

DISCIPLINARY CODES AND PROCEDURES: A COMPARATIVE STUDY AT THREE SOUTH AFRICAN UNIVERSITIES

by

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DECLARATION

I, Maleho Moses Lekgela, declare that *Disciplinary Codes and Procedures: A Comparative Study at three South African Universities*, is my own work both in content and in accomplishment. All sources I used in this study are cited and referred to in the reference list by way of a comprehensive referencing system. Apart from the requisite guidance from my study leader, I have received no assistance, except as stated in the acknowledgements.

I declare that the content of this dissertation has never been used before for any qualification at any other tertiary institution.

I, Maleho Moses Lekgela, declare that the language in this dissertation was edited by Mr. Bongani C Thela (“Editor”).

Maleho Moses Lekgela

Date:

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ABSTRACT
DISCIPLINARY CODES AND PROCEDURES: A COMPARATIVE
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Anecdotal evidence would suggest that there is perception amongst employees that line managers and supervisors often do not know how to manage discipline and disciplinary hearings which has led to the mishandling of cases that often get reversed at forums such as the Commission for Conciliation Mediation and Arbitration (CCMA).

The research objectives of this study at three South African Universities were:

- to measure the compliance of disciplinary codes and procedures against the provisions of schedule 8 of the LRA with particular reference to section 4: “Fair Procedure”;
- to analyse whether disciplinary-related outcomes indicate the level of skills that role players, including line managers and supervisors, have in handling and conducting disciplinary processes in order to obtain effective or appropriate results;

- to determine how effectively disciplinary codes and procedures at three South African universities were communicated to all levels of staff;
- to examine staff awareness of the implementation of disciplinary codes and procedures;
- to analyse the degree of understanding of the roles of participants as stipulated in the different disciplinary codes and procedures among staff;

In order to answer the above research objectives, a questionnaire was designed and distributed to a representative sample of respondents at the three universities. The data collected were captured and analysed by using Statistical Package for Social Sciences (SPSS). From this data, a descriptive statistical analysis, a factor analysis and inferential statistical analysis were done. The research findings identified the main variables which were placed into five categories, namely Compliance Practices, Skills level, Compliance to Codes, Awareness to Disciplinary Codes and Procedures as well as Role Players understanding their roles in Disciplinary Proceedings.

The main findings in the five categories can be summarised as follows; the majority of participants agreed that they were compliant to their practices in terms of their respective disciplinary codes, there were mixed reactions with regard to skills levels, wherein other instances participants felt that supervisors do not know how to prove their cases, how to conduct investigations and to prove their cases during hearings whilst at the same time participants felt that chairpersons attended formal training and have the requisite skill to preside. Regarding compliance to Codes, participants were neutral on cases that were referred to the CCMA as well as with regard to the question whether disciplinary outcomes were consistent with previous cases, they also disagreed that the hearings were mostly completed in the required time, and agreed strongly that alleged offenders were mostly informed timeously.

The majority of participants agreed that employees in the respective institutions were made aware of the disciplinary codes and procedures, and that Role Players understood their roles as provided for by their respective codes.

Emanating from the research findings, it became apparent that a shortcoming regarding supervisors' skills and level of competency is prevalent, and that training interventions on initiating and chairing disciplinary enquiries are therefore recommended to line managers and supervisors.

LIST OF ABBREVIATIONS

CCMA	Commission for Conciliation Mediation and Arbitration
CAQDAS	Computer Aided Qualitative Data Analysis Software
GIS	Geographic Information System or geographical Information system
HRMIS	Human Resource Management Information Systems
LAC	Labour Appeal Court
LC	Labour Court
LRA	Labour Relations Act
NIA	National Intelligence Agency
SCA	Supreme Court of Appeal
SPSS	Statistical Package for Social Sciences

CHAPTER 1

INTRODUCTION TO THE RESEARCH TOPIC AND DESIGN

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1.1 Introduction

The aim of this study, a comparative investigation is made on how the disciplinary codes and procedures for employees have been implemented at three identified South African Universities labelled A, B and C.

Relevant case law in general suggests that disciplinary codes and procedures should advocate the adherence of disciplinary enquiries to a fair procedure. This is attested to in the matter between *Avril Elizabeth Home for the Handicapped v CCMA & Others [2006] 9 BLLR 883 (LC)*, where it was held that disciplinary codes and procedures should be based on fair procedure and not be exposed to biasness of those chairing them.

This study also addresses the extent to which disciplinary codes and procedures at the identified three universities comply with the provisions of the Labour Relations Act, No 66 of 1995, (hereafter LRA), with particular reference to schedule 8, item 4. Also the measurement and extent to which clarity is provided in respect of the duties, roles and responsibilities of all relevant role players in disciplinary enquiries forms an inherent part of this study.

The study also describes the manner disciplinary codes and procedures at these universities promote the approaches advocated by the procedural requirements laid down by the LRA.

1.2 Background

Grogan, J. (2007) avers that the fact that a disciplinary offence is not mentioned in a disciplinary code does not mean that an employee cannot be charged with such an offence, provided that the employee had knowledge about it. This study will attempt to determine whether employees are

knowledgeable about disciplinary infractions, including the extent of their knowledge regarding this rule.

The measurement of the implementation of the disciplinary codes and procedures at the identified universities can contribute significantly to the body of knowledge that currently exists regarding uniformity and compliance with the provisions of schedule 8 of the LRA as amended, to the extent that compliance is tied to fair procedure.

The adversarial types of relationship that often exist between management and trade unions pose a particular challenge in the implementation of sound disciplinary codes and procedures. Grogan, J. (2009) attests that the adversarial relationship between management and union impacts negatively on issues relating to the provision and exchange of documentation as evidence during disciplinary hearings.

1.3 Research Problem

In this study, emphasis is placed on efforts to establish how disciplinary codes and procedures at the identified three universities can be compared. The study further highlights non-compliance issues, emanating from the requirements of schedule 8, item 4.

Guidelines or 'procedure manuals' to assist chairpersons in arriving at conclusive findings and to judge the appropriateness of the sanctions commensurate with disciplinary infractions could be suggested. This would be in accordance with the view expressed by Barbieri, G. (2006) that compliance with the Code of Good Practice as contained in the LRA, No 66 of 1995, would eliminate claims to procedural unfairness.

The new disciplinary code and procedure for University A was implemented with effect from the 1st of March 2009, and the issues referred to above are to some extent still prevalent, and if not corrected can lead to problems as highlighted in the case law referred to above. A case in point is the request for recusal of chairpersons on the premise of perceptions of bias.

Effective implementation in this context could mean that the disciplinary code and procedure has been formulated on the grounds that a collective agreement has been concluded. The question whether Universities B and C have their disciplinary codes and procedures as collective agreements remains to be tested.

This study has investigated if training sessions were offered to all relevant line managers with regard to adequately clarifying interpretation issues relating to the assurance that disciplinary codes and procedures were sufficiently communicated throughout the abovementioned universities.

1.4 Research Objectives

The objectives of this study are:

- to measure the compliance of disciplinary codes and procedures against the provisions of schedule 8, item 4.
- to investigate whether disciplinary-related outcomes indicate the level of skills that role players, including line managers and supervisors, have in handling and conducting disciplinary processes in order to arrive at effective or appropriate results.
- to determine how effective disciplinary codes and procedures at the three universities were communicated to all levels of staff.
- to examine staff awareness of the implementation of disciplinary codes and procedures.

- to analyse the degree of understanding of the roles of participants as stipulated in the different disciplinary codes and procedures among staff.

1.5 Context and units of analysis

This study specifically investigated the implementation of various disciplinary codes and procedures at the three universities as referred to above. The units of analysis will be the University A, B and C, and also to measure the extent to which they comply with the requirements of schedule 8 of the LRA.

1.6 Importance and benefits of the proposed study

This research is conducted in order to ascertain the degree of impact which the implementation of the disciplinary codes and procedures at the three universities has on internal staff, and the extent to which it has enhanced or contributed to changing organisational behaviour. Compliance with disciplinary codes and procedures by staff, as well as compliance with the provisions of the LRA, with particular reference to schedule 8, item 4 is of paramount importance.

1.7 Chapter outline

The following chapters will deal with various topics, the topics are:

This dissertation consists of five chapters:

Chapter 1 Introduction to the research topic and design

Chapter 2 Organisational Justice and Legislative Provisions on Fairness

Chapter 3 Research Methodology

Chapter 4 Data Gathering and Analysis

Chapter 5 Findings and Recommendations

1.8 Delimitations and assumptions

1.8.1 Delimitations

This study was conducted at selected South African Universities.

The disciplinary codes and procedures of the mentioned South African Universities have not been measured against any international legislation, including literature that falls outside the boundaries of South Africa since such information may not add value to this work, since this study will only be confined to the requirements of Schedule 8 of the LRA.

1.8.2 Assumptions

This study makes certain assumptions about the manner in which line managers and supervisors implement disciplinary codes and procedures at the three identified South African universities, importantly these assumptions are made taking into account the requirements of schedule 8 of the LRA.

This study is based on the following assumptions:

- The disciplinary codes and procedures of the three identified South African universities have been communicated to employees.
- The different levels of literacy among employees have an impact on the application of discipline in the organisation.
- Disciplinary measures imposed on employees are interpreted in the same way in respect of similar types of transgression.
- Line managers and supervisors are adequately trained to handle tasks associated with initiating and chairing disciplinary enquiries.

1.9 Conclusion

Chapter one provided the theoretical background of this study, as well as the research problem and the specific research objectives that have been addressed in responding to the overall topic of this study.

In chapter two, specific attention is given to the concept of organisational justice and legislative provisions on fairness.

CHAPTER 2

ORGANISATIONAL JUSTICE AND LEGISLATIVE PROVISIONS ON FAIRNESS

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2.1 Introduction

This chapter focuses on the concepts of Organisational Justice consisting of distributive justice; procedural justice and interactional justice and their relevance to the purpose of the study, dealing with disciplinary codes and procedures at South African Universities.

The legislative provisions on fairness will touch on the two rules of natural justice namely, the maxim usually referred to as, “*audi alteram partem*” rule and the “*nemo iudex in propria causa*” principles are analysed.

2.2 Organisational Justice

According to Vermeulen, L.P. and Coetzee, M. (2006), the concept of organisational justice refers to people’s perceptions of fairness in organisational settings and can be divided into distributive, procedural and organisational fairness.

Murtaza, G; Shad, I; Shahzad, K; Shah, M.K and Khan, N.A. (2011), defines organizational justice as the perception of employees about the fair treatment in the organizations.

Vermeulen L.P and Coetzee, M. (2006), further went on to state that organisational justice has become a salient issue and frequently researched topic in the field of human resource management, industrial, organizational psychology and organizational behaviour.

Tang, T.LP, Baldwin, S. and Linda, J.J. (1996), states that for the last two decades, managers in human resources have come to recognise the importance of the relationship between organisational justice and organisational effectiveness. They further believe that people tend to make fairness judgements by looking at the actual decisions or the procedures used to reach a decision, and that employees use

organisational justice judgements to evaluate the quality of their relationship with groups and authorities.

It was further mentioned by Tyler, T.R. (1989), that there were relational judgements that stood out, namely:

- i. trust in benevolence, judging the trustworthiness and the motives of the decision-maker, and
- ii. neutrality, involving assessments as to whether decision-making procedures are unbiased, honest and based on evidence; and
- iii. status recognition, evaluating the politeness, dignity and respect with which a person is treated by the authority.

2.2.1 Distributive justice

Leventhal, G.S. (1976) argues that fair and equal employees' treatment increases job satisfaction, improves relationships between supervisors and employees, and encourages organisational citizenship behaviour. Vemeulen, L.P and Coetzee, M. (2006) indicated that distributive justice deals with the ends achieved, meaning the results obtained from such distributive justice actions. Murtaza G. *et al.* (2011), contends that distributive justice finally deals with the degree of perceived fairness in distribution and allocation of outcomes as an organization refers with employees input.

It was indicated by Leventhal, G.S. (1976) that people use three main justice rules to determine the justice of an outcome, namely:

- i. the equality rule; and
- ii. the needs rule; and

iii. the contributions rule (equity rule).

The purpose of decisions of equity rule are aimed at achieving productivity and high levels of performance, whilst maintaining social harmony is attributed through the use of the equality rule and lastly, promoting personal welfare is attained by applying the needs rule, Coetzee, M. (2005).

Cropanzano, R. and Ambrose, M.L. (2001) indicates that distributive justice has been loosely equated with economic benefits, and further refers to it as the “bottom line” of justice in that what becomes critical question to answer and evaluate in this method is whether was the outcome of the decision fair? They further assert further that the assessment of fairness is generally informed by what the employee is experiencing as compared to what is happening to others in the organisation. Distributive justice can therefore contribute to the enhancement of maintaining consistency and certainty in the application of discipline.

The theory, distributive justice further befits an organization to leverage its economic influence in taking a stand on moral issues, and to contribute to the institutionalisation of values that could benefit society as a whole, as argued by De Beer, E. and Rensburg, R. (2011) as further cited by Pratt in Botan and Hazleton, (2006) who averred that Rawls’s distributive justice theory is one that holds that property, rights, economic advantages and opportunities should be distributed on merit, equally among members of society.

De Beer, E and Rensburg, R. (2011) further defines justice as the system of rules and arrangements that increase human peace, cooperation, production and happiness.

2.2.2 Procedural justice

Vermeulen, L.P. (2005) describes the term procedural justice as referring to perceptions of the fairness of processes that conclude in an event, decision or action and related to the procedures followed to reach that outcome. Murtaza, G. *et al.* (2011) asserts that procedural justice refers to the fairness of decision making. There should be consistency across individuals and times in shape of promotions and outcomes among the employees.

Murtaza, G. *et al* (2011) further went on to indicate that according McFarlin and Sweeney (1992) when employees experience high levels of procedural justice, evaluation of supervision is higher across all levels of distributive justice, thus held that it can be concluded that procedural justice is about means while distributive justice is about ends.

It is argued by Vermeulen, L.P. (2005) argues that procedures should offer individuals some control over the decision making process, by way of voicing an opinion or making an input, including an opportunity in influencing the decision by presenting their perspectives.

Folger, R. and Cropanzano, R. (2001) state that it is easy to believe that the event and its outcomes should have been different and contends that in the language of fairness theory, a violation of procedural justice rules also violate basic moral tenets, in fact, if an authority enacts procedures that fail to adhere to the rules of accuracy, ethicality, bias, suppression, consistency, representativeness and correctability, then procedural justice is not maintained.

Coetzee, M. (2005) indicates that people are in favour of procedures that allow them opportunities of participation in paving way for decisions that affects them. It would therefore seem that employees regard procedures that provide them with an opportunity to influence the decisions that are made as fairer than procedures that deny them such an opportunity.

Murtaza, G. *et al.* (2011) has due to the research that they conducted, concluded that there is a positive relationship between the level of the:

H1: There will be a positive relationship between the level of the perceived distributive justice and the level of their organizational commitment.

H2: There will be a positive and significant relationship between the level of perceived procedural justice and the level of organizational commitment, and

H3: Perceived procedural justice will be more strongly correlated to the level of organizational commitment than perceived distributive justice.

2.2.3 Interactional justice

Smit, P. (2010) states that research indicates that the perceptions of procedural justice are influenced by factors beyond formal procedures and further contends that judgements of procedural fairness are influenced by two important factors, namely:

- i the adequacy with which formal decision making procedures are explained.
and
- ii the adequacy with which formal decision making procedures are explained.

Ambrose, M.L. and Schminke, M. (2003) indicate that organic organisations are based on interpersonal transactions, and rely more on interpersonal factors like face-to-face communication, discussion and elaboration in formal control systems and interpersonal interactions.

Ambrose, M.L. and Schminke, M. (2003) state that the significance of these interpersonal influences in organic organisations should increase the relevance of interpersonal aspects of justice and, the relative importance of interactional justice and that individuals will focus more on interactional justice concerns in organic organisations than in mechanistic organisations.

Luo, Y. (2007) indicated that interactional justice represents the interpersonal aspect of justice, or the way in which superiors treat employees while enacting procedural justice.

Smit. P. (2010) indicates that Coetzee (2004) identified four attributes of interpersonally fair procedures as the basis of interactional justice, namely:

- i. truthfulness;
- ii. respect;
- iii. propriety of questions; and
- iv justification.

He further identified the first three attributes to be dealing with the nature of the communication while it is happening and that the last attribute, dealt with the reduction of any discontent that might arise from what is perceived to be an unfair procedure.

2.3 Legislative Provisions on Fairness

2.3.1 Rules of Natural Justice

The two basic principles or rules of natural justice discussed hereunder are firstly, the *audi alteram partem* principle which means the right to hear the other side of the story and secondly, the principle of *nemo iudex in propria causa*, which means that one cannot be a judge in his or her own case. These principles are discussed further in detail hereunder.

2.3.2 Audi Alteram Partem

Grogan, J. (2007) states that one of the requirements of a fair hearing in terms of the so-called rules of natural justice, and the most important, is enshrined

in the maxim *audi alteram partem*, literally meaning “hear the other side”. Grogan, J. (2007) argues that this means that the employer may not take disciplinary action against employees without giving them fair hearings.

Grogan, J. (2007) and Smit. P. (2010) provide in keeping with the LRA, the following requirements for a fair procedure:

- investigation;
- adequate notice of the allegation
- opportunity to state a case in response to the allegations;
- reasonable time to prepare a response;
- assistance of a trade union representative or fellow employee;
- communicate the decision taken after the enquiry.

Baxter, L. (1984) also emphasises that the essence of the *audi alteram partem* principle is that the individual should be given notice of the intended action, and a proper opportunity to be heard, he further maintains that in other words, firstly, the individual must be made aware of the charges against him or her, secondly that the individual must be given reasonable time to prepare his or her case, and that he or she should be given an opportunity to present and negate evidence, to cross examine witnesses and to legal representation.

In the matter of ***South African Broadcasting Corporation Ltd (SABC) v Commission for Conciliation Mediation and Arbitration and Others [2002] 8 BLLR 693 (LAC)***, the court held that where an employer has an effective means of communicating with an employee who is absent from work, the employer has an obligation to give effect the *audi alteram partem* rule before the employer can take the decision to dismiss an employee for his absence from work or for his failure to report for duty.

2.3.3 *Nemo iudex in propria causa*

The latin maxim “*nemo iudex in propria causa*” is defined by Bouvier, J. (1856) as a fundamental principle of natural justice which regulates that no person can judge a case in which he or she is a party to or in which he or she has a material interest. The maxim crystallised in British common law in the case of ***Frome United Breweries Co. v Bath, [1926] AC 586***, in which the British highest legal officer, called “Lord Chancellor” (LC) made a decision favourable to a canal company, and that at the time, unbeknownst to the parties to the litigation, the LC was a shareholder in the canal company and had not told the litigants. The LC’s decision was set aside because of the *nemo iudex* maxim.

Baxter, L. (1984) avers that the principle of *nemo iudex in propria causa* is very important since fairness is measured with reference to objectivity and with the public interest and public confidence, however Baxter (2004) argue that the fairness of the procedure is put into question as soon as doubts concerning bias on the part of the judge or arbitrator arise.

Substantive fairness is concerned with the reason for treating someone unfavourably and that in order to ascertain the fairness of a situation one must have recourse not only to the consequences of the action or omission in question, but the reasons for such action or omission including the manner in which such action or omission took place, as contended by Baxter, L. (1984).

He further maintains that procedural and substantive fairness are independent, and that is so because procedural fairness requires certain facts to be proved before discretionary power to take disciplinary action is exercised.

In the matter of ***BTR Industries SA (Pty) Ltd & others v Metal & Allied Workers Union & another (1992) 13 ILJ 803 (A)***, the appellate division held that the existence of a reasonable suspicion of bias satisfied the test for recusal, and also that not only must the apprehension of bias be that of a

reasonable person in the position of the person being judged who has an objective factual basis for their suspicion, but the apprehension of bias must be one that in law would be recognised as raising a legitimate concern about the adjudicator's impartiality. The court held that the core requirements of natural justice are the need to hear both sides (*audi alteram partem*) and the impartiality of the decision maker (*nemo iudex in propria causa*).

The importance of *nemo iudex in propria causa* is also demonstrated in the matter of ***Raswiswi v CCMA and others (2011) 32 ILJ 2186 (LC)*** where the labour court held that since the arbitrator failed to observe the principle of natural justice regarding bias, and that his inquisitorial approach was not applied consistently to both parties. The Labour Court ordered that the arbitration award issued by the second respondent (arbitrator) be reviewed and set aside, furthermore that the matter was remitted back to the first respondent (CCMA) to be set down before a commissioner other than the second respondent for rehearing of the arbitration.

2.4 The South African Constitution

The legislative principles relating to the right to fair labour practices founded in section 23 of the Constitution is discussed as well as the concept of procedural fairness as stipulated in the LRA.

Section 23 (1) of the Constitution provides that “everyone has the right to fair labour practice.”

It is also important to note that section 23 (1) of the Constitution does not exclude any category of employees. This means that any person who is viewed as an employee in terms of section 200A of the LRA is entitled to fair labour practice as stipulated in section 23.

Smit, P (2010) indicates that what is determined to be fair labour practices or for that matter, what is deemed to be unfair is not defined nor guided by the Constitution, however suggested that national legislation, especially the LRA should be consulted for guidance in this regard.

He further avers that the right to fair labour practice applies to “everyone” and that section 23(1) of the Constitution does not distinguish between different types of employees or employers such as permanent employees, casual employees, fixed-term contract employees and probationary employees. The important concept here is that the right applies to “everyone”.

It is also argued by Smit, P. (2010) that every person who is involved in an employment relationship is entitled to fair labour practices. He further argued that the Constitution of the Republic of South Africa, 1996 has had a major and profound effect on all branches of the law, and that it entrenches certain fundamental rights and provides mechanisms that citizens can use to challenge legislations and actions by the state which infringe on those fundamental rights.

Chapter 2 of the Constitution contains several provisions that have a direct impact on employment and labour law, where section 23(1) – (6) of the same Constitution deals specifically with labour relations. The relevant sections outline that:

- “(1) Everyone has the right to fair labour practices;*
- (2) Every worker has the right -*
 - (a) to form and join a trade union;*
 - (b) to participate in the activities and programmes of a trade union; and*
 - (c) to strike.*
- (3) Every employer has the right -*
 - (a) to form and join an employer’s organisation;*
 - (b) to participate in the activities and programmes of an employer’s organisation.*
- (4) Every trade union and employer’s organisation has the right -*
 - (a) to determine its own administration, programmes and activities;*
 - (b) to organise; and*

(c) to form and join a federation.

(5) Every trade union, employer's organisation and an employer have the right to engage in collective bargaining. National legislation may be enacted to regulate collective bargaining. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36(1).

(6) National legislation may recognise union security arrangements contained in collective agreements. To the extent that the legislation may limit a right contained in this Chapter, the limitation must comply with section 36(1)."

In addition, section 39(2) of the Constitution also states that:

"when developing the common-law, every court, tribunal or forum must promote the spirit and objects of the Bill of Rights."

This was demonstrated in ***Boxer Superstore Boxer Superstores Mthatha & another v Mbenya (2007) 28 ILJ 2209 (SCA)*** where the court stated that the common-law contract of employment has been developed in accordance with the Constitution to include the right to a pre-dismissal hearing. This means that because of this case law, every employee has a common-law contractual claim, not merely a statutory unfair labour practice right, to a pre-dismissal hearing.

Smit, P. (2010) indicates that although this development is controversial, an employee's entitlement to a pre-dismissal hearing is well recognised in South African law, however he avers that such a right may have as its source, the common law or a statute. He further held that these rights are now protected by common-law and by section 39(2) of the Constitution to the extent necessary as developed by the Constitutional imperative.

He further contends that section 23(1) includes much more than just the right not to be unfairly dismissed, rather includes the right to fair labour practices and organisational rights of trade unions, employer's organisational rights, and the right to collective bargaining. The section also places particular emphasis

on employee's rights and the rights of trade unions in the South African Constitution in as far as they can be traced back to the role the trade union movement and their leaders played in the development of a new democracy and Constitution in South Africa.

Section 232 of the Constitution provides that-

“Customary international law is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament.”

Section 233, of the constitution which regulates the application of international law, provides that-

“When interpreting any legislation, every court must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law”.

Section 39(1) of the Constitution further provides that:

“When interpreting the Bill of Rights, a court, tribunal or forum –

- (a) must promote the values that underlie an open and democratic society based on human dignity, equality and freedom;
- (b) must consider international law; and
- (c) must consider foreign law.”

Sections 232 and 233 of the Constitution therefore means that international law is also applicable to the interpretation of labour law in South Africa.

Bosch, C. (2008) reflected on the decision of the labour court in the case of ***National Entitled Workers Union v CCMA (2003) 24 ILJ 2335 (LC)*** where the judge expressed the view that “*should an employer wish to prohibit a labour practice which is unfair and which is not regulated by a conventional statute, the employer may approach a court of competent jurisdiction relying on section 23 of the constitution to grant the relief which it seeks*”.

Van Niekerk, A. Christianson, M. Mc Gregor, M. Smit, N. Van Eck, S. (2012) avers that Cheadle observed that the process of constitutionalising labour law has begun where the constitutional court has inferred a right to union representation in the workplace, even for minority unions, as part of the right to organise and the right to engage in collective bargaining. The court has claimed jurisdiction over the interpretation of and application of the constitutional right to fair labour practice in so far as that right has been given effect to in the LRA.

Van Niekerk A. *et al.* (2012) further indicated that because the determination of fairness is always a matter of interpretation and application of the constitutional right, the constitutional court may have opened its gateways to every labour practice, including dismissal, in which the fairness of the practice or dismissal is disputed.

The impact and complexity of the constitutional right to fair labour practices were highlighted in the matter between **SANDU v Minister of Defence & others [2007] 9 BLLR 785 (CC)** wherein the constitutional court held that-

“Where legislation is enacted to give effect to a constitutional right, a litigant may not bypass that legislation and rely directly on the Constitution without challenging that legislation as falling short of the constitutional standard, and that a litigant who seeks to assert his or her right to engage in collective bargaining under section 23(5) should in the first place base his or her case on any legislation enacted to regulate the right, not on section 23(5). If the legislation is wanting in its protection of the section 23(5) right in the litigant’s view, then that legislation should be challenged constitutionally”.

2.5 The Labour Relations Act

The purpose of section 1 of the LRA is:

“to advance economic development, social justice, labour peace and the democratisation of the workplace by fulfilling the primary objects of this Act, which are-

(a) to give and effect to and regulate the fundamental rights conferred by section 23 of the Constitution;

(b) to give effect to obligations incurred by the Republic as a member state of the ILO.”

Smit P, (2010) indicates that similarly to the BCEA, the LRA embraces the fundamental rights of every employee in terms of section 23 of the constitution and the standards set by the International Labour Organisation (ILO). Special note must be taken of section 210 (1) of the LRA, which states that-

“if any conflict, relating to the matters dealt with in this Act, arises between this Act and the provisions of any other law save the Constitution or any Act expressly amending this Act, the provisions of this Act will prevail.”

Section 185 (a) of the LRA states that every employee has the right not to be unfairly dismissed, and the LRA stipulates two criteria to be met before a dismissal can be deemed as a fair dismissal, namely a valid or fair reason and a fair procedure.

Section 188(1) of the LRA provides that-

“[a] dismissal that is not automatically unfair, is unfair if the employer fails to prove-

(a) that the reason for dismissal is a fair reason-

(i) related to the employee’s conduct or capacity; or

(ii) based on the employer’s operational requirements; and

(b) that the dismissal was effected in accordance with a fair procedure.”

Smit P (2010) argues that although an employer can terminate a contract of employment by simply giving notice in terms of section 37 of the BCEA, this process seems to be in conflict with section 188(1) of the LRA.

Section 210 of the LRA states that if there is any conflict between the LRA and any other law excluding the constitution, the provisions of the LRA prevail. The BCEA gives recognition to this and states that a dismissed employee has the right to dispute the lawfulness or fairness of his or her dismissal in terms of chapter VIII of the LRA.

Smit P (2010) avers that the LRA does not provide any guidelines regarding the requirements of a fair procedure before dismissal, however, these principles have to some extent been given guidance to in the LRA by the issuing of Codes of Good Practice.

2.5.1 Procedural Requirements in terms of Schedule 8 of LRA

- Investigation

Item 4 (1) of Schedule 8 provides that “normally the employer should conduct an investigation to determine whether there are grounds for dismissal”. Grogan, J. (2014), argues that, the code requires employers to investigate reported cases of misconduct to determine whether there may be grounds for dismissal and that, it is only fair to subject an employee to a disciplinary proceeding or charge of misconduct if there are at least *prima-facie* grounds for suspecting that the particular concerned employee committed the said misconduct, otherwise if not, may be prejudicial at initiating disciplinary proceedings against an employee.

- Adequate Notice

Schedule 8 requires that “The employer should notify the employee of the allegations in the form and language that the employee can reasonably understand”, again Grogan, J. (2014) indicates that the adequacy of the notification relates to the timing and content of the notice which should allow the alleged offender sufficient time to prepare for the hearing including the charge(s) they are required to meet.

- Opportunity to state a case

Item 4 (1) of Schedule 8 provides that “The employee should be allowed the opportunity to state a case in response to the allegations”. To this extent, Grogan, J. (2014) states that the hearing should precede the decision to dismiss the employee, and that the very purpose of the hearing is to establish whether the employee is guilty of misconduct, and if so, the sanction that should be imposed.

In the matter of *Masetlha v President of the Republic of South Africa 2008 1 BCLR 1 (CC)* the judge noted that precedent has recognised that "the power to dismiss must ordinarily be constrained by the requirement of procedural fairness, which incorporates the right to be heard ahead of an adverse decision", however, the power that the President exercises is an executive power and the relationship between the President and the head of the National Intelligence Agency (NIA) is a -"special legal relationship"- that requires particular consideration.

Whilst maintaining that the exercise of the power to dismiss the head of the NIA was not subject to the requirement of procedural fairness, Moseneke DCJ added that even if that were a requirement, Masetlha had several opportunities to state his case at the various meetings that he had with the Minister, the Inspector-General and the President.

- Reasonable time to prepare

Item 4 (1) of the LRA provides that “The employee should be entitled to a reasonable time to prepare the response”.

Smith, P. (2010) indicates that Schedule 8 does not stipulate a specific period for preparation, however it requires reasonable time and what is reasonable depends on the circumstances of each case and the question whether or not the employee was afforded sufficient time to prepare is a factual one.

On one hand, Grogan, J. (2007) mentions that the period that should be allowed can depend on various factors, namely, the employer’s own disciplinary code, the complexity of the charge, the employees knowledge of the circumstances giving rise to the offence, and the time necessary for the employee to obtain representation.

Smit, P. (2010) indicates that it has almost become an acceptable and unwritten minimum requirement by most employers that an employee should be granted at least 48 hours’ notice of the enquiry, since this is regarded as the minimum time necessary to prepare a defense. However, he also attested that there is no fixed time limit in line with the notion of flexibility.

The Labour Court had in the matter of ***Shoprite Checkers (Pty) Ltd v CCMA and others Case number J852/97 (LC)*** held that even in a case where the employee had been given less than 24 hours’ notice, it was fair under the circumstances as the employee had not been prejudiced and participated fully in the disciplinary enquiry.

- Assistance of a trade union representative or fellow employee

The following part of item 4(1) reads that the employee should be entitled “[t]o the assistance of a trade union representative or fellow employee. It is an accepted norm in South African workplaces that employees accused of misconduct are entitled to be assisted or represented by fellow employees or a trade union representative during a disciplinary enquiry. The employee has the right to choose his or her own representative within the boundaries of the employer’s disciplinary code.

In practice, a trade union representative will act as a representative for employees who belong to a trade union. The LRA Chapter 5, Code of Good Practice: Dismissal (Schedule 8) gives shop stewards the right to assist employees in disciplinary enquiries, if requested to do so by the employee.

Fellow employees normally represent non–union members from the same workplace. This was crystalized In ***NUMSA obo Thomas V M & R Alucast [2008] 2 BALR 134 (MEIBC)***, wherein the arbitrator held that the complexity of the matter was not of such a nature that entitled the employee to be represented by a shop steward and not by a trade union official.

The purpose of representation or assistance is to ensure presentation in response to the allegations or charges and fairness of the followed disciplinary procedure.

It is submitted that assistance means more than the mere presence of a fellow employee. The role of the representative can, *inter alia*, include assistance with:

- i. obtaining witnesses for the employee;
- ii. obtaining documentary evidence;
- iii. preparing a defense;
- iv. interpretation or translation and

v. gathering background information.

Under the common law it is accepted that the right to representation conferred by contract does not automatically extend to representation by legal practitioners. Item 4(1) does not make any provision for an employee's assistance by a legal practitioner such as an advocate or attorney.

The Supreme Court of Appeal held in the case ***Hamata & another v Chairperson, Peninsula Technikon Disciplinary Committee & others (2002) 23 ILJ 1531 (SCA)***, that as a general rule, legal representation is not allowed at internal disciplinary hearings, however, the exclusion of legal representation may well be regarded as a breach of the constitutional right to fair labour practices and fair administrative action.

The Labour Court in ***Chamane v The Member of the Executive Council for Transport, Kwazulu-Natal & others [2000] 10 BLLR 1154 (LC)***, held that the failure of a chairman of a disciplinary enquiry to apply his mind and consider a request for legal representation was enough to vitiate the outcome of the enquiry.

It is argued by Smit. P. (2010) that the labour courts are reluctant to accept that legal representation in disciplinary enquiries have developed into a clear right, however, the chairperson of a disciplinary enquiry retains the discretion to permit legal representation if it is requested by the employee and in complex and difficult cases relating to serious charges. In these circumstances, the chairperson must exercise his or her discretion in a fair manner.

He also further confirmed that all that is required by Schedule 8 item 4(1), is that the alleged offender be allowed the right to be assisted or represented by a trade union representative, shop steward, or fellow employee.

- Communicate the decision taken after the enquiry

Schedule 8 Item 4(1) illustrates some degree of generality and flexibility, and provides that “After the enquiry, the employer should communicate the decision taken, and preferably furnish the employee with written notification of that decision”.

The above requirement of Schedule 8, item 4(1) places an obligation on the part of the employer to inform the employee of the enquiry’s outcomes.

Similarly, the Labour Court’s decision has in ***De Jager v Minister of Labour & others* [2006] 7 BLLR 654 (LC)** supports this argument that after being approached by the employee, ordered the employer to provide the employee with written reasons for his dismissal. The court noted that the applicable disciplinary code requires the chairperson of the disciplinary enquiry to inform the employee of the verdict and then permit the employee to make representations regarding the sanction. In this instance, the court found that the employer contravened its own applicable disciplinary code. The above requirement makes it peremptory that the employee should be informed about decision taken by the chairperson in writing.

Grogan, J. (2014) argues that the decision of the presiding officer should be made in two distinct stages. Firstly at the time when the verdict is announced, and secondly, at the time when a determination of the sanction has been made.

Section 188(2) and section 203(3) of the LRA place an obligation on any person who must determine whether or not a dismissal was substantively and procedurally fair to take into account any relevant Code of Good Practice issued in terms of this Act. These tribunals must ensure that the employer’s conduct meets the requirements of the applicable legislation taking into account Schedule 8.

Smit, P. (2010) maintains that it is trite law and an internationally acceptable principle that an employer has the right to, and is entitled to demand satisfactory conduct and work performance from his or her employees. An employee can be dismissed due to lack of appropriate conduct or competence. This right is also confirmed in item (1) (3) of Schedule 8, thus in order for the employer to exercise this right, he or she must comply with the standards of fair procedures as established by Schedule 8 of the LRA.

The spirit of section 23 (1) of the Constitution reverberates in section 185 of the LRA which states in section 185 (a) and 185(b) that:

“[e]very employee has the right not to be –
(a)unfairly dismissed; and subjected to unfair labour practice”.

There is no distinction between different types of employees as per section 185 of the LRA, as well as section 23 (1) of the Constitution. Every employee, irrespective of job status or the nature of employment is entitled to fair labour practices in terms of the Constitution. This fundamental right is outlined in section 185 of the LRA which protects all employees against unfair dismissal and unfair labour practices. This also applies to employees who are on probation and who work under fixed term contracts of employment.

2.6 Conclusion

It is of paramount importance to note that the various forms of organisational justice provides different perspectives that people hold regarding the manner in which they are treated by such organisations, superiors and incumbents in positions of authority.

Procedural justice and interactional justice show that the fact that individuals in organisations are offered the platform to participate in interactive processes

to vent and air their dissatisfactions, they are more likely to accept the results of such processes, even when outcomes do not favour them.

It should be noted that the principles of natural justice have an impact on the concepts of organisational justice such as distributive justice, procedural Justice, and interactional justice, and this ensures that once these are applied on the organisational justice concepts, and particularly distributive justice, then moral and motivational levels of staff in those organisations are increased, with more job satisfaction and encouraging a sense of belonging to those individuals.

It has been noted from the foregoing chapter that section 23 of the Constitution forms an integral part in determining to a large extent, the manner conduct the business of discharging organisational responsibilities and the prerogative to discipline is conducted since non-conformity may imply that such practices are carried contrary to the bill of rights as contained in the constitution.

The next chapter will deal with research design and the research methodology that was used in this study.

CHAPTER 3

Research Design and Methods

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3.1 Introduction

This chapter focuses on theoretical aspects of research methodology. It further describes the specific research design and methodology used in this study, a broad empirical research methodology was used to explore identified variables.

Empirical research is based on observed and measured phenomena and derives knowledge from actual experience rather than from theory or belief. Key characteristics of typical empirical research methods usually contain the following components:

- **Introduction:** sometimes called “literature review”, what is actually known about the topic-usually includes a theoretical framework and or discussion of previous studies.
- **Methodology:** sometimes called “research design”, how to recreate the study –usually describes the population, research process, and analytical tools.
- **Results:** sometimes called “findings”, what was learned through the study-usually appears as statistical data as substantial quotations from research participants.
- **Discussion:** sometimes called “conclusion” or “implications”, why the study is important-usually describes how the research results influence professional practices or future studies.

This chapter also reflects on what guides research ethics specifically on issues such as: Plagiarism; voluntary participation; confidentiality and anonymity, prohibition of the use of incentives; researcher’s honesty, objectivity and integrity and permission of organisations.

3.2 Research Design and Methods

The study used questionnaires as a method of collecting data from the units of analysis. According to Leedy, P.D. and Omrod, J.E. (2010) survey research involves acquiring information about one or more groups of people, their characteristics, opinions, attitudes or previous experiences. This is done by asking them questions and tabulating their answers.

Analysed Information gathered from surveys conducted with individual line managers including role players in disciplinary proceedings was aimed to determine the extent of compliance with the requirements of schedule 8 of the LRA.

Delbert, C. and Salkind, M.J. (2012) indicate that in a descriptive inquiry, the investigator seeks to estimate as precisely and comprehensively as possible a problem area, and in an explorative inquiry of a theoretical type, the investigator seeks to test some particular hypothesis about the determinants of a dependent variable or factor.

They further stated that when evaluating a problem for possible research consideration, the complete research design and all its elements must be considered and formally evaluated, the dimensions of the research design that needs to be considered throughout the process of selecting a problem, asking the question, framing the hypothesis and completing the experiment may include and not limited to study design; access to organisations and respondents; type of data available; sample or universe to be studied; and data collection method to verify the information.

Saunders, M., Lewis, P. and Thornhill, A. (2009) describe the survey method as a strategy that is associated with the deductive approach. It is a particular and a common strategy in the business and management research that is used

most frequently to answer the who, what, where, how much and how many, questions. Therefore is mostly used for exploratory and descriptive research. Surveys are popular since they allow the collection of large amounts of data from a sizeable population in a highly economical way.

3.3 Description of Inquiry Strategy and Broad Research Design

Empirical research in social science proceeds in a variety of settings and contexts. The choice of a design setting for any research project is generally of vital concern to the researcher who seeks to determine the validity of a hypothesis and how best to discover evidence to either accept or reject it. Social phenomena are almost always complex, and control of the relevant variables that contribute to that complexity is difficult at best, (Delbert C.M & Salkind, N.J. 2012).

3.4 Sampling

3.4.1 The target population and units of analysis

The target population for the study included line managers and supervisors who handle and chair disciplinary enquiries at three identified South African Universities.

Line managers and supervisors have been selected as the target population since they are the main role players in the implementation of the disciplinary codes and procedures for these tertiary institutions, hence the study focuses on how these disciplinary codes and procedures have been implemented.

These line managers and supervisors have been selected for participation in the study and completion of the questionnaire based on the sampling method discussed below.

3.4.2 The sampling method for the study

The study used a probability sampling technique. According to Saunders *et al.* (2009) the use of probability sampling ensures that the chance or probability of each case being selected from the population is known, and it is usually equal for all cases. This means that it is possible to answer research questions and to achieve objectives that require the researcher to estimate statistically the characteristics of the population from the sample. Consequently, probability sampling is often associated with survey and experimental research strategies.

According to Saunders *et al.* (2009) the limitation associated with probability sampling is that it is for populations of less than 50 cases, should not be used. He argues that in the latter instance, the researcher should collect data on the entire population as the influence of a single extreme case on subsequent statistical analysis is more pronounced than for larger samples.

3.4.3 The number of respondents included in the study

According to Saunders *et al.* (2009) the sampling frame for any probability sample is a complete list of all the cases in the population from which a sample will be drawn. In this study, the sampling frame has been all the line managers and supervisors who have been trained to conduct and handle all disciplinary enquiries at the selected universities. These numbers were obtained through incumbents dealing with Human Resource Management Information Systems (HRMIS) in all these three identified universities.

One hundred (100) line managers and supervisors at Universities A, B and C were identified, respectively. The final sample size identified from all these Universities was three hundred in total. The table below illustrates the total population and the responses received from each University.

The survey questionnaires were e-mailed to all the identified respondents, and a majority of these questionnaires were received back electronically, whilst a small number was physically collected from the respondents.

The 38.3% combined responses received from all universities are deemed to be sufficient for purposes of this study.

Universities	Total Population	Responses received	Equals in %
University A	100	40	34.8%
University B	100	36	31.3%
University C	100	39	33.9%

Delbert C, and Salkind, M.J. (2012) states that sampling procedures should be able to describe the experimental and control sample; define and specify the population for which the research hypotheses are relevant, explain how sample size will be determined and the type of sample that will be selected and specify the method of drawing or selecting sample and estimate the relative costs of collecting data given the various sizes and types of samples.

3.5 Data collection

3.5.1. The use of survey questionnaires as data collection method

The study used survey questionnaires as a method of collecting data from the units of analysis. According to Leedy, P.D. & Ormrod, J.E. (2010) survey research involves acquiring information about one or more groups of people, their characteristics, opinions, attitudes, or previous experiences. This is done by asking them questions and tabulating their answers.

A survey is quite simple in design: the researcher poses a series of questions to willing participants; summarises their responses with percentages, frequency counts or more sophisticated statistical indexes; and then draws inferences about a particular population from the responses of the sample, Leedy, P.D. & Ormrod, J.E. (2010).

Delbert C, & Salkind, M.J. (2012) states that this means of gathering information is very popular because it promises to secure data at a minimum expenditure of time and expense. The popularity of the method is often defeated because many respondents are overburdened by the number of questionnaires that reach them.

The two further indicate that in a *descriptive* inquiry the investigator seeks to estimate as precisely and comprehensively as possible a problem area, and in an *explanatory* inquiry of a theoretical type the investigator seeks to test some particular hypothesis about the determinants of a dependent variable or factor.

The survey questionnaire that was used in this study is attached as Appendix A

3.5.2 Content Analysis

Content analysis is defined by Leedy, P.D. and Ormrod, J.E. (2010) as a detailed and systematic examination of the contents of a particular body of material for the purpose of identifying patterns, themes, or biases. Content analysis is typically performed on different forms of human communication including books, newspapers, films, television, art, music, and videotapes involving human interactions, transcripts of conversations, and internet blog and bulletin board entries.

Hesse-Biber, S.N and Leavy, P.L. (2007) views content analysis as the systematic study of texts and other cultural products or non-living data forms. The data used in this kind of research thus exist independently of the research process. In other words, the researcher does not create or co-create the raw data through surveys,

ethnography, or interviews but rather collects pre-existing data, such as newspapers, books, magazines, pictures, television programs, and so forth. The nature of the data garners them two unique qualities: (1) the data are pre-existing and thus naturalistic, and (2) the data are non-interactive as stated by Reinharz, S. (1992).

3.5.3 Length of time for collecting data

Robert, F. Belli, Frank P. Stafford Duane F. and Alwin (2009) indicates that the overarching goal of any scientific data collection is to acquire valid information. In the arena of survey interviewing, acquiring valid data is dependent on the extent to which information provided by respondents matches an underlying true state of affairs and further maintained that several studies have confirmed that calendar interviewing provides retrospective reports of reasonably good quality. What can be deduced from the foregoing then is that the length of time for collecting data depends from situations to situations.

The data collected in this study by means of survey questionnaires was done over a period of four months.

3.5.4 Questionnaire design

Valerie M. Sue and Lois A, Ritter. (2007) explains that the best survey questionnaires look professional and motivating, are easy to comprehend, are inviting and not intimidating, make answering the questions a clear and simple process, and are accessible to everyone in the target population. Many of the design principles applicable to self-administered paper questionnaires can be effectively applied to Web-based questionnaires. For example, the first question should be easy to answer, requiring no more than a few seconds of respondents' time; the questions should progress in a logical fashion; questions relating to the same topic should be kept together; and bolding or italicizing can be used to direct participants' attention to important words.

3.5.5 Pre-testing

The survey questionnaire used in this study has been pre-tested by circulating it to a limited sample which included supervisors and line managers at the Department of Human Resources at University A, as well as the identified University Statistician. This has ensured validity and reliability. After the pre-test, corrections and changes were made to the questionnaire reflecting on the results of the pre-test.

Heath, S. Brooks, R. Cleaver, E. and Ireland, E. (2009) supported that Presser *et al.* (2004) indicated that an examination of survey pre-testing reveals a paradox. On the one part, pre-testing is the only way to evaluate in advance whether a questionnaire causes problems for interviewers or respondents. They further aver that consequently, both elementary textbooks and experienced researchers declare pre-testing indispensable and that on the other part, most textbooks offer minimal, if any guidance about pre-testing methods and published survey reports usually provide no information about whether questionnaires were pre-tested and, if so, how and with what results.

3.6. Data Analysis

3.6.1 Methods of recording and storing data

The hard copies of the completed paper-based survey questionnaire has been computerised and copied into an Excel spread sheet for the purpose of storing the research results electronically. The data collected in this study has been recorded and stored on a CD-ROM in order to safely archive and conserve a copy of the research results.

Cope, M. (2009) attests that the value of Geographic Information System or (GIS) is a system designed to capture, store, manipulate, analyze, manage, and present all types of spatial or geographical data.

GIS has the ability to represent both qualitative and quantitative data along with their spatial information, and the value of (CAQDAS Computer Aided Qualitative Data Analysis Software lies in its ability to provide a means of storing, managing, and analyzing qualitative data.

3.6.2 Approaches to Quantitative analysis

Bryman, A, and Bell, E. (2011) describes quantitative research as a distinctive research approach that entails the collection of numerical data, regards the relationship between theory and research as deductive, prefers a natural science approach in general and positivism in particular and further that it adopts an objectivist conception of social reality.

The main steps in quantitative research

Bryman, A. (2004) indicate that the approach commences with theory as the first step which signifies that a broadly deductive approach to the relationship between theory and research is taken; secondly, that the formulation of hypothesis as a general rule is found more in experimental research.

He added that the third step, is the selection of research design which has implications for a variety of issues such as the external validity of findings and the researcher's ability to impute causality to their findings; fourthly the manner in which the researcher devises measures of concepts, and this is often referred to as operationalization step, which when explained simply means a process that refers to the operations by which a concept such as temperature or velocity is measured.

Select Research Site

In a nutshell, Bryman, A. (2004) indicates that the fifth step in social research entails the process where the investigator must establish an appropriate setting for his or her research. In this study, three selected South African Universities, called for this

purpose Universities A, B and C, respectively were identified as the appropriate setting for the research.

Selecting the Research Respondents

According to Bryman, A. (2004) the sixth step involves the selection of subjects or respondents and indicates that in experimental research tend to call people on whom research is conducted whilst in social survey research they are called respondents.

Line managers and supervisors who were utilised as respondent at these three identified South African Universities were identified from their institutional Human Resource Information Specialists.

Administering the research instrument

The seventh step in the process, according to Bryman, A. (2004) entails the administration of the research instrument, which involve interviewing the sample members by structured interview schedule or distributing a self-completion questionnaire. In this study, a self- completion questionnaire was developed and distributed to the respondents, this questionnaire is marked Appendix A.

Data Processing

The eighth step involves processing the data, and in this case, the Statistical Package for Social Sciences (SPSS) was utilized to analyse the frequencies, compare the groups, generate cross tabulation statistics, and all of the other exercises as indicated in chapter 4 of this study. This packaging was also used for the ninth (analysing data), and tenth steps (findings) of the process.

Write Up Findings

The last step (step eleven), according to Bryman, A. (2004) involves writing up the findings and the conclusions of data analysed, which in this study, forms an integral part for publication as a journal article for academic social researchers indicating that the research conclusions are important and the findings robust. In this instance, a joint article will be prepared by myself and the study leader as part of the completion of the degree.

3.6.3 Methods used to code, summarise and analyse data collected

Coding:

According to Bryman, A. and Bell, E. (2011) a pre-coded questionnaire could elicit different types of variable, and classifies the variables into the following categories:

Dichotomous variable:

This variable contains data with only two types of responses categorised into Yes or No responses, and that although they have only one interval, they can be treated like nominal variables. The self-completion questionnaire marked Appendix A, captures these types of responses that have been accordingly analysed.

Nominal variables are those variables that comprise categories that cannot be rank ordered, and that the only statistical analysis that can be conducted on nominal variables is to count how many there are in each category, such as counting the most common value.

Ordinal variables contain categories that can be rank ordered based on some order of magnitude where the distance between the categories are not equal. This has been demonstrated by providing scores to each question on the questionnaire, ranging from 1-5 indicating 1= strongly agree, 2=agree, 3=neutral, 4= disagree and 5= strongly disagree, thus it cannot be concluded that the difference between 1 and 2 is the same.

Thomas, S.J. (2004) stated that guidelines for preparing the data include a discussion of coding the data in preparation for analysis using spread-sheets such as Excel or Lotus 1–2–3 or statistical software packages such as SPSS or SAS.SPSS has been utilised in this instance.

3.7 Categorising data

Saunders *et al.* (2009) explain that data categorising involves two activities. One activity involves developing categories and subsequently attaching these categories to meaningful chunks of data. By doing this, the researcher will begin to recognise relationships and further develop the categories that he or she is using to facilitate data categorisation. The researcher will also be able to develop and test propositions, thereby enabling him or her to draw conclusions as well as to quantitatively analyse.

Gibbs, G.R. (2007) puts it differently by stating that coding is how one defines what the data one is analyzing is about, and that it involves identifying and recording one or more passages of text or other data items such as the parts of pictures that, in some sense, exemplify the same theoretical or descriptive idea.

In this instance, passages or questions in the self-completion questionnaire that exemplified the same theoretical or descriptive idea were grouped together under different variables, namely Compliance Practices; Skills level; Compliance to Codes, Awareness of Disciplinary Codes and Role Players understanding their Roles in Disciplinary processes.

This ensured that such passages are identified and linked with a name for that idea. Thus all the text that is about the same thing or exemplifies the same thing is coded to the same name. Coding is a way of indexing or categorizing the text in order to establish a framework of thematic ideas about it.

Gibbs, G.R. (2007) further indicates that coding in this way enables two forms of analysis, one being the ability to retrieve all the text coded with the same label to combine passages that are all examples of the same phenomenon, idea, explanation or activity; secondly, that this form of retrieval is a very useful way of managing or organizing the data, in that it enables the researcher to examine the data in a structured way and can use the list of codes, especially when developed into a hierarchy, to examine further kinds of analytic questions, such as relationships between the codes (and the text they code) and case-by-case comparisons.

Missing data

Bryman, A. Bell, E. (2011) points out that how to handle missing data is an important issue in the management of data, and that this often arises when respondents fail to reply to a question either by accident or deliberately. The computer software has been notified of this, and all the missing data to all the five categories or variables have accordingly been reflected as such, where applicable. This is so because such missing data has to be taken into account during data analysis.

Structuring data using narrative

Saunders *et al.* (2009) define narrative broadly “as an account of an experience that is told in a sequenced way, indicating a flow of related events that, taken together, are significant for the narrator and which convey meaning to the researcher. It follows that understanding and meaning are likely to be promoted

through analysing data in their originally told form rather than by seeking to fragment them through a process of developing categories and coding”

Narrative structuring ensures that the data are organised both temporally and with regard to the social or organisational contexts of the research participant. Narrative analysis, as a result, allows the nature of the participant’s engagement, the actions that they took, the consequence of these and the relationship events that followed to be retained within the narrative flow of the account without losing the significance of the social or organisational context within which these events occurred (Saunders *et al.* 2009).

Other Tests used

Bryman, A. and Bell, E. (2011) define Cronbach -Alpha as a test of internal reliability which calculates the average of all possible split-half reliability coefficients. The calculation of the alpha correlation coefficient varies between 0 (no correlation) and therefore no internal consistency) and 1 (perfect correlation and therefore complete internal consistency).

Kaizer-Meyer-Olkin (KMO) The test measures sampling adequacy for each variable in the model and for the complete model. The statistic is a measure of the proportion of variance among variables that might be common variance (Norman, G.R. & Steiner, D. L. 2008).

Chi-Square test according to (Bryman, A. and Bell, E. 2011) is a test of statistical significance, which is typically employed to establish how confident we can be that the findings displayed in a contingency table can be generalised from a probability sampling method.

Bartlett's Test of Sphericity (Snedecor, G.W. and Cochran, W.G. 1989) state that it is used to test if samples have equal variances and explains that equal variances across samples is called homogeneity of variances.

They further indicates that some statistical tests such as the analysis of variance, for example assume that variances are equal across groups or samples, and that the Bartlett test can be used to verify that assumption to measure the variance between all the categories or variances. Taking into account the latter discussions, this study utilized the Bartlett's test.

3.8 Assessing and Demonstrating the Quality and Rigour of the Research Design

Silverman, D. (2005) identifies quality issues with what he calls "methodological awareness" and points out that "methodological awareness" involves a commitment to showing as much as possible the procedures and evidence that have led to particular conclusions, further maintains that there is always the possibility that conclusions may need to be revised in the light of new evidence". In this instance, no the survey instrument was reviewed and questions rephrased.

Validity of results was established by processing the raw data into Statistical Package for Social Sciences (SPSS) and running various tests in order to confirm that the data is acceptable.

In addition, Silverman, D. (2005) points out that validity is sometimes compromised because researchers seldom provide the criteria or grounds for including certain instances and not others, and that research reports presented in tabular form do not preserve the materials upon which the analysis was conducted.

Reliability has been established by subjecting the raw data into Statistical Package for Social Science (SPSS) which drew analytical procedures, and provided statistical

analytical results. Saunders *et al.* (2009) argues that this process further helps continuity and increases both transparency and methodological rigour.

3.9 Research Ethics

Saunders *et al.* (2009) identify the below-mentioned ethical considerations which the proposed study aims to adhere to.

Plagiarism – Recognition will be given to all the sources used in this study.

Voluntary Participation – Appendices B; B1; has been used. The involvement of participants has been voluntary and they have been reassured that they can withdraw from the study at any time that they feel it is necessary or for whatever reason.

Confidentiality and anonymity – The identity of participants has been kept private and not made known publicly.

Prohibition of the use of incentives – Incentives have not been used as a means to gain participation.

Researcher's honesty, objectivity and integrity – The researcher has reported on all applicable findings in an unbiased a manner as possible.

Permission of Organisations – The necessary permission has been obtained from the relevant institutions for their employees to participate in the study prior to any communication with employees to request them to participate, Appendices B2; B3 and B4, have been used in this regard.

3.10 Conclusion

This chapter has indicated the nature and structure of the research methods used in this study. Quantitative analysis has assisted in drawing conclusions from information gathered through an inquisitorial approach on the impact of the implementation of various disciplinary codes and procedures at three selected South African Universities. This Quantitative research has demonstrated its benefits by

extracting the respondents understanding of the implementation of their various disciplinary codes.

The research setting favoured the investigation and its ability to allow the application and testing of concepts and theory that produced a wealth of detailed information as captured on the survey questionnaire.

CHAPTER 4

DATA INTERPRETATION AND ANALYSIS

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4.1 Introduction

This chapter provides the analysis and the interpretation of the data gathered during the data collection process. Surveys were used as a methods of collecting data, and the results will be discussed in detail in this chapter.

An illustration will be made by use of tables and where appropriate, a graphical presentation will be applied in order to simplify the illustration.

Excel and SPSS (Statistical Package for Social Sciences) was utilised to analyse the data.

A total number of 115 completed questionnaires were returned compared to 300 distributed questionnaires which show a 38.3% response rate. The results will be presented in terms of demographic details and these will be followed by responses of participants on various aspects of the questionnaire in relation to disciplinary codes and procedures at the selected three South African Universities.

This chapter will be laid out in three phases, being the Descriptive Statistics; Exploratory Factor Analysis and Inferential Statistics.

4.2 DEMOGRAPHIC REPRESENTATION OF DATA COLLECTED: UNIVERSITIES A, B, AND C.

4.2.1 Demographic profile of participants

Table 4.1 Profile of Participants by Institution (n=115)

Variable	Number (n)	Percentage (%)
Age		
25 – 29	1	0.9
30 – 34	9	7.8
35 – 39	7	6.1
40 -44	22	19.1
45+	74	64.3
Gender		
Male	69	60
Female	46	40
Race		
Black	21	18.3
Coloured	8	7.0
Indian	16	13.9
White	69	60.0
Missing	1	0.9
Length of Service (Years)		
1 – 5	5	4.3
6 – 10	45	39.1
11 – 15	18	15.7
15+	47	40.9
Formal Education		
Matric	5	4.3
Diploma/ Certificate	10	8.7
Bachelor degree	21	18.3
Postgraduate degree	78	67.8
Missing	1	0.9
Management Level		
Lower	18	15.7
Middle	63	54.8
Senior	29	25.2
Top	4	3.5
Missing	1	0.9

The age group of participants between 45 years and older at the three selected South African Universities thus they constituted almost two thirds of the respondents (64.3%). In addition female respondents were the majority of the respondents (60.0 %) with white people constituting (60.0%) resulting in them being the majority of the respondents, with coloureds the least represented by only (7.0%).

Respondents who are between 6 to 10 years length of service and those with more than 15 length of years of service represented the vast majority (80%), with new employees, those between 1 to 5 years length of service representing the smallest group with only 4.3%.

Respondents at middle management level was mostly represented with just over half of the respondents (54.8%), followed those at senior management level with (25.2%).

Respondents with post graduate degrees constitutes the majority (67.8%).

4.2.2 Profile of Participants by Institutions and Training

The institutions and training on disciplinary enquires of respondents are presented below using two figures.

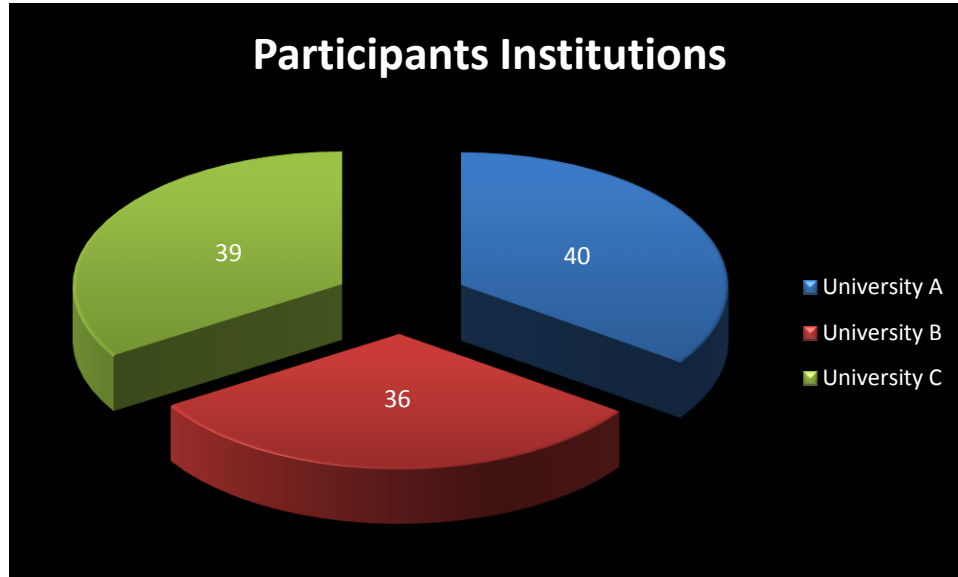


Figure 4.1 Profile of Participants by institution

The table above reflects that an almost equal number of responses were received from the three selected Universities with 34.8%, 31.3% and 33.9% from University A, B and C, respectively.

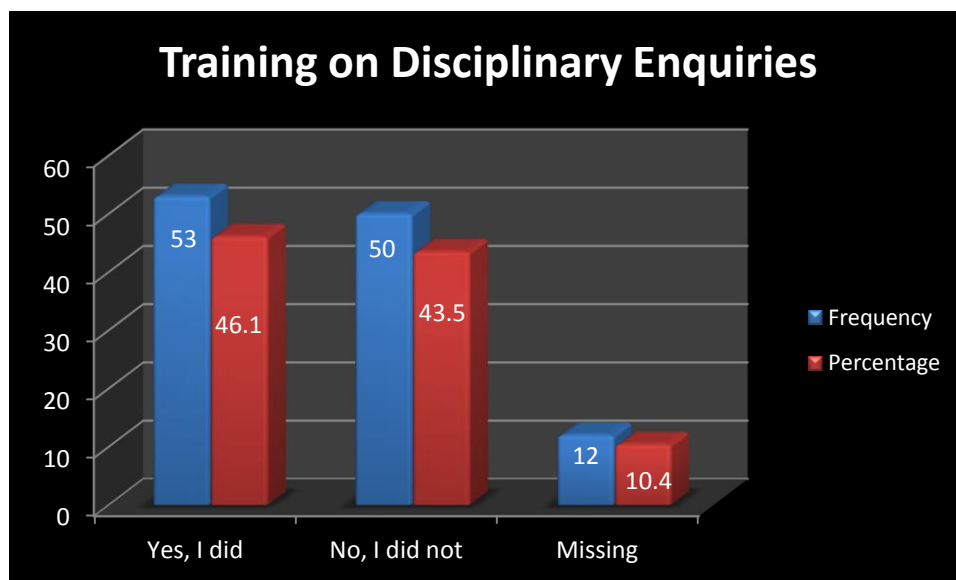


Figure 4.2 Profile of Participants by Training

The majority of the respondents were those who were trained (46.1%) as compared to those not trained, representing 43.5%.

There is still therefore a need for staff to be trained as the percentage of those not trained is almost close to 50%.

4.3 Compliance Practices

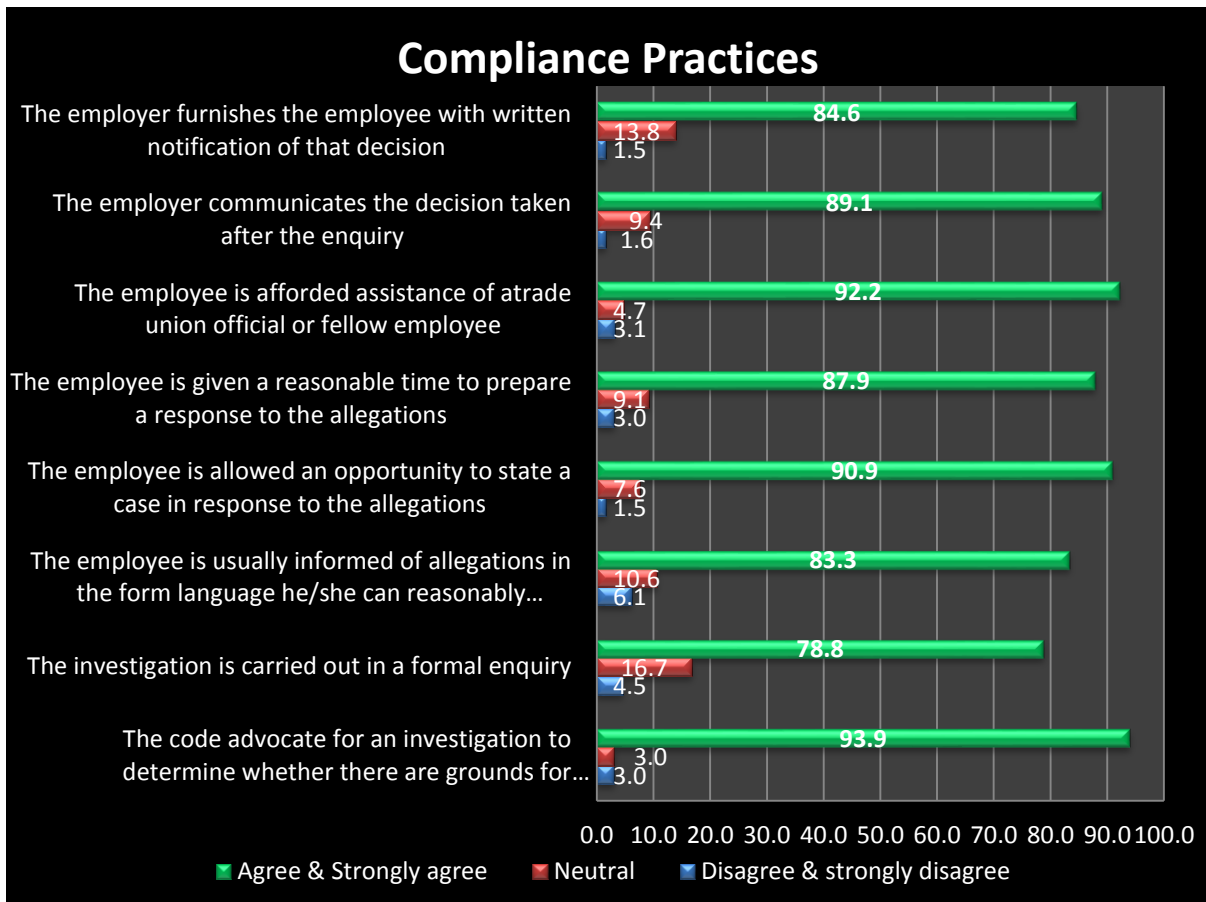


Figure 4.3 Compliance to Practices

A fairly high majority (at least 78%) agree or strongly agreed with the statements on compliance practices. This indicates that, there is a very strong adherence to some of the procedural requirements laid down by item 4 of the LRA in the three Universities.

A very small fraction of an average of about 3% disagreed and strongly disagreed.

4.4 Skills level

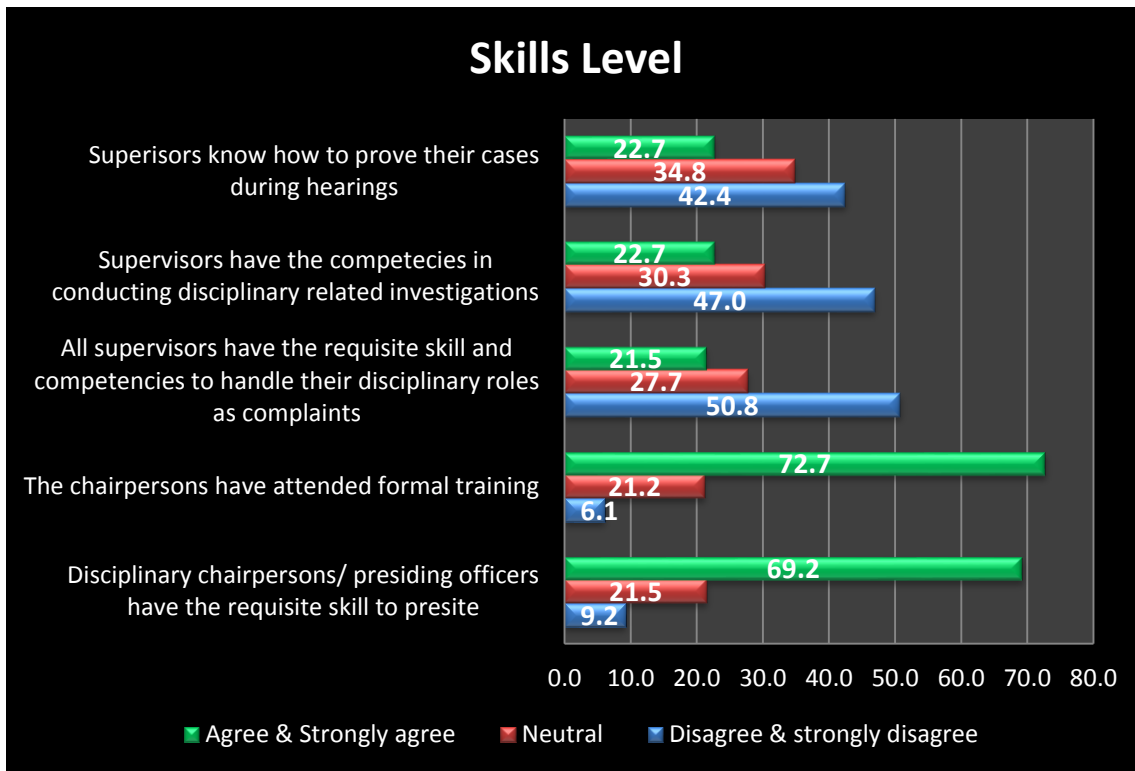


Figure 4.4 Skills Level

The majority of the respondents agreed on two statements and confirmed that chairpersons have attended formal training and have the requisite skill to preside.

A large proportion of respondents also disagreed on the other three statements regarding supervisors, indicating that they do not have the necessary skills and competencies. Therefore this suggests that more training interventions should be placed for this group of respondents, since It can be seen that there are mixed reactions regarding the skill levels of participants, in that although participants agreed and strongly agreed that chairpersons attended formal training and have the requisite skill to preside, the same participants had a different view though with the supervisors in respect of the same variable in that they do not know how to prove their cases, do not have the requisite competencies in conducting disciplinary

related investigations and that they cannot handle their disciplinary roles as complainants.

This appears to be the core of the people where much effort and attention should be placed in addressing the very shortcoming with the supervisors since they are the ones tasked to carry execute disciplinary related duties.

4.5 Compliance to Codes

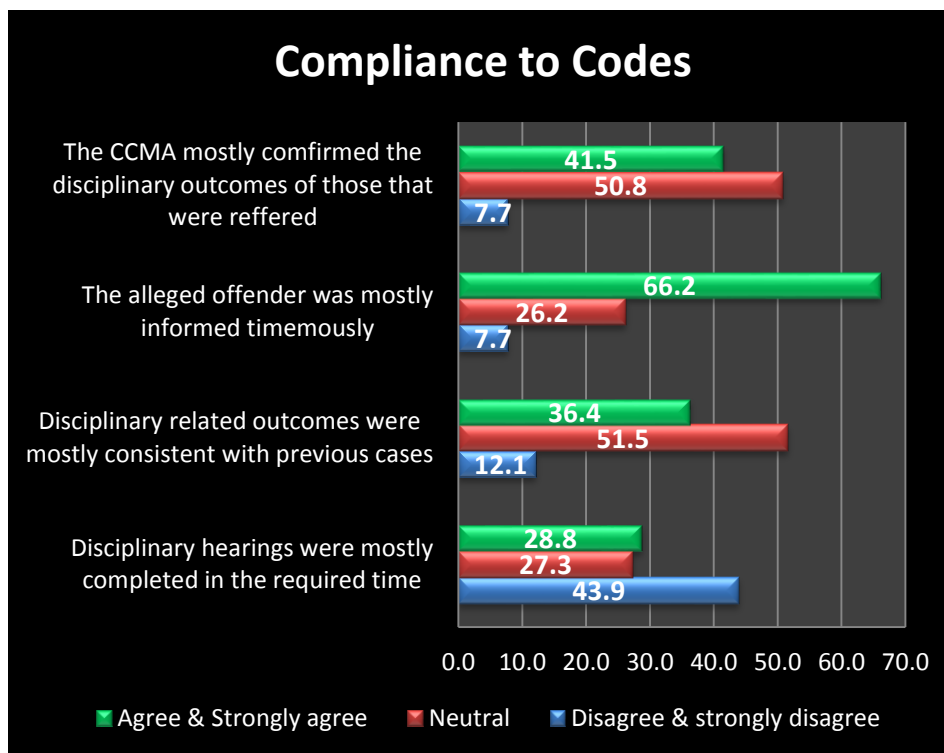


Figure 4.5 Compliance to Codes

A large proportion of respondents agreed or strongly agreed with one statement, “that the alleged offender was mostly informed timeously” (66.2%) whilst 51.5% remained neutral on two others and disagreed on one other statement. They were of the view that they were not aware if the Commission for Conciliation Mediation and Arbitration (CCMA) confirmed the disciplinary outcomes of those referred since

they do not attend such proceedings. They also remained neutral on the issue whether disciplinary related outcomes were mostly consistent with previous cases.

Reflecting on figure 4.5 , it is evident that the majority of the participants would not necessarily know whether the CCMA confirmed the majority of cases that were referred or not in that they do not necessarily handle CCMA proceedings, and in view of the fact that supervisors in respect of the skills level variable were found not knowing how to prove their cases, not having the requisite competencies in conducting disciplinary related investigations and cannot handle their disciplinary roles as complainants, this role would have been attended and defended to by the relevant institutional Employee Relations Divisions.

The above goes with their lack of knowledge whether disciplinary related outcomes were consistent with previous cases. The lack of knowledge on the part of the supervisors is resultant in disciplinary hearings not being completed in the required time, in most cases.

4.6 Awareness to Disciplinary Codes

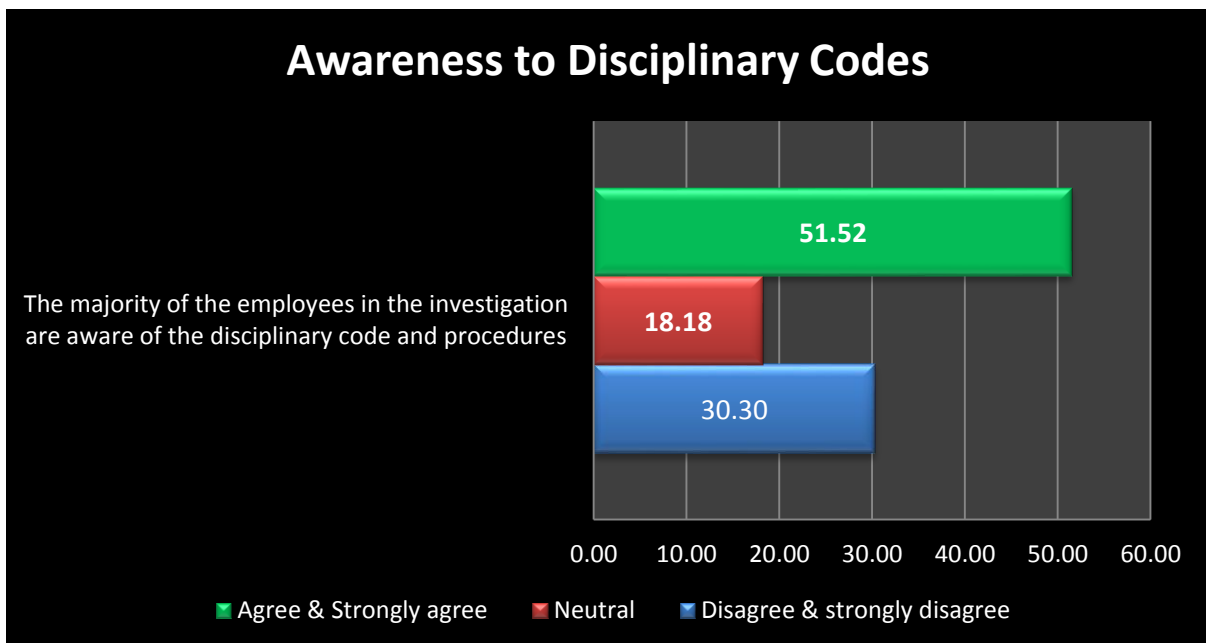


Figure 4.6 Awareness to Disciplinary Codes

Over a half (51.52%) of the participants indicated that they agreed and strongly agreed with the statement, whilst 30.30% disagreed and strongly disagreed, and 18.18% remained neutral. This indicate that almost a third are not aware of the disciplinary codes and procedures and is an area of concern that needs to be addressed thus internal communication has to be strengthened in order to make staff aware of the disciplinary codes and procedures.

4.7 Role Players Understanding their Roles in Disciplinary Proceedings

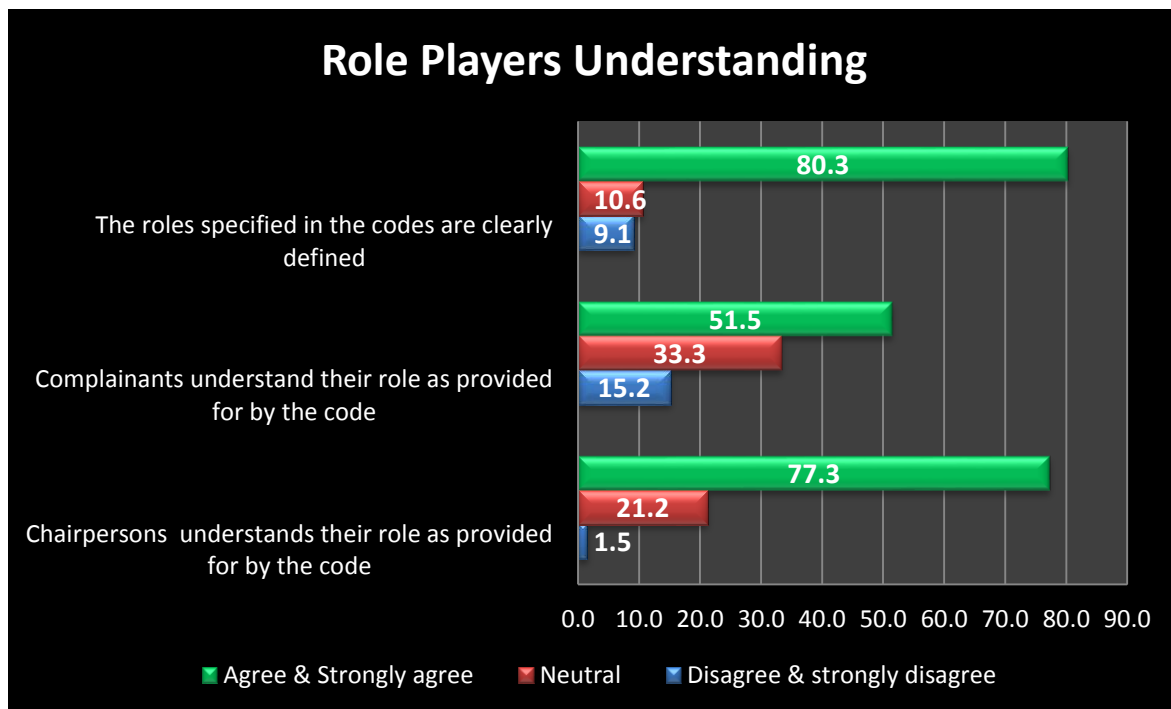


Figure 4.7 Role Players Understanding their Roles

A large proportion of respondents (about 65%) agreed or strongly agreed with the variable in general that the line managers and supervisors understand their roles in disciplinary related proceedings.

A small proportion representing (about 35%) remained neutral.

It is very clear that complainants and chairpersons understand their roles as provided for by their respective disciplinary codes, however the question that remains is that why would the same complaints, in particular those whose positions in the organisations are those of supervisors, do not execute these roles as expected, since they understand them?. One would assume that a logical conclusion to this matter is that they do not have the requisite skill, and training in particular to enable them to adequately execute this role.

4.8 FACTOR ANALYSIS

Exploratory factor analysis was conducted using principal component extraction and varimax rotation to enable data reduction for the items under each of the key research areas namely compliance practices, skills level, compliance to codes, Awareness to Disciplinary Codes and the Role Players Understanding their roles in Disciplinary Proceedings.

4.9 Compliance Practices

The Kaiser-Meyer-Olkin Measure of Sampling Adequacy was 0.920, which is above the recommended threshold of 0.5, and the Bartlett's Test of Sphericity was significant ($p < 0.001$) for the eight items dealing with compliance practices by indicating that a factor analysis was appropriate.

The analysis confirmed uni-dimensionality for the eight items, as the analysis identified only one factor based on the eigenvalue criterion (eigenvalue greater than

1) and the factor explains 73.54% of the variance. The factor loadings are shown below.

Table 4.2 The Component Matrix for Compliance Practices

Component Matrix ^a	
	Component
	1
The code advocate for an investigation to determine whether there are grounds for disciplinary action	0.855
The investigation is carried out in a formal enquiry	0.807
The employee is usually informed of allegations in the form language he/she can reasonably understand and	0.758
The employee is allowed an opportunity to state a case in response to the allegations	0.917
The employee is given a reasonable time to prepare a response to the allegations	0.910
The employee is afforded assistance of a trade union official or fellow employee	0.851
The employer communicates the decision taken after the enquiry	0.898
The employer furnishes the employee with written notification of that decision	0.850
Extraction Method: Principal Component Analysis.	
a. 1 components extracted.	

Using Cronbach alpha, the internal consistency (reliability) for compliance practices was found to be 0.946. Since this value is above the acknowledged threshold of 0.7, it was deemed satisfactory.

Factor-based scores were subsequently calculated as the mean score of the variables included in the factor.

4.10 Skills Level

The Kaiser-Meyer-Olkin Measure of Sampling Adequacy was 0.736, which is above the recommended threshold of 0.5 and the Bartlett's Test of Sphericity was significant ($p < 0.001$) for the five items dealing with skills level by indicating that a factor analysis was appropriate.

The analysis did not confirm uni-dimensionality for the five items, as the analysis identified two factors based on the eigenvalue criterion (eigenvalue greater than 1) and the factor explains 85.7.% of the variance. The factor loadings are shown below.

Table 4.3 The Component Matrix for Skills Level

Component Matrix ^a		
	Component	
	1	2
Disciplinary chairpersons/ presiding officers have the requisite skill to preside	0.602	0.670
The chairpersons have attended formal training	0.595	0.676
All supervisors have the requisite skill and competencies to handle their disciplinary roles as complaints	0.907	-0.193
Supervisors have the competencies in conducting disciplinary related investigations	0.918	-0.291
Supervisors know how to prove their cases during hearings	0.825	-0.441
Extraction Method: Principal Component Analysis.		
a. 2 components extracted.		

The two factors can be labelled as chairperson skills and supervisor skills. Using Cronbach alpha, the internal consistency (reliability) for skills level was found to be 0.779 and 0.923 for chairperson skills and supervisor skills, respectively because these values are above the acknowledged threshold of 0.7, it was deemed satisfactory.

4.11 Compliance to Codes

The Kaiser-Meyer-Olkin Measure of Sampling Adequacy was 0.587, which is above the recommended threshold of 0.5 and the Bartlett's Test of Sphericity was significant ($p < 0.001$) for the four items dealing with compliance to codes, therefore indicating that a factor analysis was appropriate.

The initial analysis did not confirm uni-dimensionality for the four since the analysis identified only two factors based on the eigenvalue criterion (eigenvalue greater than 1) and the factor explains 73.86% of the variance, however two items loaded on both factors (double loadings).

Further inspection on the nature of the statements and taking the value of the factor loadings into account indicated that one factor will be formed with statements. The statements are: disciplinary hearings were mostly completed in the required time; disciplinary related outcomes were mostly consistent with previous cases; the alleged offender was mostly informed timeously and the CCMA mostly confirmed the disciplinary outcomes of those that were referred.

Only one item remains. This item will not be considered in subsequent analysis. The factor loadings are shown below.

Table 4.4 The Component Matrix for Compliance to Code

, namely Component Matrix ^a		
	Component	
	1	2
Disciplinary hearings were mostly completed in the required time	0.396	0.805
Disciplinary related outcomes were mostly consistent with previous cases	0.767	0.239
The alleged offender was mostly informed timeously	0.850	-0.144
The CCMA mostly confirmed the disciplinary outcomes of those that were referred	0.631	-0.603
Extraction Method: Principal Component Analysis.		
a. 2 components extracted.		

Using Cronbach alpha, the internal consistency (reliability) for compliance to code practices was found to be 0.661 which is above the acknowledged exploratory threshold of 0.6, it was deemed satisfactory.

4.12 Role Players Understanding their Roles

The Kaiser-Meyer-Olkin Measure of Sampling Adequacy was 0.613, which is above the recommended threshold of 0.5 and the Bartlett's Test of Sphericity was significant ($p < 0.001$) for the three items dealing with role players understanding their roles therefore indicating that a factor analysis was appropriate.

The analysis confirmed uni-dimensionality for the three items, as the analysis identified only one factor based on the eigenvalue criterion (eigenvalue greater than 1) and the factor explains 57.4% of the variance. The factor loadings are shown below.

Table 4.5 The Component Matrix for Role Players Understanding their Roles in Disciplinary Proceedings

Component Matrix ^a	
	Component
	1
The roles specified in the codes are clearly defined	0.823
Complaints understands their role as provided for by the code	0.689
Chairpersons understands their role as provided for by the code	0.754
Extraction Method: Principal Component Analysis.	
a. 1 components extracted.	

Using Cronbach alpha, the internal consistency (reliability) for role players understanding their roles was 0.622. Although this value is lower than the acknowledged threshold of 0.7, but higher than 0.6, it is considered as a threshold for exploratory research. It was deemed satisfactory.

Factor-based scores were subsequently calculated as the mean score of the variables included in the factor. The descriptive statistics for the factors identified are shown in table 4.6 below.

Table 4.6 The Mean and Standard Deviation for the 5 Variables

		Statistics				
		Compliance Practices	Role Players	Chairperson's skills	Supervisor's Skills	Compliance to Codes
N	Valid	63	66	65	65	65
	Missing	52	49	50	50	50
Mean		1.6746	2.1616	2.1231	3.2667	2.4718
Median		1.6250	2.0000	2.0000	3.3333	2.6667
Std. Deviation		0.70373	0.63580	0.79072	1.03950	.66639
Skewness		2.052	0.202	0.289	-0.478	-0.186
Kurtosis		7.057	-0.075	-0.512	-0.037	1.248

The mean for Compliance Practice was the lowest at 1.67 ± 0.70 signifying that participants agree or strongly agree with the compliance practices items. The highest mean was for Supervisor skills at 3.27 ± 1.04 showing that the participants disagree or strongly disagree with regard to Supervisor skills items.

4.13 INFERENTIAL STATISTICS

Nonparametric statistics is suitable when the variable being analysed does not conform to any known or continuous distribution (Zikmund, W.G, Babin, B.J. Carr, J.C. and Mitch, G. 2013), the Kruskal- Wallis test can be used when two or more independent groups need to be compared based on a single variable. It is useful to apply this test when the sample from the population is small or if the data type is ordinal.

Inferential statistical analysis were conducted to determine if-

- (i) there exist differences between respondents of the three universities with respect to the five identified factors
- (ii) there exists differences between respondents of different length of service groups with respect to each of the identified factors.
- (iii) there exist differences between respondents of the different management levels with respect to each of the identified factors, and
- (iv) there exists differences between male and female respondents with respect to each of the five identified factors.

1. University Differences

The nonparametric Kruskal Wallis test was used to determine if differences exist between respondents of the three universities with respect to each of the five identified factors.

Kruskal-Wallis Test

H₀: There is no difference between the three universities with regard to their level of agreement regarding:

- (i) Compliance practices
- (ii) Role players
- (iii) Chairperson skills
- (iv) Supervisor skills
- (v) Compliance code

H₁: There is a difference between the three universities with regard to their level of agreement regarding:

- (i) Compliance practices
- (ii) Role players
- (iii) Chairperson skills
- (iv) Supervisor skills
- (v) Compliance code

Kruskal-Wallis Test

Table 4.7 The Kruskal-Wallis Test for University Differences for the 5 Variables

Test Statistics ^{a,b}					
	Compliance Practices	Role Players	Chairperson Skills	Supervisor Skills	Compliance to Codes
Chi-Square	4.745	0.241	2.100	0.075	3.800
Df	2	2	2	2	2
Asymp. Sig.	0.093	0.886	0.350	0.963	0.150

a. Kruskal Wallis Test

b. Grouping Variable: Inst

The results show that there is a statistical significant difference at a 10% level of significance between the three universities with respect to compliance practices, ($p = 0.093$), furthermore, the mean ranks indicate that university (B) tends to agree the most regarding the compliance practices statement (mean rank = 24.53).

Table 4.8 The Mean Rank for Universities Regarding Compliance Practices

Ranks			
	Inst	N	Mean Rank
Compliance practices	A	31	33.71
	B	18	24.53
	C	14	37.82
	Total	63	

None of the other domains showed statistical significant differences between the three universities (all the p values were above 0.1).

2. Length of Service

H₀: There is no difference between the three universities with regard to their level of agreement regarding:

- (i) Compliance practices
- (ii) Role players
- (iii) Chairperson skills
- (iv) Supervisor skills
- (v) Compliance code

H₁: There is a difference between the three universities with regard to their level of agreement regarding:

- (i) Compliance practices
- (ii) Role players
- (iii) Chairperson skills
- (iv) Supervisor skills
- (v) Compliance code

Table 4.9 Significance Level for the 5 Variables

Test Statistics ^{a,b}					
	Compliance Practices	Role Players	Chairperson Skills	Supervisor Skills	Compliance to Code
Chi-Square	1.122	1.699	1.297	2.000	0.768
Df	2	2	2	2	2
Asymp. Sig.	0.571	0.428	0.523	0.368	0.681

a. Kruskal Wallis Test

b. Grouping Variable: Length of service (in years)

The above variables demonstrated the level of significance that is above 0.05, hence retaining the null hypothesis results.

3. Management Level

H₀: There is no difference between the three universities with regard to their level of agreement regarding:

- (i) Compliance practices
- (ii) Role players
- (iii) Chairperson skills
- (iv) Supervisor skills
- (v) Compliance code

H₁: There is a difference between the three universities with regard to their level of agreement regarding:

- (i) Compliance practices
- (ii) Role players
- (iii) Chairperson skills
- (iv) Supervisor skills
- (v) Compliance code

Table 4.10 The Kruskal-Wallis Test of Universities regarding 5 Variables

Test Statistics ^{a,b}					
	Compliance Practices	Role Players	Chairperson Skills	Supervisor Skills	Compliance to Codes
Chi-Square	8.245	2.051	1.959	3.444	10.348
Df	2	2	2	2	2
Asymp. Sig.	0.016	0.359	0.376	0.179	0.006

a. Kruskal Wallis Test

b. Grouping Variable: Management level

The above results show that there was a statistical significant difference between the three management levels with respect to compliance practice (5% level of significance $p=0.016$) and compliance to codes (1% level of significance, $p=0.006$).

This also implies that only the middle management levels are of the view that they do not agree that they comply with practices and that they do not agree to comply with their disciplinary codes, whilst Top and Senior Management hold a different view that they comply in both instances. This further crystallises the fact that this is the group where training interventions should be placed to bridge this gap.

Gender Differences

The test determines whether statistical significant differences exist between males and females with regard to their views Compliance to Practices; skills levels; Compliance to Codes, Awareness to Disciplinary Codes and Role Players Understanding of their Roles.

The hypotheses are:

H₀: Males and females do not differ with respect to their views regarding:

- (i) Compliance practices
- (ii) Role players
- (iii) Chairperson skills
- (iv) Supervisor skills
- (v) Compliance code

H₁: Males and females do differ with respect to their views regarding:

- (i) Compliance practices
- (ii) Role players
- (iii) Chairperson skills
- (iv) Supervisor skills
- (v) Compliance code

The Student t-test for independent groups was used to test the hypothesis. A 5% level of significance will be used.

The means and standard deviations are shown below:

Table 4.11 The Domains expressed in means and standard deviations by Gender

	Gender	N	Mean	Std. Deviation
Compliance practise	Male	34	1.5625	.81316
	Female	29	1.8060	.53304
Role-players	Male	36	2.0926	.65033
	Female	30	2.2444	.61857
Chairpersons skills	Male	36	2.0000	.76532
	Female	29	2.2759	.80829
Supervisors skills	Male	35	3.3619	1.01740
	Female	30	3.1556	1.07116
Compliance code	Male	35	2.4190	.77688
	Female	30	2.5333	.51491

The results of the t test are tabled below.

Table 4.12 The t-test of Domains by gender

	Levene's Test for Equality of Variances		Sig.	t-test for Equality of Means		Df	Sig. (2-tailed)
		F		T			
Compliance practise	Equal variances assumed	.718	.400	-1.379	61	.173	
	Equal variances not assumed			-1.424	57.443	.160	
Role-players	Equal variances assumed	.053	.819	-.966	64	.338	
	Equal variances not assumed			-.970	62.847	.336	
Chairpersons skills	Equal variances assumed	.810	.371	-1.409	63	.164	
	Equal variances not assumed			-1.401	58.597	.167	
Supervisors skills	Equal variances assumed	.131	.718	.796	63	.429	
	Equal variances not assumed			.792	60.390	.431	
Compliance code	Equal variances assumed	3.095	.083	-.686	63	.495	
	Equal variances not assumed			-.708	59.468	.482	

The null hypotheses of equal variances assumed could not be rejected ($p > 0.05$), can thus assume equal variances for all the domains considered. The t test results indicate that no statistical significant differences, ($p > 0.05$), exist between males and females with regard to the five domains considered at the 5% level of significance.

It is thus evident that gender did not play a role in determining the implementation of disciplinary codes and procedures at the selected South African Universities.

CHAPTER 5

FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

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5.1 Introduction

This chapter discusses the main findings of the study and an overview of the research objectives. This includes further interpretation of the results presented in Chapter four and how they might relate to other studies. There are discussions on the demographic, limitations of this report, as well as recommendations for future research in the application and Implementation of disciplinary codes and procedures.

The results obtained by applying methods described in Chapter Four will be presented in this chapter. These results will also be discussed in terms of the research objectives stated in Chapter One.

The sequence in which the results will be presented and discussed is as follows:

- Descriptive Statistics to analyse the population studied.
- Exploratory factor analysis that was used to conduct principal component extraction and varimax rotation in order to enable data reduction for the identified variables.
- Cronbach-Alpha to determine the reliability of the questions in the questionnaire.
- Inferential Statistics
- T-test Results

5.2 Overview of the Research

Chapter one outlined an overview of the background to the research topic. The chapter outlined the aim of the study as well as the suitable research methodology. A quantitative research approach was followed. The research focus, scope and delimitations were outlined.

Chapter two paid particular focus on the concepts of Organisational Justice, which comprised of distributive justice, procedural justice and interactional justice and their relevance to the purpose of the study dealing with disciplinary codes and procedures at selected South African Universities.

The Chapter further explored with legislative provisions on fairness which mainly concentrated on the rules of natural justice namely the maxims usually referred to as firstly, “*audi alteram parterem*” rule and secondly the “*nemo iudex in propria causa*” principles.

The South African Constitution and its impact to the right fair labour practice in relation to the Labour Relations Act was also discussed.

Chapter three discussed the Research Design and Methods, Description of inquiry strategy and broad research design; Sampling; The target population and units of analysis; The planned sampling method for the proposed study; Data collection, Interpretation and Analysis, research ethics and plagiarism.

Chapter four analysed and interpreted the data gathered and presented in the form of tables and figures.

Chapter five gave a description of the research findings. The impressions drawn at the end of each chapter were summarised drawn into chapter 5 to provide a holistic overall picture of the research findings.

5.3 Demographic Information

The majority of the participants were over 45 years (64.3%) and mainly comprised of white females (60.0 %), with 7% representing coloureds (7.0%).

The very majority of the participants as presented, had 6 to 10 years of length of service and over 15 years of service, respectively at (80%), whilst new employees with (1-5) length of service represented the smallest group (4.3%). This appears to be those occupying Middle Management positions and were over half of the respondents (54.8%) and Senior Management (25.2%), respectively. The majority (67.8%) of the respondents possessed post graduate degrees.

5.4 Participants by Institution and training

Table 4.1 and 4.2 reflected that almost an equal number of responses were received from the three selected Universities with 34.8%, 31.3% and 33.9% from University A, B and C, respectively. The majority of the respondents (46.1%) were those who are trained as compared to 43.5% of those who were not trained. The study also revealed that a greater need for training is still required since almost close to 50%.of the respondents were those not trained.

5.5 Research Objectives Achieved

The following research objectives mentioned in paragraph 1.4 above, namely:

To measure the compliance of disciplinary codes and procedures against the provisions of schedule 8, item 4, to analyse whether disciplinary-related outcomes indicate the level of skills that role players including line managers and supervisors have in handling and conducting disciplinary processes in order to arrive at effective or appropriate results, to determine how effective disciplinary codes and procedures at the three identified universities were communicated to all levels of staff, to examine staff awareness of the implementation of disciplinary codes and procedures, and to analyse the degree of understanding of the roles of participants as stipulated in the different disciplinary codes and procedures among staff.

5.6 Findings of the study against Research Objectives

Chapter two commenced by providing the stipulations of the Labour Relations Act in keeping with the requirements for a fair procedure, the requirements are:

- investigation;
- adequate notice of the allegation
- opportunity to state a case in response to the allegations;
- reasonable time to prepare a response;
- assistance of a trade union representative or fellow employee;
- communicate the decision taken after the enquiry.

To this extent, chapter four, provided in figure 4.3 above, that the majority of at least 78% agreed or strongly agreed with the statements on “Compliance Practices” that the three identified Universities strongly adhered to the procedural requirements laid down by item 4 of the LRA, and only a very small fraction of an average of about 3% disagreed and strongly disagreed.

Chapter four, dealt further with the second research objective, “Skills Level” and the study revealed in a nutshell table 4.4 that-

- (i) The majority of the respondents agreed on two statements and confirmed that chairpersons have attended formal training and have the requisite skills to preside.
- (ii) A large proportion of respondents also disagreed on the other three statements that supervisors do not have the necessary skills and competencies.

Participants had mixed reactions regarding “skill levels” variable. This means that although they agreed and strongly agreed that chairpersons attended formal training

and have the requisite skills to preside, they also on the same breath were of the view that supervisors, do not know how to prove their cases, and that they do not have the requisite competencies in conducting disciplinary related investigations and that they cannot handle their disciplinary roles as complainants.

The above appears contradictory since the same chairpersons are in most cases supervisors, and yet they are the ones indicated as not having the necessary skills and competencies in conducting investigations and do not know how to handle their roles as complainants.

It appeared that much effort and attention through training should be placed in addressing the very shortcoming with the supervisors that of-

- Conducting disciplinary related investigations and handling their roles complainants.

The third research objective dealt with “Compliance to Codes” and participants, the study revealed as demonstrated in figure 4.5, that-

A large proportion of respondents agreed or strongly agreed with one statement (66.2%) whilst 51.5% remained neutral on two others and disagreed on one other statement. It is very clear that the majority of the participants would not necessarily know whether the CCMA confirmed the majority of cases that were referred or not in that they do not necessarily handle CCMA proceedings. This goes with their lack of knowledge whether disciplinary related outcomes were consistent with previous cases. The lack of knowledge on the part of the supervisors further is resultant in disciplinary hearings not being completed in the required time, in most cases.

The fourth research objective dealt with “Awareness to Disciplinary Codes” where just over half (51.52%) of the participants agreed and strongly agreed that these policies were communicated to staff.

The fifth research objective dealt with “Role Players Understanding their Roles”, where it is revealed that-

A large proportion of respondents (about 65%) agreed or strongly agreed with all the statements.

A small proportion representing (about 35%) remained neutral.

It can be seen that complainants and chairpersons understand their roles as provided for by their respective disciplinary codes, however, it equally appeared that the very same group of respondents (complainants) in particular, whose positions in the organisations are those of supervisors, do not execute these roles as expected, since they understand them.

The logical conclusion is that they do not have the requisite skill, and training in particular to enable them to adequately execute this role.

5.7 Major Aspects of the literature reviewed

The literature reviewed and relevant case law has placed on record compliance to the provisions of disciplinary codes and procedures and that such disciplinary codes and procedures should advocate for adherence to fair procedures. This includes the roles and participation of those initiating and chairing them.

5.8 Challenges

At the instance of the new statistician, the survey questionnaire had to be revised and rephrased in order to give meaning to the expected answers which would inform the conclusions drawn. I had to move jobs, and that also bore strain to my studies.

5.9 Research Methodology

The final sample of three hundred (300) line managers and supervisors was taken for which one hundred and fifteen 115, constituting 38% of the total sample, responded to the survey questionnaire. The said data was collected by means of a survey self- designed survey questionnaire that was e-mailed to all the identified participants, who also e-mailed them back.

A face and content pilot on the survey questionnaire was conducted with few Human Resources Managers as a result of this pilot, few changes were made to some wording on the questionnaire.

The data collected was analysed through the utilisation of the scientific method SPSS which determined the internal validity and reliability of the domains and variables studied.

The responses to the questions were then analysed to determine whether all the identified line managers had different opinions or differed significantly when comparing all responses to a particular domain, and it transpired that the results were significant.

5.10 Findings and Observations

Guidelines or 'procedure manuals' to assist chairpersons in arriving at conclusive findings and to judge the appropriateness of the sanctions commensurate with disciplinary infractions may be suggested. This would be in accordance with the view expressed by Barbieri (2006) that compliance with the Code of Good Practice as contained in the LRA, No 66 of 1995, would eliminate claims to procedural fairness.

5.11 The resulting Status of the knowledge in the field

The knowledge in this particular field has been enhanced by the contribution made by the findings as encapsulated in chapter four of this work, in that firstly, both employees, line managers and supervisors will benefit from the knowledge in as far as it relates to the implementation of their various disciplinary codes and procedures at their various institutions. Secondly, everybody affected by the study will understand and appreciate the practical implications these policies and the knowledge it requires of certain basic legal principles applicable to the Employment Relations field as a specialisation.

Thirdly, basic training should be provided in order to be able to apply all the relevant principles consistently and fairly in order to advance procedural justice in the working environment and that it is prudent to keep abreast of development since the field itself is not static and changes continuously over time.

Lastly, the system will instil confidence in employees if they observe that there is organisational justice in totality which is not only limited to procedural justice.

5.12 Future Research possibilities

It is recommended that future studies or a similar study be conducted to determine whether a similar type of analysis is prevalent in other institutions or that the situation is different.

It is recommended that future related studies should focus on the influence and level of decision makers in meting out disciplinary sanctions, and whether their role in their participation in disciplinary related processes is not compromised and or undermined by those taking such decisions.

One important facet or inherent principle of disciplinary codes and procedures is that often it is indicated that discipline is a management function and it is therefore

recommended that future studies be conducted to determine whether this role still exists or whether has it being eroded by the outsourcing practice in this regard.

5.13 Recommendations

The recommendations in this study covers the observations made and that may result in specific actions being carried out as a result of findings arrived at in this study, the resulting status of the knowledge in the field and future research possibilities.

It is recommended that training in general be provided to middle and senior management levels on the management and administration of discipline, with respect to-

- (i) initiating and,
- (ii) chairing disciplinary enquiries for chairpersons and supervisors since their roles are interchangeable.
- (iii) Capacitation on CCMA proceedings as follow through from disciplinary proceedings.

A further study be conducted with a view of understanding why a group of respondents (complainants) in particular, whose positions in the organisations are those of supervisors, do not execute their roles as expected, moreover when they understand them.

5.14 Conclusion

This chapter, (chapter five), provided an exposition of the research data collected, analysed and research findings regarding the extent to which the research objectives have been addressed. Chapter four provided a detailed analysis of the

above and presented some observations and recommendations that could be pursued further in this regard.

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TABLE OF STATUTES, CHARTERS AND CONVENTIONS

1. South African Statutes

Constitution of the Republic of South Africa 108 of 1996.

Employment Equity Act 55 of 1998.

Labour Relations Act 66 of 1995.

APPENDIX A

SURVEY QUESTIONNAIRE

Respondent Number					
For office use only	V1	1	2	3	4

Dear respondent

Thank you for your willingness to complete this survey. The purpose of the survey is to determine your perceptions of service value in handling disciplinary enquiries. The survey should not take more than 10 minutes to complete. This is an anonymous and confidential survey. You cannot be identified and the answers you provide will be used for research purposes only.

Please answer all the questions. There are no right or wrong answers. We are interested in understanding your perceptions of service value in handling disciplinary enquiries.

Section 1. The following questions relate to your biographical information.

Race:

White		Black		Coloured		Indian	
-------	--	-------	--	----------	--	--------	--

For office use only		
V2		5

Sex:

Male		Female	
------	--	--------	--

For office use only		
V3		6

Age:

20-24		25-29		30-34		35-39		40-44		45+	
-------	--	-------	--	-------	--	-------	--	-------	--	-----	--

For office use only		
V4		7

Length of service (in years):

1-5		6-10		11-15		15+	
-----	--	------	--	-------	--	-----	--

For office use only		
V5		8

Management level:

Top		Senior		Middle		Lower	
-----	--	--------	--	--------	--	-------	--

For office use only		
V6		9

Highest level of formal Education

Matric		Diploma/Certificate		Bachelor Degree		Postgraduate degree	
--------	--	---------------------	--	-----------------	--	---------------------	--

For office use only		
V7		10

Section 2. Have you ever received training in disciplinary hearings?

Yes, I did	
No, I did not	

If your answer is 'No', please do not continue further.

For office use only		
V2		5

Section 3. The following statements relate to ensuring compliance to disciplinary codes and procedures as practised by your institution. . Please indicate your level of agreement with each of the statements below by ticking the appropriate box for each statement.

	Strongly agree	Agree	Neither agree or disagree	Disagree	Strongly disagree	For office use only		
The code advocate for an investigation to determine whether there are grounds for disciplinary action.	1	2	3	4	5	V3		6
The investigation is carried out in a formal enquiry.	1	2	3	4	5	V4		7
The employee is usually informed of the allegations in the form and language that he/she can reasonably understand.	1	2	3	4	5	V5		8
The employee is allowed an opportunity to state a case in response to the allegations.	1	2	3	4	5	V6		9
The employee is given a reasonable time to prepare a response to the allegations.	1	2	3	4	5	V7		10
The employee is afforded assistance of a trade union official or fellow employee.	1	2	3	4	5	V8		11
The employer communicates the decision taken after the enquiry.	1	2	3	4	5	V9		12
The employer furnishes the employee with written notification of that decision.	1	2	3	4	5	V10		13

Section 4. The following statements relate to the level of skills role players have in disciplinary procedures.

	Strongly agree	Agree	Neither agree or disagree	Disagree	Strongly disagree	For office use only		
Disciplinary chairpersons/ presiding officers have the requisite skill to preside.	1	2	3	4	5	V11		14
The chairpersons have attended formal training.	1	2	3	4	5	V12		15
All supervisors have the requisite skill and competencies to handle their disciplinary roles as complainants.	1	2	3	4	5	V13		16
Supervisors have the competencies in conducting disciplinary related investigations.	1	2	3	4	5	V14		17
Supervisors know how to prove their cases during disciplinary hearings.	1	2	3	4	5	V15		18

Section 5. The following statements relate to the level of compliance to disciplinary codes and procedure.

	Strongly agree	Agree	Neither agree or disagree	Disagree	Strongly disagree	For office use only		
Disciplinary hearings were mostly completed in the required time.	1	2	3	4	5	V16		19
Disciplinary related outcomes were mostly consistent with previous cases.	1	2	3	4	5	V17		20
The alleged offender was mostly informed timeously.	1	2	3	4	5	V18		21
The CCMA mostly confirmed the disciplinary outcomes of those that were referred.	1	2	3	4	5	V19		22

Section 6. The following statement relates to the extent of staff awareness on disciplinary codes.

	Strongly agree	Agree	Neither agree or disagree	Disagree	Strongly disagree	For office use only		

The majority of the employees in the organisation are aware of the disciplinary code and procedures.	1	2	3	4	5	V20		23
--	---	---	---	---	---	-----	--	----

Section 7. The following statements relate to the role players understanding of their roles in disciplinary proceedings.

	Strongly agree	Agree	Neither agree or disagree	Disagree	Strongly disagree	For office use only		
Chairpersons understands their role as provided for by the code.	1	2	3	4	5	V21		24
Complainants understands their role as provided for by the code.	1	2	3	4	5	V22		25
The roles specified in the codes are clearly defined.	1	2	3	4	5	V23		26

I wish to thank you for having participated in this research and your completion of this questionnaire.

APPENDIX B

University of Pretoria
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0018

21 July 2017

REPLY: REQUEST TO PARTICIPATE IN AN ACADEMIC RESEARCH STUDY

Student: Maleho Moses Lekgela

Department: Human Resource Department, University of Pretoria

Title: **DISCIPLINARY CODES AND PROCEDURES: A COMPARATIVE STUDY AT
THREE SOUTH AFRICAN UNIVERSITIES**

A	Dr. P. Smit
	Study Leader: MPhil: Labour Relations Management
	Department of Human Resources Management
	University of Pretoria
cc	Prof K. Stanz
	Head of Department
	University of Pretoria

- Hereby my consent to participate in the study on a voluntary basis
- I have read and understand the information provided

Name in print	
Signature	
Date	

Please return to moses.lekgela@up.ac.za before the 3rd May 2012.
Thank you.

APPENDIX C

CHAPTER 6

ANNEXURES TO THE DISCIPLINARY CODE

ANNEXURE A: GUIDELINES FOR TRANSGRESSIONS AND DISCIPLINARY MEASURES

NO	TRANSGRESSION	DESCRIPTION	GUIDELINES	DISCIPLINARY MEASURE
1.	ATTENDANCE AND OBSERVANCE OF WORKING HOURS		Absence from service without permission will be unpaid.	
1.1	Desertion	Absence from work for five (5) and more consecutive working days without any notification to the University.	Investigate circumstances of his/her absence, stop salary and in accordance with the policy, regulations and conditions of service, the employee's service must be deemed to be terminated. If, however, the employee returns and tenders his/her services, a post desertion inquiry must be held. If, in view of the circumstances, acceptable reasons are furnished for the absence, the employee may be reinstated and, if appropriate, disciplinary action may be initiated upon reinstatement.	
1.2	Absence without permission.	Absent from work for at least one to four working days.	First transgression Second transgression Third transgression	Written warning Final warning Dismissal
1.3	Failing to inform management in good time of absence.	Failing to inform direct supervisor of leave, sick leave or of any other reason for the extension of the aforesaid.	First transgression Second transgression Third transgression	Written warning Final warning Dismissal

1.4	Poor observance of working hours.	Reporting for work late or leaving early.	First transgression Second transgression Third transgression	Written warning Final warning Dismissal
1.5	Leaving premises or place of duty while on duty without permission.	Disappearance from workplace without permission.	First transgression Second transgression Third transgression	Written warning Final warning Dismissal
2.	WORK PERFORMANCE			
2.1	Negligence, neglect, indifference, unreliability, poor co-operation, sleeping and lack of interest.	Failure to carry out duties diligently or at all, due to the aforesaid.	First transgression Second transgression Third transgression	Written warning Final warning Dismissal
2.2	Poor work performance (this is not a form of misconduct).	Continued output of work of a low quality as a result of the incapacity of an employee to comply with the requirements of the post.	See Schedule 8, items 8 & 9 of the Labour Relations Act 1995, as amended. (See also Performance Management.)	
3.	DISHONESTY			
3.1	Dishonesty or attempted dishonesty.	Any dishonesty or attempted dishonesty including conspiracy, theft, unauthorised possession of property, bribery, fraud, corruption, forgery or giving false or misleading statements to anybody.	First transgression	Dismissal

3.2	Abuse of sick leave.	Misuse of sick leave for other purposes than recuperation or medical treatment.	First transgression	Dismissal
3.3	Non-disclosure/misrepresentation of relevant information.	Failure to declare previous convictions, a record of misconduct or chronic ill health before employment. Non-disclosure of direct or indirect outside interests/ sources of income or gifts and benefits received.	First transgression	Dismissal
3.4	Misuse of position.	Misuse of position to promote personal interests.	First transgression	Dismissal
3.5	Competing interests/conflict with the interests of the University.	E.g. doing extra work as defined in the Regulations for Extra Work (R 386/96) without permission.	First transgression	Dismissal
4.	OFFENCES TO THE PERSON OR DIGNITY OF OTHERS			
4.1	Rudeness, insolence, impoliteness, the use of foul language, making disparaging remarks and making improper or indecent gestures at a supervisor, a colleague or any other person.	Abusive behaviour that may upset relationships or injure the dignity of others.	First transgression Second transgression	Final warning Dismissal
4.2	Harassment, including sexual, religious, or racial harassment.	Unwanted deliberate and subtle physical and psychological harassment of others by innuendoes or physical acts or	First transgression	Dismissal

		otherwise belittling his/her person.		
4.3	Assault, attempt or a threat to assault a person or fighting.	Physical or verbal attack on a person.	First transgression	Dismissal
4.4	Unfair discrimination.	Promoting or engaging in hate speech, incitement or being abusive or engaging in discriminatory behaviour based on <i>inter alia</i> race (including racist jokes), gender, creed, political beliefs or sexual orientation.	First transgression	Dismissal
4.5	Skylarking or horseplay.	Conduct that has a detrimental effect on the maintenance of order, health, safety and discipline.	First transgression Second transgression	Final warning Dismissal
4.6	Commission of a crime in terms of South African law.	Performance of an act which is a crime in terms of South African law and where such act relates to the employer/ employee relationship or poses a threat to the interests of the University.	First transgression	Dismissal
5.	ALCOHOL OR DRUG-RELATED TRANSGRESSIONS OR SUBSTANCE ABUSE			
5.1	Being under the influence of drugs/ alcohol while on duty.	Being under the influence of drugs/ alcohol while on duty.	First transgression Second transgression Third transgression	Written warning Final warning Dismissal
5.2	Unauthorised possession or consumption of drugs/alcohol while on duty.	Unauthorised possession or consumption of drugs/alcohol while on duty.	First transgression Second transgression Third transgression	Written warning Final warning Dismissal

6.	UNACCEPTABLE BEHAVIOUR			
6.1	Improper behaviour damaging the interests of the University.	Improper behaviour which is potentially damaging to the interests or reputation of the University	First transgression Second transgression	Final warning Dismissal
7.	HEALTH, SAFETY AND ENVIRONMENT			
7.1	Contravention of any provision or regulation contained in any applicable legislation, internal policies, procedures and practices.	Contravention of any provision or regulation contained in any applicable legislation, internal policies, procedures and practices.	First transgression Second transgression	Final warning Dismissal
7.2	Possession of forbidden articles.	Unauthorised possession of a camera, firearm, weapon or other dangerous materials.	First transgression Second transgression	Final warning Dismissal
7.3	Traffic-related misconduct.	Reckless or careless driving or ignoring traffic rules, traffic signs and speed limits on University premises or public roads while driving a University vehicle.	First transgression Second transgression	Final warning Dismissal
8.	TRANSGRESSIONS RELATING TO PROPERTY AND ASSETS			
8.1	Revealing confidential information.	Without obtaining the prior approval of the University, revealing confidential information he/she has gathered or obtained as a result of his/her	First transgression	Dismissal

		duties for reasons other than the execution of his/her official duties.		
8.2	Copyright and patent infringements.	Commission of any act which infringes on copyright or any other immaterial property right and where such act may be detrimental to the University.	First transgression Second transgression	Final warning Dismissal
8.3	Unauthorised use/misuse of property or assets.	Use of the University's property, facilities, vehicles, electronic equipment and applications, or other assets without authorisation.	First transgression Second transgression	Final warning Dismissal
8.4	Damaging of property or assets.	Wilful or negligent damaging of property or assets of the University.	First transgression Second transgression	Final warning Dismissal
9.	RESISTING AUTHORITY			
9.1	Insolence/undermining authority.	A repudiation by an employee of his/her duty to show respect or to recognise the authority of superiors.	First transgression Second transgression	Final warning Dismissal
9.2	Insubordination/refusal to obey instructions.	Refusal to execute reasonable and fair orders or ignoring such orders, or inciting or intimidating other employees to act accordingly.	First transgression Second transgression	Final warning Dismissal
9.3	Intimidation.	Directly or indirectly influencing others to engage in disorderly conduct on the University's premises.	First transgression Second transgression	Final warning Dismissal

Disciplinary Code

Annexure C to the Conditions of Service

Approved by the Employment Conditions Committee of Council on
11 November 2005

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Disciplinary Code

1. PREAMBLE

- 1.1 This code sets out a schedule of offences indicating the disciplinary action that will normally be applied, but it must be borne in mind that the schedule provides only guidelines.
- 1.2 Depending on the circumstances of a particular case, any offence may warrant a more or a less severe penalty than that laid down.
- 1.3 The job description of an alleged offender, as well as the context within which an offence is committed, must always be borne in mind, as must the provisions of any relevant policies that may have a bearing on the matter.
- 1.4 The list of offences is not exhaustive and unforeseen matters will create new precedents over time.
- 1.5 An employee who is found guilty of committing an offence not specifically described in this code may nevertheless be disciplined in appropriate circumstances.

2. DEFINITIONS AND INTERPRETATION

- 2.1 In this Code, all words have the same meaning as those defined in the consolidated conditions of service, unless the context indicates otherwise.
- 2.2 “Code” means this Disciplinary Code, which forms part of all employees’ conditions of service.
- 2.3 Whenever a number of days is prescribed in this code, such number shall be calculated by excluding the first day, but including the last day, unless the last day falls on a Saturday, Sunday or an official Public Holiday, in which case the last day shall be the next day that is not a Saturday, Sunday or a official Public Holiday.
- 2.4 Paragraph headings are inserted for convenience only and cannot be used in the interpretation of this Code.
- 2.5 If any provision confers any right or imposes any obligation on any party, then notwithstanding that it is only in the interpretation clause, effect must be given to it as if it were a substantive provision.
- 2.6 Legend for abbreviations used in the schedule:

VW: Verbal warning

WW: Written warning

FW: Final warning

1

DC: Dismissal with notice

SD: Summary dismissal (Dismissal without notice)

3. ABSENTEEISM

(a)	Absenteeism without leave: 1day	WW	FW	DC
(b)	Absenteeism without leave: 2days	WW	FW	DC
(c)	Absenteeism without leave: 3days		FW	DC
(d)	Absenteeism without leave: 4days or more			DC
(e)	Abuse of sick leave	WW	FW	DC
(f)	Non-notification of absence	WW	FW	DC

4. TIME-RELATED MISCONDUCT

(a)	Arriving late at work	VW	WW	FW	DC
(b)	Unauthorised absence form workplace	VW	WW	FW	DC
(c)	Leaving workplace without permission	VW	WW	FW	DC
(d)	Leaving workplace before closing time	VW	WW	FW	DC
(e)	Unauthorised breaks during work	VW	WW	FW	DC
(f)	Receiving unauthorised visit during working time	VW	WW	FW	DC
(g)	Unauthorised occupation of other employees' time (e.g. selling goods, collection lists)	VW	WW	FW	DC

(h) Passing time idly, loafing (failing to complete tasks) VW WW FW DC

5. DISORDERLY CONDUCT

5.1 Insubordination and abusive behaviour

(a) Insolence or insubordination to senior employee FW DC

(b) Unwillingness or refusal to accept or execute lawful instruction from person in authority FW DC

(c) Contravenes or fails to comply with the University's conditions of employment, written agreements with trade unions, operating regulations, security measures, codes, rules and statutory requirements WW FW DC

(d) Refusing to work agreed overtime WW FW DC

(e) Horseplay WW FW DC

(f) Injury to others due to horseplay FW DC

(g) Abusive/obscene language WW FW DC

(h) Threats of violence DC

(i) Assault/attempt to assault SD

(j) Fighting SD

(k) Grossly offensive behaviour SD

(l) Riotous behaviour FW SD

(m) Inciting others to commit offence SD

(n) Victimization/intimidation FW SD

3

(o) Harassment FW DC

(p) Indecency WW FW DC

(q) Unauthorised possession of dangerous weapon

FW DC

(r) Behaviour which could tarnish the University's image or relationships

WW FW DC

(s) Improper/disgraceful conduct FW DC

5.2 Unacceptable behaviour

(a) Smoking in non-smoking area (In the case of a dangerous non- smoking area (e.g. in the presence or proximity of flammable material) a first offence warrants DC) VW WW FW DC

(b) Unauthorised placing of posters/notices VW WW FW DC

(c) Sleeping on duty (In the case of a Security Guard a first offence warrants SD) VW WW FW DC

(d) Gambling on duty on University's premises VW WW FW DC

(e) Conducting private business in working hours (Subject to the provisions of the University's Private Work Policy) WW FW DC

(f) Failing to report an accident at work FW DC

(g) Poor maintenance of vehicles, machines or equipment WW FW DC



(h)	Intentional interference with or obstruction of other employees in		FW	DC	
(i)	performance of their duties	WW	FW	DC	SD
(j)	Minor negligence	Gross	WW	FW	
(k)				DC	
(l)	negligence Dereliction of duty			DC	
	Performing private work without Permission				
(m)	Performing private work that amounts to a conflict of interest (Such as an academic employee who teaches the same course at the University as at a private college)		FW	DC	

5.3 Dishonesty

(a)	Bribery/corruption				SD
(b)	Fraud/forgery				SD
(c)	Theft				SD
(d)	Misuse of University's funds				SD
(e)	Unauthorised possession of University property or of another employee's or visitor's property	WW	FW		SD
(f)	Disclosure of confidential information		FW	DC	
(g)	Giving false statements		FW	DC	

6. MISUSE OF UNIVERSITY PROPERTY

(a)	Willful loss of property	WW	FW	DC
	5			
(b)	Willful abuse or misuse of property		FW	DC
(c)	Damage of property through negligence		FW	DC
(d)	Willful damage of property		FW	DC
(e)	Wasting of resources/materials	WW	FW	DC
(f)	Driving vehicle without permission		FW	DC
(g)	Negligent or reckless driving		FW	DC
(h)	Speeding	WW	FW	DC

7. VIOLATION OF SAFETY AND HYGIENE RULES

(a)	Minor infringement of health, hygiene and safety rules and regulations	WW	FW	DC
(b)	More serious infringement of health, hygiene and safety rules and regulations		FW	DC
(c)	Gross violation of health, hygiene and safety rules and regulations			DC
(d)	Failure to wear specific personal protective clothing		FW	DC

8. ALCOHOL OR DRUGS MISCONDUCT

Drugs do not only mean illicit drugs but also prescription drugs or other hallucinogenics obtained illicitly (also see the University's policy for dealing with substance abuse).

(a)	In unauthorised possession of alcohol/drugs at the workplace			DC
(b)	Arrival at work under influence of	WW	FW	DC

7

alcohol/drugs

(c) Being under the influence of alcohol or drugs during working hours

FW DC

(d) Consuming alcohol in any form in the workplace (except sanctioned social occasions)

FW DC

(e) Inability to work properly as a result of drugs or alcohol

WW FW DC

(f) Driving a University vehicle while under the DC influence of alcohol or drugs

(a) Participation in an unprotected strike/industrial action DC

(b) Participation in an unprotected secondary (sympathy) strike / industrial action DC

(c) Participation in unprotected picketing DC

(d) Participation in unprotected protest action DC

(e) Inciting unprotected activity FW DC

(f) Damaging University property or causing injury to employees during strike action DC

(g) Trashing University property during industrial action (including but not limited to overturning rubbish containers) FW DC

9. INDUSTRIAL ACTION

Participation in an unprotected strike/industrial action DC

(b) Participation in an unprotected secondary (sympathy) strike / industrial action DC

(c) Participation in unprotected picketing DC

(d) Participation in unprotected protest action DC



(e) Inciting unprotected activity	FW	DC
(f) Damaging University property or causing injury to employees during strike action		DC
(g) Trashing University property during industrial action (including but not limited to overturning rubbish containers)	FW	DC

APPENDIX E

DISCIPLINARY PROCEDURE

MADE AND ENTERED INTO BY AND BETWEEN

**ADMINISTRATIVE AND LIBRARY STAFF ASSOCIATION
(hereinafter referred to as “ALSA”)**

AND

**ACADEMIC STAFF ASSOCIATION UNIVERSITY C
(hereinafter referred to as “ASAWU”)**

AND

**MUNICIPALITY, EDUCATION, STATE, HEALTH AND
ALLIED WORKERS’ UNION
(hereinafter referred to as “MESHAWU”)**

AND

**TECHNICAL STAFF ASSOCIATION
(hereinafter referred to as “TSA”)**

**(The above associations/trade unions hereinafter referred to collectively as
the “Joint Staff Forum”)**

AND

**NATIONAL EDUCATION HEALTH AND ALLIED WORKERS’ UNION
(hereinafter referred to as “NEHAWU”)**

AND

**UNIVERSITY “C”
(hereinafter referred to as “the University”)**

1. INTRODUCTION

- 1.1 Following protracted negotiations between the parties to this agreement, it has been agreed by each of them that the disciplinary procedure set out in this agreement shall be applicable with effect from 1 January 2000.
- 1.2 It is not intended that these guidelines be followed explicitly in each case, since it is recognised that variations in detailed procedure may be required depending on the specific cases being considered. However, the spirit and general principles to be followed should be adhered to as far as possible in all cases.

2. APPLICATION

- 2.1 The disciplinary procedure set out in this agreement applies to all employees of the University, whatever their status, designation or function.
- 2.2 When any employee believes that another employee has breached the University's Disciplinary Code (cf. Annexure 1) and wishes to lay a formal complaint in that regard, he or she must –
- 2.2.1 if the complaint is against a member of the academic staff, refer it to that person's head of school, or, if the complaint is against the head of that school, to the dean of the faculty within which the school falls, or, if the complaint is against the dean, to a Deputy Vice-Chancellor, or if the complaint is against a Deputy Vice-Chancellor, to the Vice-Chancellor, or, if the complaint is against the Vice-Chancellor, to the Chairperson of Council;
- 2.2.2 if the complaint is against a member of the support services staff, refer it to the head of the division within which that person is employed, or, if the complaint is against the head of that division, to the Registrar, or, if the complaint is against the Registrar to the Vice-Chancellor;
- 2.2.3 if –
- 2.2.3.1 the complaint relates to conduct which may constitute a crime; or
- 2.2.3.1 the person against whom the complaint is to be laid does not fall within a line function; or

- 2.2.3.2 the complainant does not know in which school, faculty or division the person against whom the complaint is to be made is employed,
- refer it to the head of security.
- 2.2.4 If any of the persons to whom a complaint ordinarily should be referred is not available or is an interested party, the complaint must be referred to his or her superior.
- 2.3 The referral of the complaint must take place within 30 days of the date upon which the conduct complained of first came to the notice of the person making it. This 30 day period shall be extended automatically if the complaint is initially referred to the wrong person and only reaches the person designated under section 2.2 (above) after the expiry of the 30 day period.
- The Head of School, Dean or Divisional Head who receives the complaint, as the case may be, will decide whether it is to be dealt with within the school, faculty or division concerned or referred to a Central Disciplinary Enquiry having due regard to 2.4. If the complaint is referred to the Security Department it will, following investigation by that department be referred to the University's Honorary Disciplinary Advisor, who will decide where it should be handled.
- 2.4 If the accused employee has not received a final written warning which is still current and is in respect of a related offence,
- 2.4.1 an alleged minor offence (see footnote 1) will be dealt with internally in his or her area of employment; and
- 2.4.2 an alleged serious offence (see footnote 2) will be referred to a Central Disciplinary Enquiry.
- 2.4.3 If however, the authority receiving the complaint considers it likely that an internal enquiry might, having regard to the extent of prior knowledge and discussion of the allegations in question within the working environment of the employee concerned, result in a potentially unfair or otherwise improper enquiry, the allegation must, notwithstanding clause 2.4.1 above, be referred to a Central Disciplinary Enquiry.
- 2.4.4 The decision of the appropriate authority as to how and where the matter is to be handled, will be final and not open to dispute or challenge.
- 2.5 If the accused is already in receipt of a final warning in respect of a related offence, the complaint must be referred through the designated person

(c.f. 2.2.) for initial investigation and then to the Central Disciplinary Enquiry.

- 2.6 The authority to terminate the employment relationship is vested in the Central Disciplinary Enquiry.

3. NOTICE OF ENQUIRY AND CHARGES

- 3.1 Unless the enquiry is an informal one, notice must be given to the accused employee in writing not less than 7 clear working days prior to the scheduled date of the enquiry and must clearly state the time and place of the hearing and the nature and substance of the charges against him/her. The notice

1 Such offences would include poor timekeeping, absenteeism, minor negligence, disregard for safety regulations, the use of abusive language and minor infringements of the employment contract.

2 Such offences would include absconding from work, gross insubordination, assault, bringing the University into disrepute, malicious damage to property, the use of racially abusive language and material breaches of the employment contract.

must state clearly and fully the rights of the employee in such hearing, and must identify whether the hearing will be a school, faculty, or divisional hearing or a Central Disciplinary Enquiry. The notice period referred to may, for good reason, such as for example too short a time to prepare having regard to the nature of the allegations, be extended by the presiding chairperson.

- 3.2 The notice referred to in 3.1 above must be given to the accused employee within 60 working days of the date upon which the complaint relating to the conduct in question was laid. This period may however be extended by the presiding chairperson if there is a good reason to do so.
- 3.3 An accused employee who is a shop steward may be represented in disciplinary proceedings by a union official. Other accused employees may be represented only by a fellow employee. No accused employee may be represented at a disciplinary hearing by a person who is qualified to practice as an attorney or advocate, whether or not that person is admitted to practice as such or practices as such in the ordinary course.
- 3.4 In the appropriate circumstances, and in the sole discretion of the appropriate University authority, an accused employee may be suspended on full pay pending the disciplinary hearing.
- 3.5 Unless, for reasons acceptable to the University authorities the employee is unable to attend it at the scheduled time, the disciplinary hearing will proceed as scheduled in the notice served on him/her. Any request for postponement of the hearing must, unless it is impossible or impractical to do so, be received by the University authorities not less than 48 hours before its scheduled commencement time.

4. SCHOOL/FACULTY/DIVISIONAL HEARINGS

- 4.1 In any enquiry which is not, in terms of this procedure, referred to a Central Disciplinary Enquiry, that hearing may be conducted informally if, in the opinion of the Head of School, Faculty or Division to whom the complaint has been referred, the issue is one which is unlikely to result in more than a reprimand of, or counselling for the accused employee.
- 4.2 In that event, at least one full working days' notice of the hearing must be given and the employee will be entitled to be assisted by a fellow-employee. The chairperson may at his or her discretion appoint an observer who shall act solely in that capacity and record the proceedings if necessary.
- 4.3 If however, the complaint is considered to be one requiring formal disciplinary action, a hearing must, on proper notice to the accused employee as provided for in clause 3.1 above, be convened at which evidence of the complaint will be presented. The maximum penalty which

may be imposed at the conclusion of any such hearing, is a final written warning.

- 4.4 Should a party require an interpreter, it shall procure the services of an interpreter acceptable to the other party.

5. DISCIPLINARY COMMITTEE HEARING

SUPERSEDED BY ANNEXURE 4

6. RECORDS OF DISCIPLINARY ACTION

6.1 **SUPERSEDED BY ANNEXURE 4 s. 14.2 and 14.3**

- 6.2 The records of the disciplinary proceedings against any employee and of the findings and sanction, if any, against him/her will be maintained by the University in the official personal file (held by the Faculty/Divisional HR Manager) of the employee concerned. At his or her written request, the university will make such content of the file available for inspection and copying by him or her or his or her representative. Where the penalty is a written warning or final written warning, it will remain valid for a period of 12 months and may, within that period, be taken into account only in relation to disciplinary proceedings against the same employee for a related offence. After a warning has expired, it remains on the employee's disciplinary record, and remains relevant as part of the total history of employment. An expired warning cannot convert a subsequent non-dismissible offence to a dismissible offence. But if the employee subsequently commits a dismissible offence, the employer, in deciding whether it is fair and reasonable to terminate for that offence, is entitled to take the employee's entire employment history into account. This includes the fact that one or more previous (expired) warnings exist. Warnings which relate to offences which can only occur once in a calendar year, (such as those which may relate to the invigilation of examinations or the registration process), will, notwithstanding what has been stated herein, remain valid and effective for 24 months. The use by an employee of the University's disciplinary records for purposes other than those contemplated in this agreement or the Labour Relations Act will constitute grounds for the institution of grievance and/or disciplinary procedures against such employee.

7. POST-ENQUIRY PROCEEDINGS

- 7.1 There is no internal appeal procedure in force or available to any employee in regard to any disciplinary action against him or her.

7.2 **EXPIRED**

7.3 After the expiry of the period referred to in paragraph 7.2 above, unless otherwise agreed in writing between the parties, if an employee is dismissed at the conclusion of the procedures defined herein, and wishes to challenge either the finding or that penalty, he or she may take such action as may be prescribed in terms of the Labour Relations Act for that purpose.

7.4 In any case where the penalty imposed on the accused employee is anything less than dismissal, and the employee wishes to challenge the finding and/or penalty, he or she may refer the dispute to the Commission for Conciliation Mediation and Arbitration, to be dealt with in terms of the Labour Relations Act.

8. THIS AGREEMENT OVERRIDES ANY AND ALL PREVIOUS AGREEMENTS ON THE SAME SUBJECT MATTER

The terms of this agreement insofar as they relate to subject matter canvassed in collective agreements between two or more of the parties to this agreement, override those agreements.

9. TERMINATION

A party to this agreement may terminate the agreement insofar as it relates to it on 3 months written notice to the other parties provided that:

9.1 it shall continue to be of force and effect as between the remaining parties;
and

9.2 this agreement shall, notwithstanding the cancellation, be applicable to any disciplinary action already instituted in respect of a member of the party which has terminated the agreement as at the date of such termination.

ANNEXURE '2'

IMSSA STANDARD ARBITRATION AGREEMENT: DISMISSALS

EXPIRED

ADDENDUM TO DISCIPLINARY PROCEDURE

AGREEMENT

The parties who are signatories to this addendum hereby agree the following:

1. **EXPIRED**
2. **EXPIRED**

ANNEXURE '4'

1. **AGREEMENT**

The parties hereby agree to the following amendment to the Disciplinary Procedure entered into on 6 April 2000.

2. **AMENDED PROCEDURE**

This shall supersede and replace section 5 “Disciplinary Committee Hearing” in its entirety.

3. **CONSEQUENTIAL CHANGES**

Any consequential changes required in the remainder of the Disciplinary Procedure to give effect to this amendment shall be mandatory.

4. **CENTRAL DISCIPLINARY ENQUIRY**

4.1 This amended procedure shall be invoked in all cases referred to a Central Disciplinary Enquiry irrespective of the sanction that is being requested.

4.2 In such cases a presiding officer shall determine whether, based on the evidence presented in a hearing and by reference to the criterion of fairness;

4.2.1 action should be taken against the employee arising out of the manner in which the employee has breached the disciplinary code or has discharged or failed to discharge his/her duties as such; and

4.2.2 if so, what that action should be.

4.3 The presiding officer shall have the power to make an award, which s/he deems appropriate and which may prescribe a sanction or remedy.

4.4 The presiding officer shall have the power to decide upon the procedure, which s/he shall follow at the hearing.

4.5 The presiding officer shall, on application by one or other of the parties, have the discretion to make an award as to costs which s/he deems appropriate in the event of the non-appearance or late appearance of a party at the hearing, or in the event of the cancellation, postponement or adjournment thereof.

5. CHOICE OF PRESIDING OFFICER

The parties shall request the Director of the Arbitration and Mediation Service of South Africa (AMSSA) to appoint a presiding officer from the AMSSA panel.

6. VENUE

Hearings will take place on University premises at a date and time determined by the University Industrial Relations Office.

7. REPRESENTATION

The parties shall not be entitled to be legally represented.

8. COSTS

The University shall bear the costs of the presiding officer and AMSSA.

9. ATTENDANCE AT HEARINGS

Only the employee with his/her representative and the employer with his/her representative shall be entitled to attend the hearing. Witnesses may be called by the employee and/or the employer.

10. EX PARTE HEARINGS

The hearing may proceed in the absence of any party who, after due notice, fails to be present or fails to obtain an adjournment. An award shall not be made solely on the default of the party. The presiding officer shall require the attending party to submit evidence to prove its case.

11. RECORD OF PROCEEDINGS

The hearing shall be recorded mechanically on audio tape by the University. A copy of the tapes will be provided, on request, to the employee. Any party who wishes to make use of a transcription of the tapes shall bear the cost of the transcription and shall provide a copy of such transcription at its cost to the other party.

12. INTERPRETER

Should a party require an interpreter, it shall procure the services of an interpreter acceptable to the other party. In the event of the parties failing to reach agreement as to an acceptable interpreter, the parties shall approach AMSSA to appoint one.

13. INSPECTIONS

Whenever the presiding officer deems it necessary, s/he may make an inspection in connection with the subject matter of the hearing after notice to the parties who may, if they so desire, be present at such inspection.

14. **AWARD**

- 14.1 Subject to s7 of the Disciplinary Procedure (post-enquiry proceedings) the award of the presiding officer shall be final and binding.
- 14.2 It shall be rendered verbally by the presiding officer within 1 (one) working day of the end of the hearing.
- 14.3 The award shall be confirmed in writing and shall be accompanied by succinct written reasons for the award, within 20 (twenty) working days from the date of the last day of the hearing.
- 14.4 The parties shall accept as legal delivery of the award the simultaneous notification by AMSSA or the presiding officer to each party's nominated fax number that the award is available for collection at the AMSSA offices.

15. **RELATIONSHIP WITH AMSSA**

The parties agree that their relationship with AMSSA and the presiding officer shall be governed by the Standard AMSSA Conditions of Service which may be amended from time to time.

CODE OF CONDUCT

Definition of Misconduct

A member of the staff of the University shall be deemed guilty of misconduct if he or she

- (a) contravenes or attempts to contravene any standing order, regulation, rule or instruction of the University;
- (b) refuses to comply with any lawful order or request or acts in a manner contradictory to such order or request or commits insubordination by word or deed;
- (c) wilfully or negligently does not fulfil his or her duties in a proper manner;
- (d) is absent from his or her office, workplace or duty without leave or a valid reason or wilfully without leave or valid reason repeatedly fails to present a lecture or practical class if it is his or her duty to present such lecture or practical class;
- (e) is guilty of conduct that has, or could as a reasonable possibility have, any of the following consequences, where such consequence was foreseen or foreseeable as a reasonable consequence at the time when he or she was guilty of such conduct:
 - (i) has a detrimental effect on the good name of the University;
 - (ii) has a detrimental effect on the maintenance of order and discipline at the University or puts it at risk;
 - (iii) has a detrimental effect on the orderly course of teaching and research at the University or puts it at risk;
- (f) without detracting from the generality of paragraphs (a) to (e) -
 - (i) while on premises of the university or premises controlled by the university or, within the context of the university is guilty of contravening or undermining the fundamental rights of individuals;
 - (ii) performs an act which is a crime in terms of South African law and such act is to the detriment of the University, its staff or students;
 - (iii) without obtaining the prior approval of the employer, reveals confidential information he or she has gathered or obtained as a result of his or her duties for reasons other than the execution of his or her official duties, or uses such information for a purpose other than the execution of his or her official duties, whether or not he or she reveals such information;
 - (iv) commits any act which infringes on copyright or any other form of immaterial property law and such act is detrimental to the University;
 - (v) misappropriates or wilfully or negligently damages University property or uses or causes such property to be used in an improper or unauthorised manner;
 - (vi) interferes with or attempts to interfere with access to or egress from university or university-controlled premises or buildings;
 - (vii) trespasses on or occupies or attempts to trespass on or occupy, any university or university-controlled premises or building or parts thereof without authorisation or conducts himself or herself on such premises in any way that is unseemly or improper;
 - (viii) in any way infringes upon or attempts to infringe upon the freedom of movement of students, staff members or members of the public duly authorised to be present on university-controlled premises or in any other way acts in a derogatory, unseemly or improper way towards a student or staff member of the University or a member of the public duly authorised to be present who is on university or university-controlled premises,

- (ix) in contravention of the instructions of the South African law or decisions of the Council of the University or any other competent university authority possesses, distributes, buys, sells or is under the influence of any dependence-producing substance on university or university-controlled premises;
- (x) brings to, or houses or uses on University property any firearm, dangerous weapon or mock weapon (without prior permission).

SIGNED AT JOHANNESBURG ON THE _____ DAY OF _____ 2001.

For: ADMINISTRATIVE AND LIBRARY STAFF ASSOCIATION

_____ 1. Witness _____
_____ – Chairperson

For: ACADEMIC STAFF ASSOCIATION UNIVERSITY “C”

_____ 1. Witness _____
_____ – President

For: MUNICIPALITY, EDUCATION, STATE, HEALTH AND ALLIED WORKERS’ UNION

_____ 1. Witness _____
_____ – Chairperson

For: TECHNICAL STAFF ASSOCIATION

_____ 1. Witness _____
_____ - Chairperson

For: NATIONAL EDUCATION HEALTH AND ALLIED WORKERS’ UNION

_____ 1. Witness _____

For: UNIVERSITY “C”

_____ 1. Witness _____
_____ – University Industrial Relations Adviser

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RevisedDiscipProc2.doc
21 May 2002

APPENDIX F

2.3.3.1 Schedule 8 of the LRA: Code of Good Practice: Dismissal

Schedule 8 section 1 (1), stipulates that, “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.

(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.

(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 arbitrary action, employers are entitled to satisfactory conduct and work performance from their employees.

2. Fair reasons for dismissal

(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. Whether or not a dismissal is for a fair reason is determined by the facts of the case, and the appropriateness of dismissal as a penalty. Whether or not the procedure is fair is determined by referring to the guidelines set out below.

(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.

(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.

(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. Disciplinary measures short of dismissal

(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 larger business will require a more formal approach to discipline.

An employer's rules 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.

(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) 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

(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, wilful endangering of the safety of others, physical assault on 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.

(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.

(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

(1) Normally, the employer should conduct an investigation to determine whether there are grounds for dismissal. This does not need to be a formal enquiry. 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 trade union representative or fellow employee. After the enquiry, the employer should communicate the decision taken, and preferably furnish the employee with written notification of that decision.

(2) Discipline against a trade union representative 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.

(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.

(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.

6. Dismissals and industrial action

(1) Participation in a strike that does not comply with the provisions of Chapter IV 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.

(2) Prior to dismissal the employer should, at the earliest opportunity, contact a trade union official 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.