Dismissal		

NATURE OF OFFENCE	FIRST OFFENCE	SECOND OFFENCE	THIRD OFFENCE	FOURTH OFFENCE
Not carrying supplied kit/s, tools, ID cards, name tags, not wearing uniforms etc. at all times whilst on duty	Final written warning	Dismissal		
Failure to report for duty without an acceptable reason and/or failure to personally (or if unable to, via a third party) advise of absence.	Final written warning	Dismissal		
Repeated failure to update information into Company records e.g. Caretakers name, telephone numbers, key locations, addresses	Final written warning	Dismissal		
Repeated failure to timeously respond to telephone, pager, cellular telephone, beeper, messages, etc.	Final written warning	Dismissal		
3. OTHER Incompetence/ incapacity (failure to maintain set work standards)*	Written warning	Final written warning	Dismissal	
Not performing to standards or job requirements not due to incapacity	Written warning	Final written warning	Dismissal	
Failure to timeously issue contracts of employment / casual letter (see "R" Recruitment etc.) and / or changes to terms and conditions of employment	Written warning	Dismissal		
Failure to comply with Company Motor Vehicle Policy Note: a serious infraction could result in dismissal for the first offence.	Written warning	Dismissal		

NATURE OF OFFENCE	FIRST OFFENCE	SECOND OFFENCE	THIRD OFFENCE	FOURTH OFFENCE
Failure to comply with Company Telephones and Office Equipment Policy, Computer Users – Code of Conduct, Internet /e-communications Policy and Cellular Telephone and (Personal) Policy	Written warning	Dismissal		
Failure to comply with Firearms / Traditional Weapons / Weapons Policy	Written warning	Dismissal		
Failure to comply with Media Interviews Policy	Final written warning	Dismissal		
Failure to comply with other Company employment policy.	Written warning	Dismissal		
Failure to comply with the Uniforms Policy	Written warning	Final written warning	Dismissal	
Failure to properly complete and / or comply with appraisals procedures	Written warning	Final written warning	Dismissal	
Failure to comply with Children in the Workplace Policy	Verbal warning	Written warning	Final Written Warning	Dismissal
Failure to comply with Dress Code Policy	Verbal warning	Written warning	Final written warning	Dismissal
Failure to comply with Illegal Substances Policy	Verbal warning	Written warning	Final written warning	Dismissal
Failure to comply with Working Hours Policy	Verbal warning	Written warning	Final written warning	Dismissal
Wastage of material/ causing damage to Company stock or abuse of Company assets e.g. telephones, computers, facsimile machines.	Written warning	Final written warning	Dismissal	

NATURE OF OFFENCE	FIRST OFFENCE	SECOND OFFENCE	THIRD OFFENCE	FOURTH OFFENCE
Unauthorised absence from work place whilst on duty	Written warning	Final written warning	Demotion where applicable and reasonable or Dismissal.	
Swearing and/or abusive language of a minor nature	Written warning	Final written warning	Demotion where applicable.	Dismissal
Habitual absence of 1 (one) to 2 (two) days without reasonable excuse or producing a doctor's certificate for occasions exceeding twice in any 8 (eight) week period.	Written warning	Final written warning	Dismissal	
Loss of protective clothing/Company property being the fault of the employee.	Written warning	Final written warning	Deduction from salary/wage if possible and reasonable.	Dismissal
1. MINOR Low productivity, minor unsatisfactory work performance not due to incapacity	Verbal warning	Written warning	Final written warning	Dismissal
Loafing whilst on duty	Verbal warning	Written warning	Final written warning	Dismissal
Lack of punctuality	Verbal warning	Written warning	Final written warning	Dismissal

Amended: April 2012

Authorised:

DEFINITIONS OF WORDS WHICH COULD BE USED IN RESPECT OF OFFENCES

1. MAJOR BREACH OF CONTRACT means the failure of an employee to meet obligations in terms of the Terms and Conditions of Employment Contract or the Policies and/or Procedures of the Company.
2. INTIMIDATION means the use of threats or violence against a person/s to force their actions or restrain them.
3. PICKETING means the posting of person/s to intercept the flow of goods/vehicles and/or non-strikers on their way to or from work and or customers, visitors to the Company.
4. GROSS INSUBORDINATION means flagrant defiance of an order or instruction given by a Supervisor or Manager or other authorised person.
5. GROSSLY OFFENSIVE BEHAVIOUR means excessive, indecent or insulting behaviour.
6. DERELICTION OF DUTY means forsaking or failure in duty or reprehensible neglect, which has or could have serious consequences for the Company.
7. GROSS NEGLIGENCE means failure to adhere to or to execute work according to work standards and/or regulations with serious or potentially serious consequences for the Company.
8. DANGEROUS HORSEPLAY means rough or boisterous play which could endanger a life or lives, or is likely to result in damage to property or Company assets/property.
9. INCOMPETENCE means failure to maintain work standards not due to incapacity.

5.2 LIFE OF WARNINGS means a verbal warning shall be valid for two months; a written warning for four months and a final written warning for six months from the date it is issued.

6. The Appeal

- 6.1 Every employee has the right to appeal against any disciplinary action taken against him/her as does the Company have the right to appeal a Chairperson's decisions.
- 6.2 When appealing, an employee / the Company is required to explain the reason/s for which the Appeal is being made. The following would normally (as examples only) constitute good grounds for an appeal:
- (i) Any alleged irregularity in the disciplinary procedure e.g. procedural
 - (ii) Any allegations that the disciplinary action imposed is unprecedented for such an offence or is inconsistent.
 - (iii) The availability of new evidence not covered at the Hearing.
 - (iv) A plea for clemency with regard to the sanction imposed.
 - (v) Any doubt with regard to jurisdiction of management.
 - (vi) Any other reasonable grounds on which the employee can motivate allegations of bias, unfair or unjust treatment in respect of the disciplinary system.
- 6.3 An appeal against disciplinary action may not be raised via the **Grievance Procedure**.
- 6.4 The employee / Company must sign and lodge a written appeal with the appropriate Manager within four working days of the disciplinary action being imposed. This should be done by using the Appeal Form ('Annexure H') but management will accept any written submission, properly set out.
- 6.5 Should the Appeal be lodged after four working days as specified above, management must establish reasons for the late lodging. The late lodging may be condoned if the explanation is reasonable and in the interests of justice and fairness.

6.6 The employee / Company person lodging the Appeal or his representative is entitled to a copy of the minutes/tape of the Disciplinary Hearing. The employee or his representative or Company person in order to adequately prepare for the Appeal Hearing may use these.

7. **Considering an Appeal**

7.1 The Appeal should be considered where possible by a higher level of Management than that which chaired the Disciplinary Hearing or if at a similar level, suitably removed from an involvement on a day to day basis with the employee.

7.2 Unless otherwise agreed to in writing by both parties, the Appeal shall be heard within five working days of it having been lodged with the appropriate Manager.

7.3 The Appeal Hearing is to be chaired by a person appointed by the Company who may or may not be an employee of the Company. It shall be attended by the person who acted as initiator at the Disciplinary Hearing and the employee / Company person concerned and his/her representative if he/she so wishes. Any witnesses required by either party should be on stand-by to attend. If necessary an interpreter should be present. Any other person who can assist with facts, evidence etc. whom the Chairperson deems necessary in considering the appeal or the Appellant may be called to be present.

7.4 The Chairperson conducting the Appeal may conduct it in any manner he/she deems appropriate in order to best serve the interest of justice and fairness.

7.5 The Chairperson considering the Appeal may decide on an appropriate sanction which may be lesser or higher or one which may not be prescribed in the Disciplinary Code.

- 7.6 The decision of the Chairperson considering the Appeal shall be made within two working days of the Appeal being heard, shall be in writing detailing his/her findings and outcome of the Appeal and shall constitute the final stage of the disciplinary process.
- 7.7 Any further action deemed necessary by the Company or employee shall be routed via the Labour Relations Act no. 66 of 1995 and any amendments thereto or, if agreed by both parties via mediation or arbitration under the supervision of a competent person. Prior to using such process an agreement must be reached as to who is responsible for costs and what the issues are to be decided upon.

ANNEXURE B**CODE OF GOOD PRACTICE: DISMISSAL**

(Extracted from the Labour Relations Act, no. 66 of 1995)

(all underlining for purposes of emphasis and words in brackets have been done by Motla Utilities (Pty) Ltd)

1. Introduction

- 1.1 This Code of Good Practice deals with some of the key aspects of dismissals for reasons related to conduct and capacity. It is intentionally general. Each case is unique, and departures from the norms established by this Code may be justified in proper circumstances. For example, the number of employees employed in an establishment may warrant a different approach.
- 1.2 This Act emphasises the primacy of collective agreements. This Code is not intended as a substitute for disciplinary codes and procedures where these are the subject of collective agreements, or the outcome of joint decision-making by an employer and a workplace forum.
- 1.3 The key principle in this Code is that employers and employees should treat one another with mutual respect. A premium is placed on both employment justice and the efficient operation of business. While employees should be protected from the arbitrary action, employers are entitled to satisfactory conduct and work performance from their employees.

2. Fair reasons for dismissal

- 2.1 A dismissal is unfair if it is not effected for a fair reason and in accordance with a fair procedure, even if it complies with any notice period in a contract of employment or in legislation governing employment. The facts of the case and the

appropriateness of dismissal as a penalty determine whether or not a dismissal is for a fair reason. Whether or not the procedure is fair is determined by referring to the guidelines set out below.

- 2.2 This Act recognises three grounds on which a termination of employment might be legitimate. These are: the conduct of the employee, the capacity of the employee, and the operational requirements of the employer's business.
- 2.3 This Act provides that a dismissal is automatically unfair if the reason for the dismissal is one that amounts to an infringement of the fundamental rights of employees and trade unions, or if the reason is one of those listed in section 187. The reasons include participation in a lawful strike, intended or actual pregnancy and acts of discrimination.
- 2.4 In cases where the dismissal is not automatically unfair, the employer must show that the reason for dismissal is a reason related to the employee's conduct or capacity, or is based on the operational requirements of the business. If the employer fails to do that, or fails to prove that the dismissal was effected in accordance with a fair procedure, the dismissal is unfair.

3. **Misconduct**

Disciplinary procedures prior to dismissal

- 3.1 All employers should adopt disciplinary rules that establish the standard of conduct required of their employees. The form and content of disciplinary rules will obviously vary according to the size and nature of the employer's business. In general, a large business will require a more formal approach to discipline. An employer's rule must create certainty and consistency in the

application of discipline. This requires that the standards of conduct are clear and made available to employees in a manner that is easily understood. Some rules or standards may be so well established and known that it is not necessary to communicate them.

- 3.2 The courts have endorsed the concept of corrective or progressive discipline. This approach regards the purpose of discipline as a means for employees to know and understand what standards are required of them. Efforts should be made to correct employees' behaviour through a system of graduated disciplinary measures such as counselling and warnings.
- 3.3 Formal procedures do not have to be invoked every time a rule is broken or a standard is not met. Informal advice and correction is the best and most effective way for an employer to deal with minor violations of work discipline.

Repeated misconduct will warrant warnings, which themselves may be graded according to degrees of severity. More serious infringements or repeated misconduct may call for a final warning, or other action short of dismissal. Dismissal should be reserved for cases of serious misconduct or repeated offences.

Dismissals for Misconduct

- 3.4 Generally, it is not appropriate to dismiss an employee for a first offence, except if the misconduct is serious and of such gravity that it makes a continued employment relationship intolerable. Examples of serious misconduct, subject to the rule that each case should be judged on its merits, are gross dishonesty or wilful damage to the property of the employer, a fellow employee, client or customer and gross insubordination. Whatever the merits of the case for dismissal might be, a dismissal will not be fair if it does not meet the requirements of

section 188 (i.e. relating to conduct, capacity, or operational requirements and in accordance with a fair procedure and a good reason).

- 3.5 When deciding whether or not to impose the penalty of dismissal, the employer should in addition to the gravity of the misconduct consider factors such as the employee's circumstances (including length of service, previous disciplinary record and personal circumstances), the nature of the job and the circumstances of the infringement itself.
- 3.6 The employer should apply the penalty of dismissal consistently with the way in which it has been applied to the same and other employees in the past, and consistently as between two or more employees who participate in the misconduct under consideration.

4. Fair Procedure

- 4.1 Normally, the employer should conduct an investigation to determine whether there are grounds for dismissal. This does not need to be a formal inquiry. The employer should notify the employee of the allegations using a form and language that the employee can reasonably understand. The employee should be allowed the opportunity to state a case in response to the allegations. The employee should be entitled to a reasonable time to prepare the response and to the assistance of a shop steward or fellow employee. After the enquiry, the employer should communicate the decision taken, and preferably furnish the employee with written notification of that decision.
- 4.2 Discipline against a shop steward or an employee who is an office-bearer or official of a trade union should not be instituted without first informing and consulting the trade union.

4.3 If the employee is dismissed, the employee should be given the reason for dismissal and reminded of any rights to refer the matter to a council with jurisdiction or to the Commission or to any dispute resolution procedures established in terms of a collective agreement (e.g. the appeals procedure).

4.4 In exceptional circumstances, if the employer cannot reasonably be expected to comply with these guidelines, the employer may dispense with pre-dismissal procedures.

5. **Disciplinary records**

Employers should keep records for each employee specifying the nature of any disciplinary transgressions, the actions taken by the employer and the reasons for the actions. (Counselling records **MUST** be kept).

6. **Dismissals and Industrial action**

6.1 Participation in a strike that does not comply with the provisions of Chapter IV (strikes and lockouts) is misconduct. However, like any other act of misconduct, it does not always deserve dismissal. The substantive fairness of dismissal in these circumstances must be determined in the light of the facts of the case, including-

- (a) the seriousness of the contravention of this Act;
- (b) attempts made to comply with this Act; and
- (c) whether or not the strike was in response to unjustified conduct by the employer.

6.2 Prior to dismissal the employer should, at the earliest opportunity, contact a trade union official if the Company is Unionised to discuss the course of action it intends to adopt. The employer should issue an ultimatum in clear and unambiguous terms that should state what is required of the employees and what sanction will be imposed if they do not comply with the ultimatum. The employees should be allowed sufficient time to reflect on the ultimatum and respond to it, either by complying with it or rejecting it. If the employer cannot reasonably be expected to extend these steps to the employees in question, the employer may dispense with them.

7. **Guidelines in cases of dismissal for misconduct**

Any person who is determining whether a dismissal for misconduct is unfair should consider-

- (a) whether or not the employee contravened a rule or standard regulating conduct in, or of relevance to, the workplace; and
- (b) if a rule or standard was contravened, whether or not-
 - (i) the rule was a valid or reasonable rule or standard;
 - (ii) the employee was aware, or could reasonably be expected to have been aware, of the rule or standard;
 - (iii) the rule or standard has been consistently applied by the employer; and
 - (iv) dismissal was an appropriate sanction for the contravention of the rule or standard.

8. Incapacity; Poor work performance

8.1 A newly hired employee may be placed on probation for a period that is reasonable given the circumstances of the job. The period should be determined by the nature of the job, and the time it takes to determine the employee's suitability for continued employment. When appropriate, an employer should give an employee whatever evaluation, instruction, training, guidance or counselling the employee requires to render satisfactory service. An opportunity for the employee to state a case in response and to be assisted by (a shop steward) or fellow employee should precede dismissal during the probationary period.

8.2 After probation, an employee should not be dismissed for unsatisfactory performance unless the employer has –

- (a) given the employee appropriate evaluation, instruction, training, guidance or counselling; and
- (b) after a reasonable period of time for improvement, the employee continues to perform unsatisfactorily.

8.3 The procedure leading to dismissal should include an investigation to establish the reasons for the unsatisfactory performance and the employer should consider other ways, short of dismissal, to remedy the matter.

8.4 In the process, the employee should have the right to be heard and to be assisted by (a shop steward) or a fellow employee.

9. Guidelines in cases of dismissal for poor work performance

Any person determining whether a dismissal for poor work performance is unfair should consider-

- (a) whether or not the employee failed to meet a performance standard; and
- (b) if the employee did not meet a required performance standard whether or not –
 - (i) the employee was aware, or could reasonably be expected to have been aware, of the required performance standard;
 - (ii) the employee was given a fair opportunity to meet the required performance standards; and
 - (iii) dismissal was an appropriate sanction for not meeting the required performance standard.

10. Incapacity: Ill health or injury

10.1 Incapacity on the grounds of ill health or injury may be temporary or permanent. If an employee is temporarily unable to work in these circumstances, the employer should investigate the extent of the incapacity or the injury. If the employee is likely to be absent for a time that is unreasonably long in the circumstances, the employer should investigate all the possible alternatives short of dismissal. When alternatives are considered, relevant factors might include the nature of the job, the period of absence, the seriousness of the illness or injury and the possibility of securing a temporary replacement for the ill or injured employee. In cases of permanent incapacity, the employer should ascertain the possibility of securing alternative employment, or adapting the duties or work circumstances of the employee to accommodate the employee's disability.

- 10.2 In the process of the investigation referred to in subsection (1) the employee should be allowed the opportunity to state a case in response and to be assisted by (a shop steward) or fellow employee.
- 10.3 The degree of incapacity is relevant to the fairness of any dismissal. The cause of the incapacity may also be relevant. In the case of certain kinds of incapacity, for example alcoholism or drug abuse, counselling and rehabilitation may be appropriate steps for an employer to consider.
- 10.4 Particular consideration should be given to employees who are injured at work or who are incapacitated by work-related illness. The courts have indicated that the duty on the employer to accommodate the incapacity of the employee is more onerous in these circumstances.

11. Guidelines in cases of dismissal arising from ill health or injury

Any person determining whether a dismissal arising from ill health or injury is unfair should consider –

- (a) whether or not the employee is capable of performing the work; and
- (b) if the employee is not capable –
 - (i) the extent to which the employee is able to perform the work;
 - (ii) the extent to which the employee's work circumstances might be adapted to accommodate disability, or, where this is not possible, the extent to which the employee's duties might be adapted; and
 - (iii) the availability of any suitable alternative work.

ANNEXURE C

MOTLA UTILITIES (PTY) LTD

**NOTIFICATION OF A DISCIPLINARY HEARING AND CHARGES
PREFERRED**

DATE: _____

SERVED ON: _____

EMPLOYEE NO.: _____

1. The following allegation/s has/have been preferred against you:

2. The required standard is:

3. A Disciplinary Hearing into the matter referred to above is scheduled to take place on _____ (date) at _____ (time) at _____ (place). You are required to be present.

4. Your rights, in terms of the Disciplinary Procedure, include:
 - 4.1 You are entitled to be represented at the Hearing by an employee of your choice, who is also an employee of the specific Company you work for. Your chosen representative should not be a witness to the alleged offence/s referred to in 1. above. Please notify your immediate Manager/Supervisor at least 1 working day before the Hearing of your representative's name, so that arrangements can be made for his/her attendance. It is your duty to arrange for your representative.
 - 4.2 You and your representative will be given the opportunity to challenge evidence against you by cross examining the witnesses and examining any evidence and/or documents pertaining to the case.
 - 4.3 You and your representative will be entitled to and be given the opportunity to present a full defence of your case including by presenting evidence and by calling your own witness to testify at the Hearing.
 - 4.4 Should you require the services of an interpreter, please advise the Chairperson who will provide an interpreter.
5. The Chairperson is _____ who can be contacted at _____
6. The Manager/ Supervisor laying the charge referred to in 1. above is _____
7. Should you have any queries regarding any aspect of this matter, please contact the Chairperson who will make arrangements for you to be assisted.

8. Contact details of employee:

Physical home address _____

Postal address _____

Telephone numbers (H) _____ (Cell) _____
Personal /Spouse/next of kin _____

NOTE: Details regarding 8. above to be obtained from the employee at the time of handing him/her this Notification.

I ACKNOWLEDGE RECEIPT OF THE NOTIFICATION OF A DISCIPLINARY HEARING AND CHARGES PREFERRED AS DETAILED ABOVE. I UNDERSTAND THE CHARGES AND UNDERSTAND MY RIGHTS.

SIGNED: (EMPLOYEE) AND DATE AND TIME

SIGNED: (INITIATOR) AND DATE AND TIME

NOTE: Should an employee refuse to accept and/or sign this form, then the procedure below should be followed.

I HAVE WITNESSED THE ABOVEMENTIONED BEING INFORMED OF THE ABOVE HEARING AS DETAILED AND BEING ADVISED OF HIS/HER RIGHTS.

SIGNED: (WITNESS)

DESIGNATION

DATE AND TIME

ANNEXURE D

MOTLA UTILITIES (PTY) LTD

VERBAL WARNING

NAME OF EMPLOYEE: _____

DATE: _____

DEPARTMENT: _____

EMPLOYEE NO: _____

SANCTION: _____

THIS WARNING WILL REMAIN EFFECTIVE UNTIL:
_____ (TWO MONTHS).

Should you wish to appeal against this Warning, this must be done in writing on the Appeal Form, stating the reasons for appeal and submitted to the Company within 4 (four) working days of the date of this Warning.

EMPLOYEE'S SIGNATURE: _____ DATE: _____

OR

WITNESS SIGNATURE: _____ DATE: _____

WARNING GIVEN BY: _____ DATE: _____

ANNEXURE E

MOTLA UTILITIES (PTY) LTD

WRITTEN WARNING

DISCIPLINARY HEARING RESULT FORM

NAME OF EMPLOYEE: _____

DATE: _____

DEPARTMENT: _____

EMPLOYEE NO: _____

SANCTION:

THIS WARNING WILL REMAIN EFFECTIVE UNTIL; _____
(FOUR MONTHS).

Should you wish to appeal against this Warning, this must be done in writing on the Appeal Form, stating the reasons for appeal and submitted to the Company within 4 (four) working days of the date of this Warning.

EMPLOYEE'S SIGNATURE: _____ DATE: _____

OR

WITNESS SIGNATURE: _____ DATE: _____

WARNING GIVEN BY: _____ DATE: _____

ANNEXURE F

MOTLA UTILITIES (PTY) LTD

FINAL WRITTEN WARNING

DISCIPLINARY HEARING RESULT FORM

NAME OF EMPLOYEE: _____

DATE: _____

DEPARTMENT: _____

EMPLOYEE NO: _____

SANCTION: _____

THIS WARNING WILL REMAIN EFFECTIVE UNTIL; _____
(SIX MONTHS).

You are cautioned that, as this is a FINAL warning, any further misconduct of a same or similar nature within six months of the date of this warning may result in your dismissal.

Should you wish to appeal against this Warning, this must be done in writing on the Appeal Form, stating the reasons for appeal and submitted to the Company within 4 (four) working days of the date of this Warning.

EMPLOYEE'S SIGNATURE: _____ DATE: _____

OR

WITNESS SIGNATURE: _____ DATE: _____

WARNING GIVEN BY: _____ DATE: _____

ANNEXURE G

DISMISSAL LETTER

Date

PRIVATE AND CONFIDENTIAL

Mr/Ms _____

c/o

Office Address

Dear _____

RE: DISCIPLINARY HEARING/FINAL COUNSELLING SESSION* HELD ON

This document serves to confirm that at the above mentioned Disciplinary Hearing/Final Counselling Session* you were found guilty of the following:

As a result of these findings it was verbally advised at the Disciplinary Hearing/Final Counselling Session* that your employment services would be terminated with/without statutory notice.

Your last working day with is _____. You are required/not required* to work your notice period.

All monies due to you will be calculated and deposited into your bank account by _____

You are reminded of your right to appeal against the procedure followed and/or outcome of the Disciplinary Hearing/Final Counselling Session*. Your appeal, in writing must include the grounds/reasons on which you appeal and must be lodged with:

Name: _____

at: _____

Within 4 (four) working days of the date of this document.

Yours sincerely

Chairperson

NOTE: *delete whichever is not applicable.

ANNEXURE H

MOTLA UTILITIES (PTY) LTD

APPEAL FORM

TO BE COMPLETED BY EMPLOYEE / COMPANY PERSON LODGING THE
APPEAL

I wish to appeal against the disciplinary action taken on _____

My reason/s for appealing is/are:

The following action should rather have been taken:

SIGNED: _____

DATE: _____

TO BE COMPLETED BY MANAGER RECEIVING APPEAL.

DATE AND TIME APPEAL RECEIVED: _____

RECEIVED: _____

DATE, TIME AND VENUE OF APPEAL HEARING:

APPEAL CHAIRPERSON:

CONTACT TELEPHONE NO: _____

SIGNED: _____ POSITION: _____ DATE: _____

ANNEXURE I

MOTLA UTILITIES (PTY) LTD

APPEAL PROCEDURE OUTCOME

TO: _____

DATE: _____

NAME OF PERSON HANDLING APPEAL: _____

POSITION IN RELATION TO COMPANY: _____

APPELLANT'S NAME: _____

APPEAL DECISION:

SIGNATURE OF EMPLOYEE:

SIGNATURE OF APPEAL
CHAIRPERSON

DATE: _____

DATE: _____

ANNEXURE J

**PERFORMANCE IMPROVEMENT
PROCEDURE**

EMPLOYEE'S NAME	
DEPARTMENT	
COUNSELLING CONDUCTED BY	
DATE OF FIRST COUNSELLING	
DATE OF THIS COUNSELLING	

4. CAUSES OF THE PROBLEM, AS STATED BY THE EMPLOYEE

INITIALS – EMPLOYEE/COUNSELLER

5. SOLUTIONS, ACTION PLANS OBJECTIVES AGREED TO AND THE TIME PERIOD/S FOR FURTHER REVIEW/EVALUATION:

<u>Solutions, Action Plans, Objectives to be taken</u>	<u>By who</u>	<u>By when</u>

 INITIALS – EMPLOYEE/COUNSELLER

Reviewed: April 2012

Authorised:

6. CONSEQUENCES OF PERFORMANCE NOT IMPROVING:

This performance improvement discussion will be valid until	
and will be followed up every	week/s until it expires
Date of first follow up:	
Date of second follow up	
Date of third follow up	
Date of final discussion	

I, _____ confirm that I have participated in this performance discussion, fully understand everything discussed and agree to make every possible effort to improve:

_____ Date
Signature of Employee

I, _____ confirm that I have held this performance discussion with the above mentioned employee:

_____ Date
Signature of Manager

- 8. If, after full, fair and proper counselling sessions with attendant coaching, training, evaluation or any other necessary procedure the employee has failed to meet the required standards, enter into discussion with the employee regarding dismissal.

Once completed, use the dismissal letter on pages 34 & 35 of this Disciplinary Procedure and Code or initiate a Disciplinary Hearing to confirm termination of the employee's services.

NOTES

Initials: Employee/Counsellor

(to be typed on a Company letter head)

Date

PRIVATE AND CONFIDENTIAL

Mr/Ms _____

Address

Dear _____

**RE: CONFIRMATION OF OUR COUNSELLING SESSION - ALLEGED
NOT MEETING OF INHERENT JOB REQUIREMENTS/STANDARDS**

I refer to our counselling session of (insert date) when I discussed issues in regard to your alleged failure to meet inherent job requirements and/or standards.

The purpose of the counselling session was to determine/investigate/ advise you of:

- the concerns the Company has in regard to areas where you are not meeting the required performance standards in terms of your job
- if you are aware or could reasonably be expected to be aware of the required performance standards
- reasons for any alleged failure to meet the required performance standards
- if any, arrive at a mutually acceptable and agreeable action plan to assist you to rectify issues raised and /or meet the required performance standards
- agree a period/s for further review/s until such time as any unsatisfactory performance/requirements are corrected.
- and to give you a full and fair opportunity to participate in and contribute to the counselling session

During the counselling session I pointed out the following areas of incapacity and resultant prejudice to the Company:

1. _____
2. _____
3. _____

After careful consideration of the above by yourself and myself you stated as reasons for the incapacity listed above were:

1. _____
2. _____
3. _____

Having, in our view, fully advised you of our concerns, investigated reasons put forward by you we agreed the following plan to assist you to improve

1. _____
2. _____
3. _____

and we agreed evaluation date/s on:

1. _____
2. _____
3. _____

A full record was kept in writing of the above counselling session on Annexure " J " which forms part of the Company's Disciplinary Code and Procedures. A copy was given to you.

You are cautioned that subject to a full and fair procedure having being followed by the Company and after consideration of all the relevant facts and circumstances including alternatives to dismissal, if your performance does not improve to the required standards you may face dismissal.

In closing I thank you for your participation and ask you to treat this counselling session in a very serious light and make a determined effort to improve. Please remember that I am available to assist you should you so require.

Yours sincerely,

Manager

c.c Personal file

Employee signature as confirmation of receipt

Date

ANNEXURE K

(to be typed on a Company letter head)

Date

PRIVATE AND CONFIDENTIAL

Mr./Ms _____

Address

Dear _____

RE: CONFIRMATION OF YOUR SUSPENSION

After consultation with you and in terms of the Disciplinary Procedure the Company has taken the decision to suspend you. Your suspension will be effective from _____ until the outcome of the disciplinary enquiry and will be on full pay and benefits remain in force.

Should you require to enter any of the Company's premises whilst on suspension in order to speak to your Representative, Witness/es or obtain evidence please contact the undersigned or in his/her absence a General Manager or the M.D. who will make the necessary arrangements.

Whilst on suspension you must be available during working hours to attend at the request of the Company any work related issues/reasons at the Company's offices

The Company specifically points out that your suspension is in no way an indication of guilt or otherwise in this matter

Yours sincerely

Manager

I _____ understand the contents of this letter _____
(Alleged Offender)

(Witness) _____

CONTACT DETAILS OF ALLEGED OFFENDER:

HOME TELEPHONE:

CELLULAR TELEPHONE:

PHYSICAL RESIDENTIAL ADDRESS:

ANNEXURE L**CHAIRPERSONS CHECKLIST: HEARINGS**

Procedural and substantive fairness are critical requirements in all disciplinary hearings. To assist you in ensuring that the correct procedures are followed and the rights of the alleged offender are not infringed upon, it is suggested that this whole checklist be used as a guide when conducting disciplinary hearings. It also serves as a record of proceedings and should be signed in all the appropriate places by all parties before being filed with the minutes.

DISMISSAL means an employer has terminated a contract of employment with or without notice and includes, but not limited to:

- Refusal to renew a fixed term contract where the employee reasonably expected it to be renewed or any attempt to renew it on less favourable terms;
- Selective re-employment of employees following a dismissal/s e.g. for participating in an unprotected strike;
- Dismissal of a female employee because of her pregnancy;
- Constructive dismissal (i.e. employee forced to resign).

AUTOMATICALLY UNFAIR DISMISSAL MEANS, BUT NOT LIMITED TO:

- Dismissals for participating in a protected strike or for refusing to do the work of employee/s on protected strike.
- A lock-out dismissal.
- If employee was dismissed for exercising rights in terms of the LRA or any other relevant Law of RSA.
- Dismissal of a female employee because of pregnancy.
- If employer discriminates against employee on any arbitrary ground.

DISCIPLINARY ENQUIRY PROCEDURE

NO	CONDUCTING AN ENQUIRY – CHECKLIST	YES/NO
1	Welcome all present	
2	Give date/time/place and note names of those present	
3	State purpose of proceedings (reason for Hearing)	
4	Introduce all present in terms of their roles	
5	Confirm rights: <ul style="list-style-type: none"> ➤ did you receive a written notification of this Hearing? ➤ Did you have enough time to prepare? ➤ Are you satisfied with your representative? ➤ Do you need an interpreter? ➤ Are there any witnesses to be called? Number? Company _____ Alleged Offender _____ ➤ You have the right to cross-question witnesses ➤ You have the right to state your case 	
6	Chairperson to read charges to alleged offender and check if it is misconduct or incapacity	
7	Check understanding of the allegations and the level of disciplinary action being instituted	
8	Ask employee how he/she pleads. Guilty or not guilty. (If an employee pleads guilty and alleges “compulsion or being forced to commit the offence”, enter a plea of <u>not guilty</u>)	
9	Explain procedure enquiry will follow (Pro-forma statement to be read on pages 54 to 55)	
10	Initiators opening statement	
11	Alleged offender’s opening statement (may want statement to be evidence in chief.)	
12	Initiator’s witnesses: <ul style="list-style-type: none"> ➤ Is an interpreter required? ➤ Evidence in chief and examination ➤ Cross examination ➤ Re-examination 	
13	Accused’s evidence in chief - Note: (Chairperson must inform alleged offender of negative inference should he intend drawing one) <ul style="list-style-type: none"> ➤ Is an interpreter required? ➤ Evidence in chief and examination ➤ Cross examination ➤ Re-examination 	

14	Accused's witness (same procedure as Initiator's witnesses)	
15	Caucus	
16	Closing statements from both sides	
17	Chairperson's summary (check facts/clarify)	
18	Short caucus before giving verdict decision	
19	Preparation of verdict (guilty/not guilty) CONSIDER: onus of proof Reliability of the evidence Balance of probability	
20	Motivate verdict and give decision	
21	Mitigating circumstances and call for record (Chairperson to check if not forthcoming from offender) consider the following: <ul style="list-style-type: none"> ➤ Service ➤ Work record ➤ Disciplinary record ➤ Personal factors 	
22	Caucus – preparation of penalty (advise overnight period) Consider: <ul style="list-style-type: none"> ➤ Similar cases (precedents) ➤ Possible effect of too lenient/too severe a penalty Test for dismissal <ul style="list-style-type: none"> ➤ Did conduct destroy all hopes of restoring a sound employee/employer relationship? ➤ Is employee's employment worthy of protection in light of the conduct? ➤ Relationship of trust broken? ➤ Did conduct go beyond what could reasonably be expected of management to tolerate? 	
23	Motivation and penalty decision based on test for dismissal	
24	Affirm right to appeal within 4 (Four) working days.	

Chairman's Signature

Date

Amended: April 2012

Authorised:

Note: the Chairperson is responsible for ensuring that copies of the minutes are received by the alleged offender or his representative and the initiator. He/she is also responsible for completing a termination form (obtain from M.D.) or pages 34 to 35 in this Disciplinary Procedure and Code if the alleged offender is dismissed.

Please attach this checklist to the minutes and forward with all other documentation to the M.D. so that it can be placed in the employee's personal file

Pro forma statement (see point 9: "Conducting an Enquiry checklist)

"As Chairperson of the enquiry I would like to explain the procedure we will follow:

It must, however be stressed that the decision of this disciplinary hearing will only be made once both sides have put their cases forward and the rest of the procedure has been followed.

The Initiator will have the opportunity to make an opening statement first; followed by an opening statement by the alleged offender or his/her rep should he/she so wish. The Initiator will then lead the Company's case, and may call witnesses in doing so. The other party may cross-question witnesses led by the Initiator.

The Initiator may re-examine his own witnesses on issues raised during cross-examination. This procedure will apply to every witness that the Company calls in putting forward its case. Once the Company has concluded putting forward its case the other side will have the opportunity of putting forward its case. The same procedure for questioning witnesses will apply to the other side, but in reverse, i.e. the representative/alleged offender will lead his witness's evidence, the initiator will cross question if he/she wishes and the representative / alleged offender may the re – examine.

After both parties have concluded putting forward their cases, the initiator and the representative may summarise their case. I will then briefly summarise both sides' cases and check for clarification. If there are not more questions I will then leave the room to make a decision as to the guilt or non-guilt.

If I find not guilty, these proceedings will cease and the alleged offender will be free to leave.

Should I find the alleged offender guilty, then I will call for mitigating circumstances from the alleged offender/representative. After any mitigating circumstances have been presented, I will then call for the offender's personal work record. I will then call for a recess to decide on the penalty. This recess may extend for several days in order for me to investigate past precedents, customs and practice and a suitable penalty in the circumstances.

My decision will be communicated to the offender on a date which I will stipulate. Are there any questions?"

CHAIRPERSON'S VERDICT GUIDE

THIS DOCUMENT IS TO BE SEEN MERELY AS A GUIDE TO ASSIST YOU

1.	Is the offence work related?		Yes	No
2.	Summary of witnesses' evidence in point form	-	-	-
	Company witness 1	_____ _____ _____ _____ _____	Credible	Not credible
	Company witness 2	_____ _____ _____ _____ _____	Credible	Not credible
	Company witness 3	_____ _____ _____ _____ _____	Credible	Not credible
	Company witness 4	_____ _____ _____ _____ _____	Credible	Not credible

	Alleged offender witness 1	_____ _____ _____ _____ _____	Credible	Not credible
	Alleged offender witness 2	_____ _____ _____ _____ _____	Credible	Not credible
	Alleged offender witness 3	_____ _____ _____ _____ _____	Credible	Not credible
	Alleged offender witness 4	_____ _____ _____ _____ _____	Credible	Not credible
3.	Contradictions in evidence	Company:		

	Contradictions in evidence	Alleged offender	
4.	In your Chairperson's view has there been: <ul style="list-style-type: none"> ➤ adequate evidence *1 (if not, benefit of the doubt should favour the employee) ➤ a breach of Company rules or policy? ➤ A fair opportunity by both sides to state their cases? Does the trust relationship remain intact	yes	No
5.	Where does the onus lie? With the Company or accused employee?		
6.	Has the onus been discharged?	yes	No
7.	On a balance of probability *2 which side emerges as being the most credible?	company	employee
8.	My verdict is therefore that the employee/alleged offender is	guilty	not guilty

*1 NOTE: Evidence can be ORAL (given by the parties at the Hearing who were witness to the event/circumstances); REAL (material objects e.g. a video tape, photographs, tape recordings etc.); DOCUMENTARY (a printed E-mail, letter, book, invoice, receipt etc. It could also include a written statement or sworn affidavit); MACHINE OR COMPUTER GENERATED; FORMAL ADMISSIONS (this is where an accused employee admits to the allegations/charges or admits to certain facts to which it may be sufficient to establish guilt.)

*2 NOTE: The rules of evidence applicable to criminal cases require that guilt must be proved beyond a reasonable doubt

In Labour Law matters, the parties need only to prove the case on a balance of probabilities

The Chairperson has to ask, based on the evidence before him/her, whose version, if any, is the most probable.

EMPLOYEES PERSONAL HISTORY

(NOT TO BE COMPLETED BEFORE VERDICT DECISION FROM DISCIPLINARY HEARING)

STARTING DATE WITH THE COMPANY: _____

POSITION: (AS AT TIME OF INCIDENT): _____

DATE OF APPOINTMENT TO POSITION: _____

PREVIOUS EXPERIENCE IN THE COMPANY: _____

WARNINGS (DATES AND DETAILS): _____

STANDARD OF EDUCATION: _____

HOME LANGUAGE: _____
(As per application form)

MARITAL STATUS: _____

DEPENDENTS: _____

ADDRESS: _____

TRAINING RECEIVED: _____

AVAILABILITY OF POLICIES, PROCEDURES AND RULES TO ACCUSED EMPLOYEE OR COULD HE/SHE HAVE BEEN REASONABLY EXPECTED TO KNOW THEM:

CHAIRPERSON'S PENALTY GUIDE

THIS DOCUMENT IS TO BE SEEN AS A GUIDE TO ASSIST A CHAIRPERSON

1. AS CHAIRPERSON YOU HAVE TOTAL DISCRETION TO MAKE ANY DECISION THAT YOU THINK IS APPROPRIATE UNDER THE CIRCUMSTANCES.

2. CONSIDER MITIGATING CIRCUMSTANCES AND COMMENT ON THEM:

- PERSONAL FACTORS
- SERVICE
- WORK RECORD
- DISCIPLINARY RECORD

3. MOTIVATE DECISION WITH REGARD TO:

- SERIOUS OFFENCE/S
- FREQUENCY
- PRECEDENT
- EMPLOYEE'S RECORD
- TRUST RELATIONSHIP
- INTENTION

4. PENALTY DECISION, RANGES FROM:

- VERBAL WARNING
- WRITTEN WARNING
- FINAL WRITTEN WARNING
- SUSPENSION WITHOUT PAY
- TEMPORARY DISMISSAL
- DEMOTION*1
- DISMISSAL

5. IF DISMISSAL IS DECIDED INDICATE WHAT YOU HAVE CONSIDERED AS ALTERNATIVES TO DISMISSAL:

6. DECISION:

CHAIRPERSON'S SIGNATURE: _____ DATE: _____

*1 NOTE: DEMOTION MUST BE AGREED TO WITH THE EMPLOYEE AS MUST ANY REDUCTION IN SALARY. THIS MUST BE CONFIRMED IN WRITING AND SIGNED BY THE EMPLOYEE AND COMPANY.