

SALGBC Disciplinary Code

Collective Agreement

Quick Reference Guide

Overview

This purpose of this document is to provide, managers, supervisors, employees, shop stewards and union officials with a Quick Reference Guide for the implementation of the Disciplinary Procedure Collective Agreement within the Municipality.

The Quick Reference Guide consists of a table that has been divided into five (5) columns.

Clause:

The clause contains the reference to the corresponding clause in the collective agreement

What:

Explains the action that has to take place

Who:

Explains who must take the action

When:

Explains the time references referred to in the collective agreement.

Notes:

Contains explanatory notes.

QUICK REFERENCE GUIDE FOR THE IMPLEMENTATION OF THE SALGBC DISCIPLINARY CODE COLLECTIVE AGREEMENT

Clause	What	Who	When	Notes
6.1	Accusation of misconduct is brought to attention of MM or his/her authorised representative in writing.	Person who witnessed the misconduct or who became aware of the incident	Within a reasonable period of time ¹	The accusation must be in writing
6.1	Investigate the accusation of misconduct	MM or his/her authorised representative	Within a reasonable period of time	MM or his/her authorised representative does not have any discretion as to whether to investigate a written allegation of misconduct. If the municipal manager or his/her authorised representative received a written accusation of misconduct, she/he <u>must</u> investigate it
6.1	Decide whether a <u>prima facie</u> ² case exists	MM or his/her authorised representative	Within a reasonable period of time after the investigation has been completed	
6.1	Decide whether disciplinary action should be instituted	MM or his/her authorised representative	Within a reasonable period of time after it was decided that a <u>prima facie</u> case exists	
15	The employer may, with the consent of the employee, request the Bargaining Council, an accredited agency or the Commission for Conciliation, Mediation and Arbitration to conduct arbitration into allegations about the conduct or capacity of an employee.	MM or his/her authorised representative	As soon as possible	<ol style="list-style-type: none"> 1. Section 188A of the LRA determines the procedure for such an application to the CCMA. 2. Section 138³ is applicable to the proceedings

¹ In *Union of Pretoria Municipal Workers and Isaac Mpho Marema v Stadsraad van Pretoria* (1992) 3 (12) SALLR 11 (IC) the Industrial Court *inter alia* laid down the following principle:-

“A disciplinary enquiry would ordinarily not be held promptly unless it commenced within days, or, at the outside, a few weeks after the commission of the alleged misconduct”

² “Prima facie” literally means “on the face of it”

³ Section 138 of the LRA contains the general provisions applicable to arbitration under the auspices of the CCMA

Clause	What	Who	When	Notes
6.2 en 6.3	Determine the seriousness of the alleged misconduct.	MM or his/her authorised representative	As soon as possible	If the possible sanction will be :- ▶ An oral or written warning refers to departmental enquiry ⁴ . ▶ suspension without pay, demotion or dismissal, refer to a disciplinary tribunal (DT)
6.4.1	If a DT, consider whether it will be appropriate to appoint a senior employee to act as Presiding Officer	MM or his/her authorised representative	As soon as possible	If this is not possible or desirable, any other suitably qualified ⁵ person may be appointed
6.4.1	Appoint Presiding Officer	MM or his/her authorised representative		It will be prudent to do the appointment in writing
6.4.2	If a DT, consider whether it will be appropriate to appoint an employee to act as Prosecutor	MM or his/her authorised representative		If this is not possible or desirable, any other suitably qualified ⁶ person may be appointed
6.4.2	Appoint prosecutor	MM or his/her authorised representative		It will be prudent to do the appointment in writing
6.5	Formulate the charges against the employee and issues the employee with a charge sheet	Prosecutor	Within 5 days of the appointment of the prosecutor	See clauses 6.5.1 to 6.5.9 regarding the detail that must be contained in the charge sheet
6.5.2	Determine date of the DT in conjunction with the Presiding Officer	Prosecutor	The disciplinary enquiry should commence on a date no less than 5 days or more than 15 days ⁷ calculated from the date of the charge sheet	The calculation of the time period will exclude the day on which the charge sheet was presented to the accused and inclusive of the last day. Saturdays, Sundays and public holidays will be excluded.

⁴ In a departmental enquiry the accused employee enjoys the same rights as she/he would have had before a disciplinary tribunal.

⁵ Suitably qualified is not defined in the agreement

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⁷ In clause 2 of the agreement days are defined as working days

Clause	What	Who	When	Notes
			unless postponement was granted	
6.5.8	Either party can request to have the Disciplinary Tribunal/Departmental Enquiry postponed to a later date.	Prosecutor or Accused		Agreement must exist
6.5.8	If no agreement can be obtained to postpone the DT apply to the Disciplinary Tribunal for an extension of the period	Prosecutor or Accused	As soon as possible	
6.5.9	Any prescribed timeframe in the agreement may be varied	Presiding Officer		Provided a return date is fixed and made certain.
7.1	Determine the procedure at the enquiry	Presiding Officer	At the start of the enquiry	Subject to the following: <ul style="list-style-type: none"> the rules of natural justice is observed in the conduct of the proceedings; the hearing is adversarial in nature and character; and the Presiding Officer must exercise care, proceed diligently and act impartially
10	The recording of the proceedings of the Disciplinary Tribunal/Departmental Enquiry	MM or his/her authorised representative		The mechanical recording must be kept in safe keeping by the employer and provided to the employee on request thereof
11	The proceedings may be conducted <i>in absentia</i>	Presiding Officer		Only if evidence can be provided that the charge sheet was properly delivered and that no good cause exist why the accused is not present
9.2	During the conduct of the enquiry the employee may make application for the recusal of the Presiding Officer	Accused	At the start of the proceedings	Such a request must contain the reasons why such a request is brought
7.2	Onus to start rests with the prosecutor and the burden to prove each and every allegation(s) on a balance of probability	Prosecutor	During DT	
7.3	Rights and obligations of the prosecutor	Prosecutor	During DT	See clauses 7.3, 7.3.1 en 7.3.2 for detail

Clause	What	Who	When	Notes
6.5.4	The employee may appoint a representative of choice who may be a fellow employee, shop steward, union official and if this is not possible or desirable, any suitably qualified person ⁸ .	Accused	Before the start of the proceedings	This right must be communicated to the accused in the charge sheet. The accused will therefore not be able to use the non availability of his/her representative as a reason for postponement
7.4	Rights of the accused	Accused and his/her representative	During DT	See clauses 7.4, 7.4.1 en 7.4.2 for detail
7.5	Powers of the Presiding Officer during the proceedings	Presiding Officer	During DT	See clauses 7.5, 7.5.1 tot 7.5.8 for detail
7.6	The Presiding Officer informs the employee in writing, of the findings of fact, sanction imposed and the reasons therefore.	Presiding Officer	Within 10 days of the last day of the Disciplinary Tribunal/Departmental Enquiry	<ol style="list-style-type: none"> 1. The calculation of the time period will exclude the day on which the enquiry was finalised and inclusive of the last day. Saturdays, Sundays and public holidays will be excluded. 2. Note that the determination must be provided to the Municipal Manager or his representative (not the prosecutor) and to the employee or his representative.
8.1	The employee may resign at any time from receiving the charge sheet and until or before the Presiding Officer comes to a finding.	Employee	Before the Presiding Officer comes to a finding	Provided that the employee consents in writing to the deduction of any money owed by him to the municipality from the monies payable to him by the employer ⁹ .
9.4	Determination of the Presiding Officer is final and binding on the employer			The employer therefore cannot appeal against the decision of the Presiding Officer
Appeal Procedure				
14.2	The employee may lodge an appeal, against	Employee	Within 5 days, of	The grounds of appeal must be

⁸ It seems as if the employee may be entitled to be represented by a legal practitioner.

⁹ Note that only money regarding his resignation or retirement may be deducted. Loss or damages may not be recovered.

Clause	What	Who	When	Notes
	the outcome of the Disciplinary Tribunal/Departmental Enquiry on the prescribed appeal form		receiving written notification of the disciplinary decision	clearly set out
14.3	Appeals will be heard by a management level above that of the Presiding Officer			In the case of final written warnings
14.3	Appeals will be heard by a higher level of management who does not exercise direct management control over the affected employee			In the case of dismissals and suspensions without pay
14.4	Either party may request that an impartial arbitrator hear the appeal. ()	1. MM or his/her authorised representative 2. Employee		1. There must however be agreement between the parties to use an impartial arbitrator 2. Arbitrator must be appointed from a panel appointed for this purpose.
14.5 & 14.10	Appeal is not a <u>de novo</u> hearing and the Presiding Officer determines the procedure	Presiding Officer		1. Appeal is limited to the grounds of appeal submitted with amendments thereto 2. Procedure to be used must be determined before the start of the proceedings
14.6	The Presiding Officer of the Disciplinary Appeal Tribunal shall have the power: <ul style="list-style-type: none"> to confirm or set aside any decision, determination or finding and to confirm, set aside or reduce any sanction imposed 	Presiding Officer		PO must use own discretion when coming to a finding ¹⁰ . See clause 14.11 of the agreement
14.7	The Presiding Officer must fix the date for the Disciplinary Appeal Tribunal that must take place within 10 days of his/her appointment and inform the parties of the date, time and venue of the enquiry.	Presiding Officer	Within 10 days of the appointment of the PO	
14.7	Appeal may be postponed	Presiding Officer		Only the PO may postpone the

¹⁰ The person exercising the discretion may not be subject to the direction, instructions or orders of another person or organ or be a slave to policy.

Clause	What	Who	When	Notes
				appeal hearing <u>after consultation</u> ¹¹ with the parties
14.8	Each party must submit a statement of case to the Presiding Officer and to each other.	Prosecutor and Accused or his representative	At least 2 days prior to the hearing	1. No further pleadings shall be exchanged unless otherwise agreed. 2. See clause 14.9 regarding the contents statement of case
14.12	The Presiding Officer informs the appellant in writing, of the determination as well as the reasons therefore.	Presiding Officer	Within 10 days of the last day of the Disciplinary Appeal Tribunal,	
Suspension Procedure				
13.1	The employer ¹² decides to, suspend the employee or utilise him temporarily in another capacity ¹³ pending the outcome of a DT	MM or his/her authorised representative		Period of suspension may not exceed three (3) months
13.2	Inform the employee in writing of the MM's intention to suspend	MM or his/her authorised representative	As soon as possible	
13.2	Conduct suspension enquiry in terms of the Summary Procedure	Presiding Officer		
7.7.5	The Presiding Officer deliver a determination, in writing to the MM or his/her authorised representative and the employee and his/her representative	Presiding Officer	Within ten (10) days of the last day of the hearing or submission of the last document to the Presiding Officer, if there was no hearing	1. The determination must contain the reasons for the decision 2. The calculation of the time period will exclude the day on which the enquiry was finalised and inclusive of the last day. Saturdays, Sundays and public holidays will be excluded.
13.3	Suspend employee for a fixed period that may not exceed a period of three (3) months	Presiding Officer		Suspension will take place with full remuneration

¹¹ "After Consultation" means that PO must give the employer and employee the opportunity to present a case before he/she comes to decision

¹² The employer in this instance can only be the council and it is therefore necessary that this power be delegated to the MM in order to prevent unnecessary confusion

¹³ Utilisation in another capacity may apparently be done without holding an enquiry. Utilisation in another capacity may not be for longer than three (3) months

Clause	What	Who	When	Notes
Summary Procedure				
7.7	Either party may request that the Summary Procedure be used to hear the case at the Disciplinary Tribunal/Departmental Enquiry	1. MM or his/her authorised representative 2. Accused or his representative	Before the start of the proceedings	There must be consensus
7.7.1	Presiding Officer confirm that the matter is ready for adjudication	Presiding Officer		
7.7.2	Determine the facts on which the parties agree and those on which they disagree	Presiding Officer	During first meeting	
7.7.3	Receive from the parties such documents or copies thereof as they consider relevant to the determination of the issues	Presiding Officer	On a date as determined by the PO	
7.7.4	Receive evidence or submissions, orally or in writing, sworn or un-sworn at joint meetings with the parties or, if the parties so agree, by the interchange of written statements or submissions, between the parties with copies to the Presiding Officer	Prosecutor and Accused or his representative	On a date as determined by the PO	
7.7.4	Respond to evidence or submissions, orally or in writing, sworn or un-sworn at joint meetings with the parties	Prosecutor and Accused or his representative	On a date as determined by the PO	
7.7.5	Deliver a determination, in writing, within ten (10) days of the last day of the hearing or submission of the last document to the Presiding Officer, if there was no hearing to the MM or his/her authorised representative and the accused or his representative	Presiding Officer	Within ten (10) days of the last day of the hearing or submission of the last document to the Presiding Officer	1. The determination must contain the reasons for the decision. 2. The calculation of the time period will exclude the day on which the enquiry was finalised and inclusive of the last day. Saturdays, Sundays and public holidays will be excluded.