Dealing with employee misconduct by presiding officers: towards a fair sanction at Umgeni Water

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DECLARATION

I, Zethu Ngcobo, declare that:

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(ii) This dissertation/thesis has not been submitted for any degree or examination at any other university.

(iii) This dissertation does not contain other persons' data, pictures, graphs or additional information, unless specifically acknowledged as being sourced from other persons.

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ABSTRACT

Anecdotal evidence would suggest a perception amongst employees that line managers/leadership often fail to deal with cases of workplace misconduct effectively, which has led to mishandling of cases, commonly referred to forums such as the Commission for Conciliation, Mediation and Arbitration (CCMA), where decisions are frequently reversed. No evidence was found that a study has been conducted before within the Umgeni Water (UW) organization on this subject, thus, in seeking evidence to address the main study purpose it was aimed to assess the processes and procedures used in concluding a fair sanction on employee misconduct at UW, establish who is entitled to preside over employee misconduct, and whether legal representations are allowed for either employer or employee at an internal disciplinary enquiry at UW. To achieve this, a qualitative study was conducted gathering data from a purposively determined sample size of 20, that was selected from a target population of 60. Data was gathered using semi-structured interview guide. The main findings revealed that the disciplinary procedure at Umgeni Water is characterised by bias, unfairness, and prejudice; as a result, decisions taken in most referred matters/cases are overturned by the CCMA or Labour Court. Furthermore, most presiding officers (POs) are found to be chosen randomly from a pool of managers to preside over a given disciplinary hearing and are unqualified to chair these hearings, as they lack training and expertise on basic labour law, resulting in inappropriate judgements. While legal representation is a constitutionally entrenched right for fairness and justice, employees were discovered to not be allowed this right during the disciplinary hearing, other than representation by Union workers, who are not well versed with labour law. In contrast, Umgeni Water may be allowed to outsource attorneys to chair such hearings, resulting in a huge imbalance. Many shortcomings regarding the management of employee misconduct were apparent from the research findings, thus, the study proposes Umgeni Water should train its POs on basic labour law, should comply with the dictates of relevant Acts and its Code of Conduct, and consider reviewing its policies and procedures regarding the issue of legal representation during internal disciplinary hearings. The organization should also seriously address gender imbalance and select POs based on merit. as well as considering a comprehensive reception of the Code of Conduct; as an innovative approach towards refining and enhancing compliance with ethical standards.

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DEDICATION

This dissertation is dedicated to my late mother, I thank her for the life lessons. Lastly, none other than the Almighty, who saw me through this difficult journey.

TABLE OF CONTENTS

SUPERVISORS' PERMISSION TO SUBMIT THE DISSERTATION i
DECLARATION ii
ABSTRACT...iii
ACKNOWLEDGEMENTS.. iv
DEDICATION v
TABLE OF CONTENTS... vi
LIST OF FIGURES xi
LIST OF TABLES xii
ACRONYMS AND ABBREVIATIONS.. xiii
CHAPTER 1: INTRODUCTION 1
1.1 INTRODUCTION 1
1.2 BACKGROUND OF THE STUDY 2
1.3 AIMS OF STUDY 4
1.4 PROBLEM STATEMENT.. 4
1.5 OBJECTIVES OF THE STUDY 5
1.6 RESEARCH QUESTIONS... 6
1.7 BRIEF RESEARCH DESIGN AND METHODOLOGY 6
1.8 LIMITATIONS OF THE STUDY 6
1.9 SIGNIFICANCE OF THE STUDY 6
1.10 DEFINITION OF KEY TERMS.. 8
1.11 ORGANISATION OF CHAPTERS 9
1.11.1 Chapter One 10
1.11.2 Chapter Two 10
1.11.3 Chapter Three... 10
1.11.4 Chapter Four... 10
1.11.5 Chapter Five 10
1.12 CONCLUSION... 11
CHAPTER 2: LITERATURE REVIEW 12
2.1 INTRODUCTION 12

2.2 SOUTH AFRICAN CONSTITUTION OF 1996 12
2.2.1The Labour Relations Act (LRA) 12
2.2.2 Basic Conditions of Employment Act (BCEA 75 of 1997) 13
2.2.3 Misconduct.. 13
2.3 TYPES OF MISCONDUCT 15
2.3.1 Determining an appropriate sanction for misconduct. 15
2.3.2 Factors to be considered In Mitigation and Aggravation 17
2.3.3 Factors to be considered when determining an appropriate sanction for misconduct. 17
2.4 FAIR REASONS FOR DISMISSAL 19
2.4.1 Disciplinary procedures prior to dismissal 20
2.4.2 Dismissal for misconduct 21
2.4.3 Guidelines in Cases of Dismissal for Misconduct 21
2.4.4 Role of discipline in the work environment 23
2.4.5 Responsibility for discipline 23
2.4.6 Employment relations and training of employees 23
2.4.7 Approaches to discipline 24
2.4.7.1 Negative Approaches 24
2.4.7.2 The positive approach to discipline 24
2.4.7.3 Disciplinary procedure at a workplace 25
2.4.7.4 Procedural Fairness 25
2.4.7.5 Substantive Fairness 25
2.4.8 Disciplinary procedure (Policies & Procedures of UW) 26
2.4.8.1 General Principles 26
2.4.8.2 Disciplinary Enquiry 27
2.4.8.3 Disciplining a Member of EXCO 28
2.4.8.5 Criminal Offences/Convictions 29
2.4.8.6 Disciplinary Appeals 29
2.4.8.7 Suspension 30
2.5 DISMISSAL FOR MISCONDUCT 30

2.5.2 Dismissal for misconduct in terms of the LRA: Procedural fairness 30
2.5.3 Substantive fairness 33
2.5.4 How POs conclude a fair sanction 34
2.5.5 Mitigating and aggravating factors 34
2.5.6 Legal representation in internal disciplinary hearings 35
2.5.7 Who should preside over the internal disciplinary enquiry. 37
2.6 CONCLUSION 38
CHAPTER 3: RESEARCH DESIGN AND METHODOLOGY 40
3.1 INTRODUCTION 40
3.2 RESEARCH DESIGN 40
3.2.1 Research Approach 41
3.2.2 Research Philosophy………………………………………………………… 42
3.2.3 Research Method 43
3.3 POPULATION AND SAMPLING 43
3.3.1 Target Population 43
3.3.2Sampling Method…………………………………………………………………44
3.3.3 Sample Size 45
3.4 RESEARCH INSTRUMENT 45
3.5 DATA COLLECTION TECHNIQUES 46
3.6 DATA ANALYSIS 48
3.7 VALIDITY AND RELIABILITY 49
3.8 LIMITATIONS OF THE STUDY 50
3.9 ETHICAL CONSIDERATIONS 51
3.10 CONCLUSION 51
CHAPTER 4: DATA PRESENTATION AND ANALYSIS 53
4.1 INTRODUCTION .... **Error! Bookmark not defined.**
4.1.1 Summary of Findings .... **Error! Bookmark not defined.**
4.2 PRESENTATION AND ANALYSIS………………………………………………54
4.2.1 Objective 1: Establishing the disciplinary procedure at Umgeni 56
4.2.1.1 Criteria for Appointing POs 56

4.2.1.2 Respondent recommendations on the selection of POs**Error! Bookmark not defined.**
4.2.2 Procedural fairness ... 58
4.2.2.1 Capability to handle disciplinary hearings ... 59
4.2.2.2 Negative Influence ... 60
4.2.2.3 Personal Vendetta ... 61
4.2.3 Fair sanction for misconduct ... 63
4.2.4 Areas of Improvement ... 65
4.2.5 Allowing Legal Representation during Internal Hearing ... 66
4.2.6 Impact of Employees' Misconduct ... **Error! Bookmark not defined.**
4.3 CONCLUSION ... 70
CHAPTER 5: CONCLUSION AND RECOMMENDATIONS ... 71
5.1 INTRODUCTION ... 71
5.2 CONCLUSIONS ... 71
5.2.1 Conclusions aligned to objective 1...70
5.2.2 Objective 2: Conclusions aligned to objective 2...72
5.2.3 Objective 3: Conclusions aligned to objective 3...72
5.3 RECOMMENDATIONS...73
5.3.1 Recommendations aligned to objective 1...73
5.3.2 Recommendations aligned to objective 2...74
5.3.3 Recommendations aligned to Objective 3:...75
5.4 SCOPE FOR FUTHER RESEARCH...75
REFERENCES ... 765
Appendix A: Ethical clearance ... 84
Appendix B: Gatekeepers letter ... 85
Appendix C: Consent form ... 86
Appendix D: Turnitin similarity report ... 90
Appendix E: Editor's Letter ... 91

LIST OF FIGURES

Figure 4.1: Respondent positions .... **Error! Bookmark not defined.**
Figure 4.2: Response ratio 54
Figure 4.3: Respondent gender 54

LIST OF TABLES

Table 4.1: Themes 54

ACRONYMS AND ABBREVIATIONS

BCEA	Basic Conditions of Employment Act
CCMA	Commission for Conciliation, Mediation and Arbitration
CGP	Schedule 8, Code of Good Practice
EEA	Employment Equity Act
HRD	Human Resources Department
KZN	KwaZulu-Natal
LC	Labour Court
LRA	Labour Relations Act 66 of 1995
PO	Presiding Officer
SA	South Africa
SALL	South African Labour Legislation
SCA	Supreme Court of Appeal of South Africa
SOE	State-owned Entity
UKZN	University of KwaZulu-Natal
ULP	Unfair Labour Practice
UW	Umgeni Water
VPN	Virtual Private Network
UW	Umgeni Water
HRD	Human Resources Department

CHAPTER 1: INTRODUCTION

1.1 INTRODUCTION

Misconduct, in Labour Law, relates to conduct that contravenes the rules or policies established by the employer. "It is not appropriate to dismiss an employee for the first offence, except when the misconduct is serious and of such gravity that it makes a continued relationship intolerable (Helgar & Groseset, 2015).

Generally, misconduct falls into two categories, gross and general. While general misconduct is a problem for employers, gross misconduct is a reason for swift disciplinary action, usually resulting in dismissal. General misconduct is not an intentional act to harm the company or another person. Also referred to as simple misconduct, general misconduct, is not usually a situation in which a person is summarily dismissed. Widespread misconduct includes insubordination, chronic absences, and inappropriate or rude comments to co-workers or customers. Employers must document instances of general misconduct in the employee file and provide the employee with a written warning that serves as proof of notice, should the situation escalate beyond a single instance (Roussouw, 2010).

In terms of the Constitution of the Republic of South Africa (RSA 1996), hereafter referred to as the Constitution, everyone has the right to fair labour practice; this includes both employers and employees. Fair labour practices according to the Constitution include the right that employees are not to be unfairly treated, as prescribed in the Labour Relations Act (LRA), Section 185(a), 66 of 1995. The LRA holds that employees may only be dismissed because of misconduct, incapacity and operational requirements. The procedural and substantive requirements for dismissal of employees, based on misconduct and incapacity, are further addressed in Schedule 8 to the LRA, the Code of Good Practice (CGP) (McGregor, et al., 2014).

In the workplace, misconduct may be defined as contrary behaviour, conduct or action to rules and standards set by an employer for his employees. These rules and standards must be very clear and known to the employee, while hey must also be lawful, reasonable and consistently applied. The employer is the custodian of the rules.

Whenever these rules are contravened, the employer must institute remedial disciplinary action. Employers have a right to discipline their employees to ensure they uphold prescribed codes of conduct (Rossouw, 2010; McGregor et al., 2015). In addition, the right to discipline must be based on the principle of fairness and comply with the statutory provisions of the LRA, and the Basic Conditions of Employment Act (BCEA) No. 75 of 1997, as amended, as well as any collective agreements.

The study explores how Umgeni Water (UW) Presiding Officers (POs) deal with employee misconduct and determine how they reach a fair sanction after a disciplinary hearing. Furthermore, the study aims to identify challenges encountered when dealing with disciplinary hearings and how UW can successfully manage the identified challenges and ensure their POs are competent in handing down appropriate sanctions. This will eliminate referrals to the Commission for Conciliation, Mediation and Arbitration (CCMA) and their decisions being overturned. The study hopes to assist UW to identify training gaps, if any, with solutions suggested to implement accordingly and ensure compliance with common law and the relevant legislation.

This chapter introduces the study that includes the background of the study, aims of the study, problem statement, objectives, research questions, brief research design and methodology, significance of the study, limitations, definition of key terms and organisation of the study.

1.2 BACKGROUND OF THE STUDY

This dissertation attempts to investigate the challenges relative to dealing with employee misconduct by POs towards a fair sanction at UW, leading to the determination of a fair sanction for misconduct. This is considered within relevant existing legislation and the legal framework from the perspective of the employer (POs) who adjudicate on the fairness of dismissals and other disciplinary action short of dismissal. An analysis will also be made of termination of employment under common law and terminations in terms of South African statutory dispensation and the need for fairness, as opposed to mere lawfulness. In addition, this study will focus on factors that may mitigate or

aggravate sanction and consider their relevance in determining a fair sanction for such acts of misconduct.

Misconduct is considered sufficient to justify a dismissal when the conduct makes it intolerable or undermines trust and confidence between employer and employee and can thus terminate an employment relationship. Misconduct is one of the three grounds recognised by the LRA to justify the dismissal of an employee. Before an employer can fairly dismiss an employee for alleged misconduct, it is generally accepted that an employer must be able to prove on the balance of probabilities that the employee committed the offence he is being charged with. However, this study is not considering collective acts of misconduct and the determination of a fair sanction for such collective transgressions (McGregor, et al., 2020).

Termination of the contract of employment through dismissal, according to (McGregor *et al.*, 2014), means an employer is allowed to dismiss an employee under certain circumstances and these circumstances and provisions are regulated by the LRA. In terms of Section 185(a) of the LRA, with CCMA rules and CGP, every employee has the right not to be unfairly dismissed (McGregor, et al., 2014).

More importantly, the provision of the Code of Good Conduct legislation stipulates the measures required for dealing with cases of unethical conduct, which are ever-increasing in public services, state-owned enterprises (SOEs) (such as UW) and local government, advising that a change in human attitude is an antidote to promoting professionalism and positive ethos in public governance within local government services in South Africa (SA). The issues of reorientation and attitudinal change among public officials are sacrosanct toward achieving an ethical environment in public service.

The implication is that reliable evidence is required to show that government officials and employers in state-owned enterprises exhibit ethical standards, mostly in all dealings with the public. As much as these ethical requirements are enshrined, gaps remain in the awareness between the details of standard conduct required by public and private office holders and the disciplinary measures appropriate for non-compliance (Govender & Reddy, 2014).

In this study, the following issues are considered: theories of misconduct, determining an appropriate and fair reason for dismissal, factors to be considered in mitigating and aggravating factors, as well as aspects to be considered when determining an appropriate sanction for dismissal, fair reason for dismissal, the disciplinary procedure prior to dismissal, and dismissal for misconduct. In addition, other factors considered are guidelines in cases of dismissal for misconduct, the role of discipline in the work environment, responsibility for discipline, and employment relationship and training of employees, along with approaches to disciplinary action, the purpose of disciplinary action, disciplinary procedure at a workplace, and the purpose of disciplinary action. Dismissal for misconduct in terms of the LRA, Act 66 of 1995, as amended, is another factor, as are dismissal for misconduct in terms of the LRA, procedural fairness, substantive fairness, and how the POs conclude a fair sanction, as well as legal representation in internal disciplinary hearings, who should preside over an internal disciplinary enquiry, factors that may mitigate or aggravate sanction, and consider determining a fair sanction for misconduct.

1.3 AIMS OF STUDY

This study aims to explore how UW POs deal with employee misconduct towards a fair sanction, this will be achieved by conducting interviews. The interview contains statements to be answered relating to, among other challenges, the legal position in how POs deal with employee misconduct resulting in a fair sanction or the determination of fair sanction at UW. This also determines how the POs conclude a fair sanction. Section 188 (2) of the LRA enjoins any person considering the fairness of dismissal to take cognisance of any CGP issued in terms of the Act.

1.4 PROBLEM STATEMENT

In this study, emphasis is placed on efforts to establish challenges faced by POs when dealing with employee misconduct at UW. The study further highlights the issues in determining a fair an appropriate sanction by the POs presiding over disciplinary hearings. Furthermore, the Human Resources Department (HRD) spent much time representing the employer (UW), with a great deal of time dedicated to multiple disciplinary hearings, instead of concentrating on its core business. There is a

perception among employees that UW is inconsistent in applying penalties for misconduct and uses external legal representatives to chair the disciplinary enquiry. In contrast, disciplinary hearings for matters other than misconduct are carried out by POs and internal employees that hold different positions and seniority. To achieve fair sanction in a disciplinary enquiry requires substantive fairness, which means there is a fair or valid reason for the employer to dismiss an employee. Misconduct is one of the three grounds recognised by the LRA to justify the dismissal of an employee. Employees who commit misconduct can be held accountable for their actions, with dismissal is seen as the ultimate sanction or any other sanction short of dismissal (Section 188 (1) (a) of the LRA). One of the biggest challenges faced by POs (managers) in UW is how to deal with determining fair sanctions for employee misconduct correctly.

Although policies and procedures are available as guidelines there is, however, no clear distinction as to what criteria are used to appoint POs; whether it is based on the title or position, as opposed to experience or credentials (exposure to labour-related litigation/legislation). In addition, the question arises regarding the applicability for both employer and employee in the use of external legal representatives to represent the employer or employees in an internal disciplinary hearing.

1.5 OBJECTIVES OF THE STUDY

- To assess the process and procedure used by POs in concluding a fair sanction on employee misconduct at UW.
- To establish who is entitled to preside over employee misconduct at UW.
- To assess whether legal representatives are allowed to act for either employer or employee at an internal disciplinary enquiry at UW.

1.6 RESEARCH QUESTIONS

How do POs conclude a fair sanction on employee misconduct at UW?

Who is entitled to preside over employee misconduct at UW?

Is a legal representative allowed to act on behalf of either employer or employee at an internal disciplinary hearing at UW?

1.7 BRIEF RESEARCH DESIGN AND METHODOLOGY

A qualitative case study was followed, using the phenomenological method to explore the experience of selected participants on how the disciplinary enquiry POs deal with employee misconduct and how they conclude a fair sanction (Kothari, 2017). In this study, the research instrument developed comprised the interview guide

1.8 LIMITATIONS OF THE STUDY

The focus of this research is on dealing with employee misconduct by POs of UW towards determining a fair and appropriate sanction. The study is only limited to UW as an organization. This study or any study similar to this one has not been conducted at UW. Therefore, in an attempt to interpret results and gain a true reflection of what participants have provided, caution has to be taken, with the extent to which the research findings can be generalised. Results from data collected at UW cannot be the same as the study collected in other water boards.

1.9 SIGNIFICANCE OF THE STUDY

The study is significant to the following:

UW employees:

The study is important to the UW employees to ensure that they are aware of the negative impact of misconduct which usually results in dismissal. The labour turnover will help the employees gain a sense of pride and self-satisfaction by reaffirming that they can support themselves and their families. This will also promote social and economic development, organising social life at a macro level.

UW as an organisation:

As an institution, it is essential that UW promptly and appropriately resolve misconduct in order to protect its employees, promoting teamwork, upholding best practices and avoiding unnecessary litigation. Effective management of misconduct reflects the values or the organisation and as leadership and impacts the company's mission.

POs:

This will assist in capacitating the POs with knowledge and skills to ensure that the right decisions, fair and appropriate sanctions are imposed when handing down sanctions after a disciplinary hearing. Compliance with the provisions of the LRA, with particular reference to schedule 8, item 4 is of paramount importance.

Trade Union representatives:

To ensure the union representatives discharge their responsibilities effectively to help protect the interests of their members in the workplace all the time as they have been elected by the members. It is the responsibility of the union representatives' duty to look after the members' interests, both within the union and in their collective bargaining relationship with the institution.

The department of labour:

This will assist the Department of Labour by giving value to social dialogue, by adhering to appropriate legislation and regulations with employers or labour institutions and protection of human rights. The aim of the Department of Labour is to reduce unemployment, poverty and inequality through policies and programmes developed in consultation with the role players, this is aimed at improved economic efficiency and productivity, skills development and employment creation and sound labour relations.

Stakeholders and non-executive members:

Stakeholders and non-executive members have a role to play to ensure that, under the best of circumstances, the executives do the strategic planning and decision making for the organization, thereby maintain good corporate governance. The stakeholders will help the organisation meet it strategic objectives by contributing their experience to any project as they have the interest in the success and progression of the company.

Internal and external stakeholders work together because they need each other. Businesses provide employment and economic growth, whereas communities provide

the customer base that fuel sales. Both internal and external stakeholders work with businesses to ensure profitability and sustainability through coordinating with communities (https://www.npstrategy.com, 2019).

1.10 DEFINITION OF KEY TERMS

The study provides definitions of the terms/concepts featured in this research.

Misconduct

Misconduct refers to unacceptable or improper behaviour (Anon., 1999).

Dismissal

Dismissal is the termination of a contract by the employer, with or without notice (McGregor 2014).

Termination of an employment contract is normal and the most common way to dismiss an employee. The BCEA (1997) determines an employer may give notice to an employee when terminating employment and the Act provides minimum requirements for such periods (Grogan, 2014).

Disciplinary Sanction

Disciplinary sanction is any action affecting the status of an employee or person taken by the appropriate employer or institution in response to a violation of the code of conduct. Depending on the circumstances and the seriousness of the offence, the term disciplinary action includes, but is not limited to warnings (verbal or written), final warning, suspension, and termination (Kaofela, 2023).

Disciplinary Procedure

Disciplinary procedure is the process whereby the employer sets out the manner in which discipline is to be managed including how cases of suspected or alleged ill-discipline are to be handed. It typically details the steps that will have to be taken, such as investigations and hearings, determining guilt considering all relevant factors, (such as circumstances and mitigating or aggravating factors), and deciding about appropriate disciplinary sanctions or penalties such as written warnings, and more (Nel, 2016).

Disciplinary Action

Disciplinary action comprises evoking a penalty against an employee who fails to meet organisational standards or comply with organisational rules (Warnich, 2021).

Presiding Officer (PO)

A PO is a person delegated by the employer to chair a disciplinary hearing. The PO attends disciplinary hearings to hear and understand the evidence from both sides. He/she must hear this evidence properly in order to be able to consider it once the hearing is adjourned for the purposes of a verdict (Kaofela, 2022).

Legal Representative

A legal representative is a registered legal expert or person who is appointed with full rights to act on behalf of another person or entity, where that particular individual is under the authority recognised by law, particularly with respect to the other's property or interests (Kaofela, 2022).

Union Representative

A union representative is any employee who is a shop steward, an employee of an organization or company who represents and defends the interests of their fellow employees as a labour member of official (Kaofela, 2022).

Employer

An employer is a person or organisation that employs people (Bolton, 2023).

Employee

A person employed for wages or salary, especially at non-executive level, is referred to as an employee (Lekopanye, 2018).

1.11 ORGANISATION OF CHAPTERS

This research has five chapters, indicated as follows:

1.11.1 Chapter One

Chapter one outlined the background information of the study and dealt with the research aims and objectives, problem statement, research questions, the significance of the study and the design and methodology employed.

1.11.2 Chapter Two

Chapter two introduces the subject of dealing with employee misconduct by POs or the so-called Chairperson of the Disciplinary enquiry, in terms of the Legislative provisions outlined in the Constitution (RSA 1996), the Disciplinary Procedure, the Disciplinary Hearing or Enquiry, and Legal Representation at an internal disciplinary hearing, along with Determining a Fair sanction for misconduct and Dismissal for misconduct, Code of Good Conduct, particularly misconduct/Chairing of disciplinary enquiries and dismissal for misconduct in terms of the LRA. Furthermore, determining a fair sanction for misconduct, and considering mitigating and aggravating factors are also included. This chapter, furthermore, also examines the disciplinary procedure at UW.

1.11.3 Chapter Three

Chapter three discusses the research design and methodology, sample and sampling strategy as well as the methods used, study population, research instrumentation, data collection and data analysis, in addition to administration of the research instrumentation and ethical consideration.

1.11.4 Chapter Four

Chapter four discusses the analysis of the data collected from the participants in the study. Each statement from the interview narrative is analysed using thematically leading to themes which are then discussed and linked literature.

1.11.5 Chapter Five

Chapter five provides conclusions and recommendations with regard to dealing with employee misconduct at UW. This will include highlighting and suggesting the approach that needs to be followed by the employer when managing employee misconduct in line with the legislation.

1.12 CONCLUSION

The research background, problem statement, study objectives and research questions were introduced in this chapter, along with definitions of key terms and variables, as well as the study significance and chapter organisation". The next chapter offers a review of literature, including relevant legislation, with regard to misconduct and dismissal.

CHAPTER 2: LITERATURE REVIEW

2.1 INTRODUCTION

In this chapter, consideration is given to the factors that should be considered when dealing with employee misconduct by any employer, as pronounced by the CGP in the South African Institution of the LRA (1996). In the South African context, dismissal for misconduct in terms of Schedule 8 of the LRA, that is, the CGP:

Dealing with employee misconduct by the POs that leads to a fair and appropriate sanction, which could be dismissal. Misconduct leading to dismissal will be discussed, together with concepts of determining a fair and appropriate sanction for misconduct. The chapter explores some concepts in understanding how the Code of Good Conduct is applied. This includes issues of legislative framework, laws and enactments, discipline and determining a fair sanction for misconduct, and dismissal.

2.2 SOUTH AFRICAN CONSTITUTION OF 1996

The Constitution “is the country's supreme law, and legislation in all fields of law should conform to it. Any legislation that does not conform to the Constitution may be challenged based on being unconstitutional.

According to Oosthuizen (2016), from an employment perspective, the Constitution promotes values underlying equality, protection against unfair discrimination, freedom of association and employment rights The primary employment legislation enacted in South Africa to affect labour rights under the Constitution is the LRA (1995), the BCEA (1997) and regulations, and the Employment Equity Act (EEA) No. 55 of 1998 and regulations (Constitution, 1995).

2.2.1 The Labour Relations Act (LRA) (Act No. 66 of 1995)

Another legal framework that guides officials/employers and employees is the LRA. This Act is designed to enhance industrial harmony through social fairness, labour tolerance and democratic governance in the workplace. Among other objectives of the LRA directly related to the workplace, discipline includes realising and regulating worker-employer fundamental rights in the Constitution. Section 23 narrates that the LRA

makes provision for the protection of workers against unfair conduct throughout the entire employment history, beginning from recruitment to retirement or other exits from the employer. The LRA addresses dismissal in the workplace by stipulating the permissible grounds that can form the basis for a dismissal, as well as the process followed by employers in effecting any dismissal in a manner that would be deemed fair (Creswell, et al., 2020).

2.2.2 Basic Conditions of Employment Act (BCEA 75 of 1997)

According to Abril, Levin, and Del Riego (2012), the BCEA is designed to highlight the fundamental conditions and the terms under which employees must be recruited. The idea is to allow individual employers to enter into the contractual employment agreement without fear of contracting the guiding laws affecting the fundamental rights of the workers. Furthermore, the BCEA, similarly aims at propelling the socioeconomic development of regional government and social equity through establishing basic conditions of public service (Budeli, 2019). The BCEA explains the inclusion of many employers and employees from the public service, in addition, to which this Act covers other conditions, for example, recruitment policy, fringe benefits, annual leave and termination of employment (Constitution, 1995).

2.2.3 Misconduct

Misconduct in the workplace refers to any behaviour that goes against the code of conduct or other policies that dictate how employees should behave at work. This might include unethical, unprofessional of even criminal behaviour that takes place within a workplace (Grogan, 2021).

Misconduct occurs when an employee culpably disregards the rules for the workplace that are given or indicated or implied terms of that employees' employment contract and the employer's disciplinary code (Grogan, 2021).Misconduct is the most common justification for employee misconduct in SA. While it is generally not appropriate to dismiss an employee for a first offence, an exception is made when the misconduct is serious and of such gravity that it makes a continued employment relationship intolerable. In the workplace, misconduct may be defined as behaviour, conduct or

action contrary to the rules and standards set by an employer for employees. These rules and standards must be clear and known to the employees. They must also be lawful and reasonable and should be applied consistently. The employer is the custodian of the rules. The employer must institute remedial disciplinary action whenever these rules are contravened (Cheadle, Davis, and Haysom, 2016).

Although employers have a right to discipline their employees to uphold codes of conduct, the right to discipline is not unlimited; it must be based on the principle of fairness and comply with the statutory provisions of the LRA, BCEA, and any existing collective agreement (Cheadle, Davis, and Haysom, 2016).

Misconduct is one of the three grounds recognised by the LRA to justify the dismissal of an employee. The other two grounds are incapacity or poor performance and operational grounds. The difference between these grounds, namely, incapacity and operational grounds of dismissal, is that an employee who commits misconduct can be held accountable for their actions. Those who fall ill or are injured, are overtaken by technological development, or become redundant, cannot be blamed for their predicament

Before an employer can fairly dismiss an employee for alleged misconduct, it is generally accepted that an employer must be able to prove on a balance of probabilities that the employee committed the offence charged with. Should it be impossible, the employer must wait for another opportunity? In certain situations, this rule can place an employer in a dilemma. For example, when an employer knows misconduct has been perpetrated by an employee of the company but cannot identify the person, the employer cannot afford not to take action. This action of dealing with employee misconduct has a disciplinary procedure which should be followed consistently by the employer (Grogan, 2021).

Schedule 8 of the LRA, CGP: Dismissal; this CGP deals with some of the key aspects of dismissal 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 (S 185. LRA 66 of 1995, CGP).

The key principle in this Code is that employers and employees should treat one another with mutual respect. A premium is placed on employment justice and the efficient operation of the business. While employees should be protected from arbitrary action, employers are entitled to satisfactory conduct and work performance from their employees.

2.3 TYPES OF MISCONDUCT

Types of misconduct may differ from company to company and there is, therefore, no complete list of the types of misconduct an employee can commit. Specific forms of misconduct would thus be dependent on the type of industry the company is operating in, its culture and specific workplace rules and regulations (McGregor et al., 2014).

Typical examples of misconduct are theft, fraud, assault, and wilful damage to company property, as well as intimidation, insubordination, unauthorised absenteeism, consumption of alcoholic beverages on company premises, along with arriving late at work, wilful poor work performance and sexual or racial harassment, to name a few. Misconduct can be managed by a company's disciplinary code, which should highlight the various forms of misconduct, as well as further elaborate upon disciplinary action imposed, should an employee be found guilty of such misconduct. Any form of misconduct, depending on the seriousness of the misconduct, may lead to dismissal (McGregor et al., 2014).

2.3.1 Determining an appropriate sanction for misconduct.

In respect of a dismissal matter, the overall test is whether there has been an irretrievable breakdown of the employment relationship. The determination of a fair sanction will be considered from the perspective of the employment relationship. The basic requirement is that the sanction imposed must be appropriate, with this being one of the requirements of substantive fairness. In terms of item 3 (4) of the CGP: Dismissal, the appropriateness of a sanction is dependent on the seriousness of the infraction and its impact on the trust relationship. The use of the word appropriate indicates it is impossible to lay rigid rules in this regard, with each case considered on its own merits (Grogan, 2010).

When the PO of the disciplinary enquiry makes a decision in respect to whether or not an employee has committed misconduct, the decision needs to be made in a two stage process, where the guilt of the employee must first be established, in terms of the evidence presented.

The second part of the enquiry is the determination of an appropriate santion, which is done with reference to the severity of the misconduct committed and its impact on the employment relationship. However, all relevant factors need to be taken into consideration in determining a fair sanction. Furthermore, the requirement of this two stage approach is desirable but not absolute. In Eddels (SA) Pty Ltd v Sewcharan & others, the court held that although the two stage approach is desirable, noting it would be unfair to expect an employer to observe this approach when commissioners are not required to do so. In other words, it is preferable that mitigation is dealt with seperately after a guilty finding has been made (Eddels SA (Pty) Ltd v Sewcheram & others, 2000).

Item 3(4) of Schedule 8 (CGP: Dismissal) of the LRA provides it is, generally, not appropriate to dismiss an employee for a first offence, except where the misconduct is serious and of such gravity that a continued employment relationship is made intolerable. Examples of serious misconduct, subject to the rule that each case should be judged on its merits, include 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 insuburordination (Grogan, 2014).

Schedule 8(5) of the LRA provides further that when deciding whether to impose a 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 (Grogan, 2014).In the event wherein a charged employee is found guilty and/or pleads guilty to the charges of misconduct against them, the PO must afford both the employer and the employee an opportunity to make submissions on aggravating and mitigating factors before a final decision on an appropriate sanction can be made.

2.3.2 Factors to be considered In Mitigation and Aggravation

Mitigating factors should be considered after the employee has been found guilty of the offence, however, whether there are mitigating or aggravating factors constitutes a separate inquiry. A variety of considerations may be relevant when considering a plea in mitigation; these include: a clean disciplinary record; long service; remorse; and the circumstances of the offence; as well as whether the employee confessed to his misdemeanour; and any other factors that might serve to reduce the moral calpability of the employee. An employer is not required to take mitigating factors into account merely because they evoke sympathy. The test is whether, taken individually or cumulatively, they serve to indicate the employee will not repeat the offence (Kaofela, 2022).

2.3.3 Factors to be considered when determining an appropriate sanction for misconduct.

Item 3(4) of sch 8 (Code of Good Practice: Dismissal) of the Labour Relations Act 66 of 1995 provides that '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, include 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. Schedule 8(5) provides further that 'when deciding whether or not to impose a 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'. In the event wherein a charged employee is found guilty and/or pleads guilty to the charges of misconduct against them, the chairperson must afford both the employer and the employee an opportunity to make submissions on aggravating and mitigating factors before a final decision on an appropriate sanction can be made. Factors, which should be considered in mitigating and aggravating circumstances, include among others the employee's personal circumstances, the employee's disciplinary record and length of service, whether the

misconduct is serious and makes a continued employment relationship intolerable, the employee's attitude and remorse, pre-meditation and circumstances of the infringement, the nature and impact of the misconduct, the harm or potential harm caused by the employee's conduct, the presence or absence of dishonesty in the employee's conduct, other applicable factors (Sidumo v Rusternberg Platinum Mines Ltd and others, 2007),

Grogan (2014:211) remarked that Mitigating factors should be considered after the employee has been found guilty of the offence; whether there are mitigating (or aggravating) factors constitutes a separate inquiry. A variety of considerations may be relevant when considering a plea in mitigation. These include a clean disciplinary record, long service, remorse, the circumstances of the offence, whether the employee confessed to his misdemeanour and any other factors that might serve to reduce the moral culpability of the employee. An employer is not required to take mitigating factors into account merely because they evoke sympathy. The test is whether, taken individually or cumulatively, they serve to indicate that the employee will not repeat the offence' (Magate Phala 'The significant value of mitigating circumstances in misconduct cases involving gross dishonesty (Grogan, 2014:211)

The following factors as laid down per Sidumo and Another v Rustenburg Platinum Mines Ltd and Others (2007) 28 ILJ 2405 (CC) are, inter alia, pertinent and should be equally considered (and weighed against each other) in determining an appropriate sanction for the misconduct, the nature and seriousness of the charge the employee found guilty of, whether progressive discipline can be utilised to transform the incorrect conduct, the harm or potential harm caused by the employee's conduct, the effect of dismissal on the employee, and whether additional training and instruction may result in the employee not repeating the misconduct. In addition, the employee's disciplinary record and length of service, the presence or absence of dishonesty in the employee's conduct, whether the employee admitted the misconduct or disputed it and, if the employee disputed it, whether the employee behaved dishonestly or inappropriately in doing so, and whether the misconduct is serious and makes a continued employment

relationship intolerable; however, this list is not exhaustive (Sidumo v Rusternberg Platinum Mines Ltd and others, 2007),

Arguably, it is interesting to note that In Department of Labour v General Public Service Sectoral Bargaining Council and Others (2010) 31 ILJ 1313 (LAC), the Labour Appeal Court confirmed the principle that a sanction aimed at correction or rehabilitation is of no purpose when an employee refuses to acknowledge the wrongfulness of their conduct. Also In De Beers Consolidated Mines Ltd v Commission for Conciliation, Mediation and Arbitration and Others (2000) 21 ILJ 1051 (LAC) at para 25, the court held that: 'Acknowledgement of wrongdoing is the first step towards rehabilitation. In the absence of a recommitment to the employer's workplace values, an employee cannot hope to re-establish the trust which he himself has broken'. Lastly, In the National Union of Mineworkers and Another v CCMA and Others (LC) (unreported case no JR2016/2009, 20-3-2013) (Prinsloo AJ) the court held that 'acknowledgement of wrongdoing is the necessary first step in correcting behaviour'. By failure to acknowledge wrongdoing, the employee had rendered himself not to qualify as a candidate of a corrective discipline.

2.4 FAIR REASONS FOR DISMISSAL

(1) A dismissal is unfair when it is not effected for a fair reason and in accordance with a fair procedure, even when it complies with any notice period in a contract of employment or legislation governing employment. Whether a dismissal is determined by the facts of the case and the appropriateness of dismissal as a penalty is fair. Whether the procedure is fair is determined by referring to the guidelines below (S. 185, LRA 66 of 1995, CGP).

(2) The LRA recognises three grounds on which a termination of employment might be legitimate. These are employee conduct, their capacity, and the operational requirements of the employer's business (S. 189, LRA 66 of 1995, CGP).

(3) This LRA provides that a dismissal is automatically unfair when the reason for dismissal amounts to an infringement of the fundamental rights of employees (S.187 LRA 66 of 1995).

(4) In cases where the dismissal is not automatically unfair, the employer must show the reason for dismissal is related to the employee's conduct or capacity or is based on the business's operational requirements. Should the employer fail to do that, it fails to prove the dismissal was effected in accordance with a fair procedure, meaning the dismissal is unfair (Grogan, 2014).

2.4.1 Disciplinary procedures prior to dismissal

Disciplinary measures short of dismissal include the following:

(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 vary according to the size and nature of the employer's business, where a larger business will generally require a more formal approach to discipline. An employer's rule must create certainty and consistency in the application of discipline, which requires clear standards of conduct that are made available to employees in an easily understood manner. Some rules or standards may be so well-established and known, it is unnecessary to communicate them (Grogan, 2020).

(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 employee behaviour through a system of graduated disciplinary measures such as counselling and warning (Schedule 8, CGP, s. 3.2)

(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. Nevertheless, 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 (Schedule 8, S.185, and CGP S 3.3).

2.4.2 Dismissal for misconduct

Generally, it is not appropriate to dismiss an employee for a first offence, except when the misconduct is serious and of such gravity that it makes a continued employment relationship intolerable. Examples of serious misconduct are gross dishonesty or wilful damage to the employer's property, and so forth. Whatever the merits of the case for dismissal might be, a dismissal will not be fair when it does not meet the requirements of Section 188 of the LRA (Du Toit, 2015).

When deciding whether or not to impose the penalty of dismissal, the employer could, 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 (Du Toit, 2015).

The employer should apply the penalty consistently in its application to the same and other employees in the past, as well as between two or more employees who participate in the misconduct under consideration (Du Toit, 2015).

2.4.3 Guidelines in Cases of Dismissal for Misconduct

Du Toit (2015) argues that the central reason that a presiding officer (PO) attends a disciplinary hearing is to hear and understand the evidence from both sides. The PO must hear this evidence properly in order to be able to consider it once the hearing is adjourned for purposes of a verdict. The PO then assesses evidence collected at the hearing in order to decide whether the employee is guilty or not guilty of the charges (Grogan, 2020). Later in the process, if the verdict is guilty, the PO must decide on the corrective action most appropriate to the circumstances. But this key task is more difficult to achieve if the PO's collecting of evidence is hampered. Such obstacles could, for example, include the absence of key participants, unjustified objections,

unnecessary adjournments and disruptive behaviour by the parties at the disciplinary hearing (Du Toit , 2015).

According to Du Toit (2015), absence of key particulars – participants in a disciplinary hearing would typically include: The presiding officer, the accused, the accused's representative, the complainant (person bringing the charges on behalf of the employer), an interpreter (where required), witnesses and a scribe.

Blaikely and Leigh (2013) ventilate that sometimes an human resource adviser also attends for procedural reasons, in cases where the accused fails to attend, continuation of the hearing in his/her absence should be considered as a possibility only if it is established that the employee has chosen not to attend without good reason. The employer must, at the outset, ensure that the accused's representative and witnesses are released from duty to be at the hearing. Blaikely and Leigh (2013), further notes that the employer must also offer to arrange for an appropriate interpreter if the hearing is not being conducted in the accused's home language. Objections – Where parties raise procedural objections the PO must give this serious consideration, assess their validity and deal with those problems that merit correction.
Adjournments – Such interruptions may be necessary where parties need time to consider responses to issues raised during the hearing. POs need to be expertly trained to know how to evaluate each such request, and to decide whether it would be proper to grant them or not. Also, POs might themselves need adjournments, in order, for example, to consider objections or proposals raised by the parties. Disruptive behaviour – Complainants seldom, if ever, behave intentionally disruptively during disciplinary hearings because an orderly hearing is in the best interests of their goal to prove the employee guilty.

Therefore, while the complainants might use underhand tricks, disruption of the process is unlikely to be among them. However, where the accused and his/her representative

know that he/she is guilty, and that they have no legitimate way of defending the charges, it may happen that they use disruptive tactics such as walk-outs, shouting, threats, hammering the table or toyi toyi-ing. Such parties trade on the fact that the accused has a basic right to be present at his/her hearing and for his/her representative to be present as well. They may behave badly in the hope of either having the hearing scrapped altogether, or with the aim of getting evicted from the proceedings. Such eviction could then be used at the CCMA as grounds for procedurally unfair dismissal. Only properly skilled POs will be able to deal with such disruptive tactics (Blaikely and Leigh, 2013)

2.4.4 Role of discipline in the work environment

The importance of understanding discipline roles in the workplace is to guarantee that individual officials/management participate proficiently in the objectives of good governance.Effective service delivery would be hampered in the public service should the officials be allowed to be absent from work or work at their own pace, disobey the constituted authorities, or ignore their management directives (Grogan, 2014).

2.4.5 Responsibility for discipline

The idea of responsibility in discipline among specific scholars and business pioneers emphasises the need for disciplinary activity as the obligation of officials and management representatives acting in advisory capacities. In such cases, management does not have a monopoly of authority, with the LRA also relevant in this regard. This Act seeks to identify the individual to be specified when a dismissal is reasonable (Blaikely & Leigh, 2013).

2.4.6 Employment relations and training of employees

Employment relations, which include training, have become important for effectively executing various work relations approaches and strategies. The proper administration and management levels, in the context of employer representatives, requires they should be equipped with skills for understanding the rules of engagement. In a unionised situation, management is expected to bear the cost of training the officials preparatory to exercising workplace rights and duties as advised (Blaikely & Leigh, 2013).

2.4.7 Approaches to discipline

Notwithstanding, it must be stated that disciplinary measures could also have a positive angle. As such, it can boost the employees' morale, improve revenue and produce a satisfied and proficient workforce. For instance, when the processes that lead to a discipline in public service are appropriately followed, it might lead to achieving the objective and goals of the public services at grassroots. As indicated, there are two ways to deal with discipline- related matters: negative and positive approaches (Aikins, 2011).

2.4.7.1 Negative Approaches

To an extent, the negative approach concerns discipline used as a measure in the hands of management to threaten employees. The management embracing this approach will be based on the evidence of material facts that may include misleading statements and take subjective choices concerning discipline and dismissal. An action is, in this manner, not made to act as a deterrent or restoring path or to acquire management. This approach puts pressure on people and will often develop mechanical distress (Aikins, 2011).

It is further contended by Aikins (2011) that such an approach is negative because the aim of exercising discipline is to be corrective instead of punitive. With this approach, the system is unwilling to rehabilitate. The implication is that management would like to expel employees in respect of minor offences, for instance, dismissing an employee for being absent from work without a valid leave of absence for a day without offering such an employee the opportunity to defend themselves (Aikins, 2011).

2.4.7.2 The positive approach to discipline

This approach to discipline commences with the promotion of fair and equitable job advertisements and proceeds through to the relationship. The implication is that management operates in an atmosphere in which leadership and authority exerted by

management are expected to be just and positive. Employees are motivated to comply with the tenets of the rules of engagement, because they comprehend the principles and acknowledge the roles of the constituted authority. The risks of frequent industrial disputes are, therefore, put to rest (Aikins, 2011).

2.4.7.3 Disciplinary procedure at a workplace

Organisational rules and regulations are among the strategies designed to install good conduct on an employee as with students in a school. This implies self-control, orderliness, good behaviour and obedience to the organisation's authority. In addition, employees are provided with a prospectus on their employment, which spells out some of the expectations. These rules and regulations usually specify what new employees should and should not do (Aikins, 2011).

Disciplinary action, in its essence, is designed to correct behaviour and maintain industrial peace as well as maintain balance in the employment relationship. In terms of the CGP, dismissal is particularly serious, considering formal procedures might not be applicable every time there is a rule breach when certain conditions are not met (Aikins, 2011).

2.4.7.4 Procedural Fairness

Procedural fairness, as a component, includes notice given to the employee regarding allegations, examination and allowance of reasonable time to prepare a defence. Since employees must be qualified to present a case, the official is, accordingly, entitled to seek the assistance of his/her choice to prepare for the case, including leading evidence during the disciplinary hearing. The employee must, furthermore, be informed of the reasons for the disciplinary enquiry or dismissal, as well as the right to file an appeal or not follow the pre-dismissal procedures (du Plessis, 2015).

2.4.7.5 Substantive Fairness

Misconduct may have a bearing on the employment contract, even when committed before the employee commenced service and may, in appropriate circumstances, constitute ground for dismissal. The substantive fairness of a dismissal for misconduct

is assessed according to a number of criteria. These are: whether the employee contravened a rule or standard regulating conduct in, or of relevance to, the workplace, and whether a rule or standard was contravened; whether or not the rule was valid or a reasonable rule or standard; the employee was aware, or could reasonably be expected to have been aware of the rule or standard; and the rule or standard has been consistently applied by the employer; in addition to, dismissal with an appropriate sanction for the contravention of the rule (du Plessis, 2015).

2.4.8 Disciplinary procedure (Policies & Procedures of UW)

2.4.8.1 General Principles

The line manager or their representative will initiate an investigation through an interview with the employee concerned to solicit an explanation, in addition to any witness(es) who may offer factual information. The information or explanation gathered from the employee concerned, and the witness(es) should be summarised in written form, confirmed with and signed by the concerned people (du Plessis, 2015).

The employee concerned may have a representative at the interview, such as a fellow employee or a shop steward, with the explanation tendered determining whether the suspected transgression has occurred. Should a transgression not have occurred, no further action will be necessary; nevertheless, a reprimand may be sufficient in the case of a minor transgression (Water, 2020).

However, should a transgression be confirmed, the matter will proceed to the next stage, which may be a formal investigation or a hearing that should not take more than 30 days. Moreover, a serious transgression will require a full disciplinary hearing to take place, where the employee will be charged in writing and allowed to reply to the allegations. A disciplinary enquiry is held to determine a finding in accordance with the disciplinary code of UW and/or any applicable legislation or code of conduct and of the steps that will be followed in the investigation (du Plessis, 2015).

2.4.8.2 Disciplinary Enquiry

A summary of the charges and the employees' rights should be given in writing to the employee concerned within seven days prior to commencement of the disciplinary enquiry. Should the employee have been served with the notice to attend the disciplinary enquiry, no postponement may be granted by the line manager or initiator outside of the disciplinary enquiry. While the alleged transgressions should contain sufficient details to enable the affected employee to prepare his/her case, the charge(s) should, in addition, be stated in behavioural terms, in other words, what transgression the employee has committed, and so on. The hearing should, furthermore, be conducted according to the provisions of natural justice, where the employee is assumed innocent until proven guilty (Aikins, 2011).

Where a witness cannot attend, the disciplinary enquiry may be adjourned. Nonetheless, the enquiry will continue without the witness should the witness fail to attend for two consecutive sittings. Since, the individual has the right to be represented by an employee from the workplace or a shop steward, they must arrange for such representation. Moreover, unless both parties agree, no legal representation should be allowed in an internal hearing (Aikins, 2011). Suspension of an employee may be implemented pending a disciplinary enquiry, however, the proviso would be that such suspension is on full pay and without prejudice to the disciplinary enquiry findings. It is also, at times, necessary to conduct a disciplinary enquiry in the absence of an employee, should they fail to attend after due notification or should they misbehave or become disruptive during or abandon the enquiry. Nevertheless, the individual should have the right to state their case and present documentary and other evidence in support thereof, along with the right to cross-question his/her accusers and witnesses and bring his/her own witnesses (du Plessis, 2015).

It is noted that, during the enquiry, requests to adjourn proceedings for caucus by the individual or his representative should not be unreasonably withheld, allowing the individual and his/her representative access to relevant records and exhibits pertaining to the case. Added to this, a voice/video recorder may be used at the disciplinary enquiry, and minutes should be prepared once the enquiry has been completed and

adjourned by the chairperson to make a finding on the individual's guilt/innocence, based on the evidence presented. This finding and the reasons thereof should be communicated to the employee (Aikins, 2011).

Where the individual is found guilty of the transgression(s), the chairperson should call for the individual's file to assess any previous history, in addition to investigating any mitigating and aggravating factors that require consideration prior to a penalty decision being taken. Although the validity of the warning may have expired, the presiding chairperson may consider any cautionary notices, should they indicate an ongoing propensity or trend (Water, 2020).

Where the penalty imposed is a written or final warning, the written warning form should be completed and signed by all present. However, where the penalty is dismissal or demotion, a letter to this effect should be prepared and provided to the individual, with all documents or copies thereof filed on the employee's personnel file (Water, 2020).

A report should be submitted by the chairperson of the hearing on whether a transgression was confirmed, and the employee concerned should be informed of the finding. In deciding an appropriate penalty where transgression has been confirmed, the nature of the transgression(s), the seriousness of the transgression(s), the employee's record of service, the employee's record of discipline, the circumstances of the employee(du Plessis, 2015). The impact of the transgression on the employment relationship; any mitigation offered by the employee and aggravation given by the employer (du Plessis, 2015).

2.4.8.3 Disciplining a Member of EXCO

The Chief Executive should initiate all disciplinary enquiries involving transgression by the Executives, except where an alternative arrangement has been agreed upon. Human Resources should manage appeals from the hearings. After that, the Chief Executive should exercise his/her rights.Transgression by the Chief Executive should be dealt with by the Board of UW and should not deviate from the principles of natural justice (du Plessis, 2015).

2.4.8.5 Criminal Offences/Convictions

Employees convicted of criminal or serious offences by a court of law should be liable for the investigation to determine whether the offence committed is related to their employment. Should it be related, the employee should be liable for disciplinary action in terms of this procedure.

In cases where the offence is not related to employment, consideration should be afforded to the employee's ability to tender performance in terms of their employment contract. Failure to tender full performance in terms of the employment contract is tantamount to a repudiation of the contract and, therefore, may render the contract null and void (Water, 2020).

2.4.8.6 Disciplinary Appeals

When an individual is dissatisfied with any disciplinary action taken in terms of their procedure, he/she may appeal against such disciplinary action. In such an event, the appellant should be required to complete a Disciplinary Appeal Form, stating the grounds for appeal and submit this to the chairperson of the disciplinary enquiry within five working days of the disciplinary penalty being made known to him. The chairperson of the disciplinary enquiry should arrange for the appeal to be reviewed by an Executive of the respective Division within 10 working days of the appeal being lodged. In addition, the Executive should study the disciplinary record and decide whether to endorse or change the sanction. The appellant should be entitled to a copy of the minutes of the disciplinary enquiry, which should be obtained from the disciplinary enquiry chairperson.

A colleague from the appellant's work area or a shop steward from a recognised Trade Union within the organisation may represent the appellant at the appeal review/hearing. Evidence should not be accepted as grounds for appeal unless there are good reasons why it was not put forward during the disciplinary enquiry. Should the appellant not accept the outcome of the appeal, they may lodge a dispute at the CCMA within 30 days of the appeal review/ hearing outcome(du Plessis, 2015).

2.4.8.7 Suspension

According to du Plessis, (2015), decisions to suspend employees will generally be taken where, the presence of the employee may disturb the investigation. The employee may interfere with the witnesses or may tamper with the vvidence. The misconduct is very serious, and the employee's continued presence at work may compromise the proceedings. Water, (2020) argue that there is a real likelihood the employees' safety or welfare may be jeopardised, and that the suspension should be of a limited duration not exceeding thirty (30) days to allow the investigations and or the disciplinary process to be completed. Also, the suspension as a disciplinary sanction or a disciplinary measure short of dismissal should be without pay.

2.5 DISMISSAL FOR MISCONDUCT

Dismissal is the termination of employment by an employer against the employee's will. Though an employer can make such a decision for a variety of reasons, ranging from an economic downturn to performance-related problems on the part of the employee, being fired has a strong stigma in some cultures (Grogan, 2014).

In the LRA, the chapter on unfair dismissals starts by stating in the clearest terms possible that 'Every employee has the right not to be unfairly dismissed'. It then proceeds to spell out what 'dismissal' means in some detail. At this stage, the fairness or unfairness of a dismissal is not at issue, since the Act details what conduct will, legally, amount to dismissal. Logically, an enquiry into the fairness of dismissal should be preceded by asking whether or not there has, in fact, been dismissal in the first place. This is also the sequence followed by the LRA (Nel et al., 2016).

2.5.2 Dismissal for misconduct in terms of the LRA: Procedural fairness

The employer has to ensure an employee's dismissal is procedurally fair. The employer should comply with any applicable disciplinary code and collective agreement when taking disciplinary action against the employees. This is the starting point for determining procedural fairness (Grogan, 2014). Generally, a disciplinary hearing should take place before a decision is taken to dismiss an employee, because that provides an employee with an opportunity to respond to the allegations levelled against

them. Allowing an employee to state their case in a disciplinary hearing is consistent with the audi alteram partem rule, which is a fundamental principle of natural justice and is also referred to as hear the other side. The audi alteram partem rule is also intended to deter employers from acting hastily and arbitrarily prior to taking a final decision to dismiss employees. At the disciplinary hearing, the chairperson or the PO must not be biased towards either the employer or employee (Grogan, 2007).

The chairperson of a disciplinary hearing must not be a person who was involved in the incident that resulted in a disciplinary hearing against an employee or someone who has a personal interest in the outcome of the disciplinary hearing. Failure to follow a fair procedure will render the dismissal procedurally unfair (Grogan, 2010).

Generally, a disciplinary hearing should take place prior to a decision being taken to dismiss an employee, since that provides an employee with an opportunity to respond to the allegations levelled against her or him. Allowing an employee to state his or her case in a disciplinary hearing is consistent with the audi alteram partem rule, which is a fundamental principle of natural justice and is also referred to as hear the other side (Grogan, 2010).

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 parterm, literally meaning, to hear the other side, which denotes the employer may not take a disciplinary action or decision without giving the employee a fair hearing (Grogan, 2010).

In keeping with the LRA, investigation, adequate notice of the allegations, An 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, and communicate the decision taken after the enquiry are critical requirements (Grogan, 2014). There are two basic principles of rulesof natural justice, that is, audi alteram partem, meaning the right to hear the other side of the story, and the principle of nemo iudex impropria causa, which means one cannot be a judge in his or her own case. These principles are discussed further in detail hereunder (Grogan, 2010).

Audi Alteram Partem

The above requirements emphasise that the essence of the audi alteram partem principle is that the individual should be given notice of the intended action, and proper opportunity to be heard; in order words, first the individual must be made aware of the charges against him or her, second, the individual must be given reasonable time to prepare his or her case, and should be provided an opportunity to present and negate evidence, to cross-examine witnesses and to legal representation (Grogan, 2007).

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

Nemo iudex inpropria causa

The Latin maxim nemo iudex inpropria causa is defined as a fundamental principle of natural justice, which regulates that no person can judge a case in which he or she has a material interest. The principle of nemo iudex inpropria causa is very important, since fairness is measured with reference to objectivity and with the public interest and public confidence. Fairness of the procedure is, however, put into question as soon as doubts concerning bias on the part of the judge or arbitrator arise (Grogan, 2007).

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 the apprehension of bias must not only be that of a reasonable person in the position of the person being judged, who has an objective factual basis for their suspicion. The apprehension of bias must be one that would be recognised in law as raising a legitimate concern regarding adjudicator impartiality. The court held that the core requirements of natural justice are the need to hear both sides (audi alteram parterm) and the impartiality

of the decision maker (nemo iudex inpropria causa) (BTR Industries SA (Pty) Ltd & others v Metal & Allied Workers Union & another, 1992).

2.5.3 Substantive fairness

Section 188(2) of the LRA provides that: 'Any person considering whether or not the reason for dismissal is a fair reason or whether or not the dismissal was effected in accordance with a fair procedure must take into account any relevant Code of Good Practice issued in a term of this Act' (S 188(2), LRA 66 of 1995, CGP).

The dismissal of an employee will only be substantively fair where there is an acceptable reason for the dismissal. Where misconduct is tendered as the reason for dismissal, the employer must prove the employee contravened a workplace rule, to demonstrate substantive fairness (S 188(2), LRA 66 of 1995, CGP).

The employer can show the workplace rule through a disciplinary code, policies and/or employment contracts. In addition, the employer must prove the employee contravened a workplace rule on a balance of probabilities and is not required to show contravention beyond reasonable doubts S 188(3), LRA 66 of 1995, CGP).

A valid workplace rule should, nonetheless, not contradict any law or public policy. A rule is reasonable when it is not unfair and is related to the performance or standard of conduct required from the employee. It is the responsibility of the employer to make the employee aware of workplace rules. The same rules and standards of conduct in the workplace should be applied consistently, meaning disciplinary action must be taken against all employees who break the same rules or standards of conduct (Grogan, 2014).

Appropriate sanction depends on the seriousness of the offence, and it is the responsibility of the PO to determine whether the sanction is appropriate or not by considering certain factors. The factors that must be considered include, the importance of the rule, the reason the employer imposed the sanction of dismissal, the basis of the employee's challenge to the dismissal, the harm caused by the employee's conduct, whether additional training and instructions result in the employee not repeating the

misconduct, and the effects of dismissal on the employee, and whether the CCMA has issued guidelines for misconduct arbitrations to promote consistent decision-making when dealing with dismissals for misconduct (Van Zyl Rudd & Associates, 2019).

The guidelines were drafted after the Sidumo decision, highlighting how the CCMA interpreted the judgment. In terms of the guidelines, commissioners must consider the following factors when determining whether the dismissal was an appropriate sanction: the gravity of the contravention of the rule, the consistent application of the rule and any other factors that may justify a different sanction (Sidumo v Rusternberg Platinum Mines Ltd and others, 2007).

2.5.4 How POs conclude a fair sanction

According to Schedule 8, CGP of the LRA, a dismissal is unfair if it is not effected for a fair reason and in accordance with a fair procedure, even when it complies with any notice period in a contract of employment or legislation governing employment. Whether or not a dismissal for a fair reason is determined by the facts of the case and the appropriateness of dismissal as a penalty Item 7 of the CGP comprise the guidelines in cases of misconduct, which include whether or not the employee has contravened a rule or standard regulating conduct in or of relevance to the workplace (b) ff a rule or standard was constrained, 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 employer has consistently applied the rule or standard, and (iv) the dismissal was an appropriate sanction for the contravention of the rule or standard (Grogan, 2014).

2.5.5 Mitigating and aggravating factors

Once the employee has been found guilty of misconduct, the parties are free to present factors in aggravation and mitigation of a sanction. This is where various factors relevant to determining the appropriate sanction are considered. In respect of mitigating factors, these would include, the length of service, the disciplinary record, whether the employee owned up to their transgression, remorse is shown, the circumstances in which the

infraction occurred, and any other factors that may reduce the employee's blameworthiness (Grogan, 2014).

An employer is, however, not required to consider factors that merely invoke sympathy. The test is whether the mitigating factors individually or in totality indicate the employee can be rehabilitated and will not commit the offence again. Mitigation, as the term is understood in the criminal context, has no place in employment law. Dismissal is not an expression of moral outrage, much less an act of vengeance. It is or should be a sensible operational response to risk management in a particular enterprise (Grogan, 2014).

However, the disciplinary enquiry does not end when an employee is found guilty of misconduct, as dismissal is not automatic, and the Code requires more. Although the Code does not use the term mitigation, it requires the employer to consider other factors such as the employee's circumstances, the nature of the job, and the circumstances surrounding the infringement, besides the gravity of the offence (Schedule 8, Item 3 (5), CGP: BALR 1076 (CCMA) at para 57). Without considering these factors, the fairness of the sanction cannot be ascertained. This would include evidence of the appropriateness or the sanction to be imposed. Item 7 (b) (iv) of the CGP requires an arbitrator to consider whether dismissal is an appropriate sanction. Other factors require consideration, including the harm caused by the employee's conduct, whether additional training and instruction may result in the employee not repeating the misconduct, and the effect of dismissal on the employee and their long service record. The aggravating factors by the employer would include the length of service, the employee's disciplinary record, whether the employee owned up to their transgression, whether remorse is shown, the circumstances in which the infraction occurred and any other factors that may reduce the employee's blameworthiness (Grogan, 2014).

2.5.6 Legal representation in internal disciplinary hearings

The LRA does not deal expressly with the question of whether legal representation should be allowed during disciplinary hearings. However, item 4(1) of the CGP contained in Schedule 8 of the LRA, states when an employee is charged with misconduct, 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 There is no mention of legal representation made in the Code.

In addition, South African courts have consistently held that, unless the applicable disciplinary code provides otherwise, legal representatives are entitled to appear on behalf of employees in internal disciplinary proceedings without the consent of the employer (RSM Global, 2020). Therefore, as a matter of general legal principle, an employee is not entitled to legal representation in internal disciplinary hearings as a right. In this regard, the Supreme Court of Appeal (SCA) held in favour of the CCMA and Others v Law Society of the Northern Provinces (Incorporated as the Law Society of the Transvaal). The courts have consistently denied entitlement to legal representation as a right for settings other than courts of law (Commission for Concilliation, Mediation and Arbitration & Others v Law Society of the Northern Province 2013).

Having determined the entitlement to legal representation as a right, the next question to determine, is whether the right to fair hearing in general would, nonetheless, oblige the PO of such a disciplinary hearing to consider whether to allow legal representation in any event (RMS Global, 2020).

In Hamata, the court dealt with disciplinary proceedings against a student of an academic institution and considered that employees have a general and unrestricted constitutional right to legal representation in all disciplinary proceedings of a punitive nature. However, any disciplinary body must be regarded as to still have the power to exercise discretion to allow legal representation. In this regard, the court held that employees have a general and unrestricted constitutional right to legal representation in all disciplinary proceedings of a punitive nature (Hamata & Another v Chairperson, Peninsula Technikon Internal Disciplinary Committee and Others, 2002).

There has always been a marked and understandable reluctance on the part of the legislators and the courts to embrace the proposition that the right to legal representation of one’s choice is always a sine qua (necessity) of procedurally fair administrative proceedings. However, it is equally true that with the passage of the years, there has been growing acceptance of the view that there will be cases in which

legal representation may be essential to a procedurally fair administrative proceeding. The court adopted the approach that there was no absolute right to legal representation in proceedings of a disciplinary nature. However, any disciplinary body must be considered to still have the power to exercise discretion to allow legal representation (RMS Global, 2020).

The court held that any rule requiring the outright rejection of requests for legal representation in all circumstances could not be accepted. In all cases, the court held that further than exercising their discretion is not acceptable (RSM Global, 2020).

The PO should consider, inter alia, the factual or legal complexity raised by charges, and the potential seriousness of a possible finding against the accused employee and the prejudice the accused employee might suffer, due to not being permitted legal representation. Other relevant considerations include the expertise of the person presenting the employer’s case, the availability of other representatives, the status of the employee, and the fact that witnesses testifying for the employer might intimidate non-professional representatives. Whilst the preceding considerations are important, POs should bear that the Labour Court (LC) has repeatedly noted that the purpose of the Code is to permit disciplinary action to proceed with a minimum of legal formality, and the mere fact that disciplinary proceedings may result in dismissal should not be a compelling factor in determining whether legal representation should be permitted, as it implies every accused employee charged with allegations that could result in dismissal would, therefore, be entitled to legal representation.

Whilst the parity of the parties is an important consideration in a factual or legally complex matter, case law regarding the question of legal representation in an internal disciplinary hearing does not dictate that there must be parity between the ability and expertise of the parties to a disciplinary hearing, but only that the procedure should be fair (Volschenk & onother v Morero, 2011).

2.5.7 Who should preside over the internal disciplinary enquiry.

There are no guidelines in South African Labour Legislation that require a PO to have formal legal training; however, it is a requirement that enquiries should be procedurally and substantively fair and that the PO must be independent and impartial (RSM Global,

2020). An independent PO is not influenced by any relationship between themselves and the employer or employee and is preferably not an individual who is also an employee of the employer that initiates the disciplinary enquiry. Apart from having knowledge and procedure prior to chairing a disciplinary enquiry, they must also clearly understand how a CCMA Commissioner will interpret the matter and what ruling might be made if the same is referred (RMS Global, 2020).

2.6 CONCLUSION

In this chapter, it has been shown that the South African LRA, Schedule 8, which is the CGP, has made it easy and clear for employers to ensure, when dealing with employee misconduct, they are procedurally and substantively fair. All the approaches applicable to the LRA are dealt with accordingly.

Employers should satisfy the Code of Good Conduct requirements when dealing with employee misconduct and apply an appropriate and fair sanction for any particular misconduct. Employer representatives should be well versed with regard to when and how these requirements are satisfied. The POs/Chairpersons of Disciplinary enquiries are required to take a holistic view of the case. Nevertheless, the test may leave employers in a precarious position to establish what decision should be appropriate and justified.

It was also noted that dismissal for misconduct must be procedurally and substantively fair, in line with Schedule 8 of the LRA. Throughout the literature, journals and other related material, it has become evident there is no inherent law, or right to legal representation in an internal disciplinary hearing. In one judgement of Wester J, it is quoted, and according to the judge, one must consider certain factors in deciding whether to allow legal representation in internal disciplinary proceedings: in other words, the seriousness of the charge and the potential penalty and complexity of the matter. The issue of legal representation applies to both the employer and the employee.

Other laws regulating employment relationships in the workplace were reviewed; for example, the issues relating to various existing disciplinary measures, in line with global best practices, demonstrated that an effective discipline framework is more of a punitive than a corrective measure. The Code of Conduct, disciplinary code, and procedures

were reviewed and areas such as disciplinary code and procedures covered, including procedural and substantive fairness in human relations.

Various forms of disciplinary measures are suitable for dealing with misconduct, among such discussed, are issues relating to verbal warnings and reprimands, final warnings, staff suspensions, as well as demotions and dismissals. It has also been learnt from the theories reviewed that there is no formal qualification that a PO ought to have". However, anyone deemed to preside over disciplinary enquiries should receive some training pertaining to chairing and investigation over cases of misconduct. The next chapter presents research design methodology.

CHAPTER 3: RESEARCH DESIGN AND METHODOLOGY

3.1 INTRODUCTION

The purpose of this chapter is to outline the approach, design and process followed in conducting this research study. The research methodology adopted in this study was aimed at gaining enhanced understanding of dealing with employee misconduct towards a fair sanction, through answering the research questions outlined in Chapter one, supported by the literature review discussed in Chapter 2, and the research results discussed in Chapter four. This chapter also includes information about the data gathering tools, population, sampling techniques, analytical tools, and research limitations.

3.2 RESEARCH DESIGN

Kothari, (2017) defines research design "as the science and art of planning procedures for conducting research studies so as to get the most valid. The end-product of research design is a plan or blueprint for conducting the intended research (Babbie & Mouton, 2019). According to Leedy, (2010), such a blueprint or plan for the intended research study is used to guide data collection and analysis. In essence, the research design focuses on the kind of study being planned, kind of results being aimed at, and the evidence required in adequately addressing the research questions. As discussed in the subsections below, this study is exploratory and qualitative in nature approached from a phenomenological paradigm, with the purpose of identifying and proposing a fair disciplinary procedure for UW employees.

3.2.1 Research Approach

The choice of research design appropriate for a study is based on the fundamental objective or purpose of the research, as well as the intended use of the research findings and recommendations (Lahman, 2022). There are various research designs that can be adopted in a study and these research designs can be classified into three main categories: exploratory, descriptive, and causal (Williamson, 2018). Exploratory studies aim to acquire insight and develop understanding than to collect accurate, replicable data (Wiid & Diggines, 2010). Descriptive research goes further in examining a problem than exploratory research since descriptive research is undertaken to ascertain and describe the characteristics of the pertinent issues (Collis & Hussey, 2013). Causal studies are done mainly with the purpose to reveal cause and effect between the dependent and independent variables. In essence, exploratory research attaches meaning to variables; descriptive research often reveals possible links between particular variables; while causal research confirms and describes the relationship between variables or shows such relationship to be false (Wiid & Diggines, 2010). Differently stated, exploratory research proposes new theories; descriptive research tests theories, while causal research reinforces theories.

This study adopted an exploratory research approach considering that the study was conducted to gain new insights, discover new ideas and increase knowledge of dealing with employee misconduct towards a fair sanction, a problem which had caused serious problems at UW for a very long time. Unlike descriptive and causal research approaches, exploratory research looks for patterns, ideas or hypothesis, rather than testing or confirming a hypothesis (Wiid & Diggines, 2010). This characteristic of exploratory research would be effective in achieving the main objective of this research, was to propose new ways of dealing with employee misconduct towards a fair sanction. Considering that new ways/methods on employee misconduct were necessary, exploratory research was most suitable approach of three approaches considered. Barbie and Mouton (2019) assert that exploratory research is best suitable when a research examines a new interest or the subject of study itself is relatively new.

3.2.2 Research Philosophy

Any research study is underpinned by a paradigm, which relates to philosophies and assumptions about what constitutes valid research and which research methods are appropriate for the development of knowledge (Collis & Hussey, 2003; Gray, 2013). There are two main research paradigms with worldviews having opposing assumptions about reality and view of the world: namely, positivistic paradigm and phenomenological paradigm (Keele, 2011). The premise for a positivistic paradigm is that reality exists external to the researcher and must be investigated through the rigorous process of scientific inquiry (Gray, 2013). This paradigm seeks the facts and causes of phenomena, with little regard to the subjective state of individuals (Collis & Hussey, 2003). In contrast, the premise for phenomenological paradigm is that an essential aspect to creating truth and meaning is the interaction that the subject has with the world (Gray, 2013). Thus a phenomenological paradigm is concerned with understanding human behaviour from the participants' own frame of reference (Collis & Hussey, 2013).

This research study was conducted from a phenomenological paradigm with the aim of exploring and understanding the lived experiences and insights of respondents (line managers and presiding officers) in relation to employee misconduct. Epistemologically, phenomenological approaches are based in a paradigm of personal knowledge and subjectivity and emphasise the importance of personal perspective and interpretation (Collis & Hussey, 2013). Thus, in-depth knowledge of employee misconduct, as well as insight or experience in dealing with labour issues in the workplace, by respondents of this research formed a critical part of this study. The epistemological basis for this study involved the researcher interacting with line managers and presiding officers in exploring the basis for regarding a how employee misconduct are dealt with. Collis and Hussey (2013) state that research done in the epistemological dimension is concerned with the study of knowledge and what is accepted as being valid knowledge. Streubert-Speziale and Carpenter (2013) defines epistemology as the research of philosophy concerned with how individuals determine what is true (Streubert-Speziale & Carpenter,
2013). This study explored the truth that leads or would lead to a fair sanction of employee misconduct. Phenomenology aims to gain a deeper understanding of the nature of the meaning of participants' experiences. Central to this research study is

determining the ‘meaning’ of dealing with employee misconduct leading to a fair sanction.

3.2.3 Research Method

The two main research methods available for use in research studies are quantitative and qualitative. Quantitative research aligns with the positivistic paradigm, whereas qualitative research is most closely aligned itself with the phenomenological paradigm (Keele, 2011; Gray, 2013). Quantitative research relies on numbers, measurements and calculations, and tends to be more highly structured and scientific in approach than qualitative research (Wiid & Diggines, 2010). In contrast, qualitative research relies on detailed description by respondents to gain insight into a particular problem (Wiid & Diggines, 2010). Qualitative research is a more systematic, subjective approach towards problem solving and tends to be less structured than quantitative research (Keele, 2011).

This study followed a qualitative method. According to Krause (2005), qualitative research has the unique goal of facilitating the meaning-making process, and this goal is aligned with the aim of this study which was to seek meaning rather than measurement. In addition to facilitating the processing of making meaning on employee misconduct that lead to a fair sanction, qualitative research would also help build on the lack of theory that currently exists in this research area.

3.3 POPULATION AND SAMPLING

3.3.1 Target Population

A research population is defined as an aggregation of study elements (such as individuals, artefacts, events, or organisations) from which data will be collected providing the basis of analysis (Burns & Grove, 2014; Babbie & Mouton, 2019). For the purpose of this study the population consisted of line managers and workplace presiding officers as experts in dealing with workplace disputes. According to Burns and Grove

(2004), not all members of the population necessarily formed part of the target population for the study; hence eligibility criteria had to be defined for specifying what was required for the membership in the target population. For example, a mere managerial position, and/or presiding officer at UW may qualify one into the population but did not automatically include them into the target population unless they had sufficient experience of at least 5 years dealing with employee misconduct. Therefore, experienced line managers and presiding officers with at least 5 years that formed part of the target population. This was because phenomenological qualitative research like this study emphasises reliance on experience, insight and inter-subjectivity of parties involved with the research (Collis & Hussey, 2013).

3.3.2 Sampling Method

Sampling refers to a process of selecting the sample, for the actual participation in the study, from the target population using specific sampling methods (Babbie & Mouton, 2019). Sampling methods are divided into two broad categories: probability sampling methods and non-probability sampling methods. Probability sampling methods are based on statistical probability theory and mostly associated with quantitative and positivistic studies (Curry, et al., 2009; Wiid & Diggines, 2010). The concept of probability sampling is mainly to obtain a sample that is representative of every element of the population. In the contrary, non-probability sampling methods are based on subjective judgment of the researcher and selection probability of population elements is unascertainable (Wiid & Diggines, 2010). According to Wiid and Digginess (2010) non-probability sampling methods do not allow for generalisation outside the group of sample units and can only be evaluated subjectively. Nevertheless, whilst making generalisations from the sample to the population under study may be desirable, it was a secondary consideration for this study. The interest of this study was in the intricacies of the sample being studied drawing on theory and practice (i.e. the experience of the researcher and the evolutionary nature of the research process). This study therefore used non-probability sampling methods.

There are various non-probability sampling methods available, with the most common being: convenience sampling, snowball sampling, quota sampling, and purposive

sampling (Collis & Hussey, 2013; Babbie & Mouton, 2019; Kolb, 2018). Convenience sampling is used when researchers choose any willing and available individuals as participants. In snowball sampling, researchers choose the first participant to match the participant profile and let the participant to then refer other participants with similar characteristics. In purposive sampling the researcher selects participants subjectively and deliberately based on a predefined set of characteristics. A phenomenological and qualitative research is only effective if the right participants are selected (Kolb, 2008). To achieve this desired effectiveness, this study used a purposive sampling method, with the aim of enabling the researcher to involve only information-rich participants with significant insight, detailed knowledge, or direct experience in dealing with employee misconduct.

3.3.3 Sample Size

In purposeful sampling, the sample size varies depending on the breadth and complexity of the study, although samples are generally smaller than those used in quantitative studies and are studied intensively (Curry, et al., 2009). Purposive sample sizes are often determined on the basis of theoretical saturation, which is the point in data collection when new data no longer bring additional insights to the research questions (Family Health International, 2012). The researcher however, tentatively, and purposively selected 20 respondents to take part in the study. However, the reality was that theoretical saturation was reached after involvement of 18 participants.

3.4 RESEARCH INSTRUMENT

Qualitative research requires data of high richness, depth and quality; and research instruments used in a study ought to fulfil this requirement (Babbie & Mouton, 2019). The researcher followed a semi-structured approach to interviews conducted, by using an interview guide as a chosen research instrument for this study. This interview guide comprised a set of standard themes and questions to be covered in the interviews, but also providing the flexibility for the research probe further views and themes that emerge during the interview. Thus, semi-structured interviews provided the researcher with benefits for both the flexibility of the unstructured and open-ended interview, and with the directionality and agenda of a structured interview guide.

The interview guide had Four main sections. The first section (section A) had questions eliciting information about demographics of participants, with the aim of ascertaining participants' eligibility to the study and confirming characteristics of participants (e.g. experience and professional background details) during interviews.

The second section (section B) comprised open-ended questions regarding procedure used by POs in conducting a fair misconduct sanction. The third section (Section C) comprised open ended questions regarding who was entitled to preside over employee misconduct. The fourth section (Section D) comprised open ended questions on whether either party were entitled to legal representation.

3.5 DATA COLLECTION TECHNIQUES

Research data collection techniques used for a qualitative and exploratory study are interviews, focus groups and participant observation. Interviewing is a qualitative data collection technique using personal communication between the researcher and the research subjects (Kolb, 2008). A focus group uses participant interaction and moderator probing to uncover deeper ideas and opinions from participants (Kolb, 2008). In participant observation, the researcher observes and records what people do in terms of their actions and their behaviour without the researcher being involved (Collis & Hussey, 2013).

A data collection technique used in this study was in-depth expert interviews, which refers to a social interaction between interviewer and respondent, where both parties have an opportunity to clarify questions and responses (Chambliss & Schutt, 2012). In particular, in-depth expert interviews were used, where the line managers and POs as experts were interviewed based on their experiences, insights and opinions presiding over employee misconducts at UW. In-depth expert interviews were the most practical of the three data collection techniques considered, in that having focus groups or participation observation was virtually impractical due challenges relating to availability and willingness of line managers and POs within the timeframe of this study

Interviews enabled the researcher the flexibility to ask both open-ended and closed-ended questions; have control on the order in which questions are asked and answered, and to provide participants' with opportunity to clarify interpretations of questions. The interviewer, therefore, was well placed to gain a full understanding of what the participants really wanted to say. However, interviews are time consuming for both the participants and the interviewer and require availability of both respondent and the interviewer at the same time, which may not be feasible. This is one of the reasons why the sample size for this study was kept small.

Interviews were conducted in persons and telephonically where participants were not available for a face-to-face interview. Participants' involvement would be requested via email and when consenting, an interview appointment would be set confirming date, time and venue (when not telephonic). Time taken for each interview ranged between 15 and 40 minutes.

Before each interview, when confirming appointment details, the researcher also obtained details of a participant in relation to Section A of the interview guide. The researcher also did additional basic research on the participant in terms of disciplinary procedure related work done to date. This was done in preparation for the interview for purpose of relating questions and concepts to the actual work done by the participant.

The researcher conducted interviews personally. At beginning of the interview, the researcher started with personal introductions, thanking the participant for involvement in the study and providing an overview of the purpose of the study. The researcher would then move to asking questions in accordance with Section B of the interview guide. While the participant responded, the researcher would be taking both mental and written notes.

Upon completion of the interviews, the researcher would thank the participants for their time and contribution towards the study. Immediately after the interview, the research would take extra 15 to 20 minutes reflecting on the interview and expanding on the notes

made during the interview. Any follow-up questions that the researcher had would be postponed until all other interviews are done and where the question was still relevant, such would be asked via email to the selected participant(s).

3.6 DATA ANALYSIS

Descriptive qualitative data was collected from interviews. A non-quantifying approach was taken in analysing this data and no statistical analysis was considered relevant (Collis & Hussey, 2013). In particular, data analysis method used in this study was thematic analysis, which enabled the researcher to move the analysis from a broad reading of the data collected from interviews towards discovering patterns and developing themes (Harvard, 2008). Thematic analysis, while it minimally organises and describes your data set in rich detail, is also relatively easy to conduct without prior detailed theoretical and technical knowledge of the method, which was of great benefit to the researcher (Braun & Clarke, 2006).

The use of purposive sampling, qualitative interviews and phenomenological approach to this study allowed data review and analysis to be done in conjunction with data collection (Collis & Hussey, 2013; Babbie & Mouton, 2019). Data analysis was therefore in continuous iterations of note compilations based on thoughts and reflections of the researcher, data reduction of interview notes, as well as categorising the data from all interviews and linking it to other data sources (i.e. literature review, as well as sample of disciplinary hearing and other documents referred by participants). Once, data was categorised and themes were identified, the next step was to display the data in a tabular format reflecting the themes in an orderly manner. A theme reflects a pattern, or meaning, that emerges from the research data set, which embodies critical aspects responding to a research question. (Braun & Clarke, 2006). The tabular format was suitable for displaying reduced data in an organised and orderly manner, which assisted when discerning patterns and establishing connections of themes and patterns, and any other further analysis of data.

3.7 VALIDITY AND RELIABILITY

All research requires validity and reliability in order to obtain trustworthiness. Validity refers to extent to which the research findings accurately and adequately reflect real meaning of the concept under consideration (Collis & Hussey, 2013; Babbie & Mouton, 2019). Research reliability refers to the ability to obtain the same results if the research were to be repeated or undertaken by any researcher (Collis & Hussey, 2013). Instead of depending on validity and reliability as defined above, trustworthiness in qualitative research is ascertained based on credibility, transferability, dependability, and conformability (Lietz & Zayas, 2010).

Credibility refers to the degree to which a study's findings represent the meanings of the research participants (Lincoln & Guba 1985 as cited in Lietz & Zayas 2010). In this study, credibility was obtained through ensuring that data collected and findings from the study tightly link back to participants own experiences, insights, and evidence in dealing with employee misconduct. To ascertain this, only line managers and POs qualified as participants in this study. The researcher also persistently pursued interpretations of the various aspects of various ways in handling employee misconduct in different ways from participants. Moreover, for referential integrity, the researcher made extensive interview notes and where there was further engagement with participants after the interview, any insights that participants that came forth would be confirmed via email and such emails would be attached to the interview notes of the corresponding participants respectively.

According to Babbie and Mouton (2019), transferability is the extent to which results of the research apply to other contexts, settings, or respondents (Babbie & Mouton, 2019). Findings of this study and recommendations made thereafter focussed on employee misconduct but they are transferrable to a fair sanction as an outcome in general.

According to Shenton (2004), dependability is about reflecting evidence that if the same study is repeated - in the same context, methods, and participants - then similar results would be obtained. For this purpose, the researcher provided a full description of

participants (in terms of experience and background, as well as attitude towards the value add of this study) and full description of data collection and analysis methods.

Confirmability refers to the extent to which the findings of a study are the results of the experiences, insights and ideas of research participants, rather than the researcher's own characteristics and preferences (Shenton, 2004). In this study, confirmability was achieved through keeping record of and linking various sets of data on which the findings are based. These included, raw data of interview notes and researchers' personal notes; data reduction and analysis notes; compilations of themes that emerged from the data; electronic copies disciplinary procedures analysed and interview guide used. Moreover, to reduce the researcher's bias, data collected from interviews was triangulated with literature review and a sample of disciplinary hearing procedures.

3.8 LIMITATIONS OF THE STUDY

The main limitation of the study was the insufficiency of research done in the area of disciplinary procedures in the workplace with the greater part of the secondary data in the form of statutes. Another limitation was the willingness of the POs and line managers to participate on this study for fear of being victimised by the organisation due to the official secret act rules. The researcher had to explain the ethical consideration rules to assure them that all was in order. Considering that that this research study is qualitative and purposive sampling method was used, the samples size was very small, which raised validity and generalizability concerns. To overcome these concerns, additional sources of data were used in order to improve validity and generalisability of results from the data collected from interviews. One of the challenges with the techniques used in this study was that a lot of the content was largely subjective and heavily charged with views not yet scientifically tested in practice. To minimise the impact that this would have on the reliance of data, only subjects who are experienced and knowledgeable experts in the relevant areas were selected.

3.9 ETHICAL CONSIDERATIONS

Ethical considerations were not only an important part of this study, but a requirement imposed upon the researcher by the Graduate School of Business and Leadership, University of KwaZulu Natal. Ethical measures in this study included consent, confidentiality and anonymity, privacy, dissemination of results and the right to withdraw from the study. An invitation to participate in this study was sent to eligible individuals, with assurance from the researcher that confidentiality, anonymity, and privacy will be upheld throughout the study and on the research report. Consent was obtained from individuals willing to participate in this study before interviews could take place. Due to the sensitive nature of some of the information discussed during interviews, the research also paraphrased and consolidated some responses from multiple responses in order to ensure that no response could be easily traced back to a specific individual. Each participant was allocated a unique code that cannot be linked back that participant's identity, so as to ensure anonymity in data collected. In other words, no participant names or contact details are attached to the data collected in this study. For the purpose of privacy, any personal information linked to a participant was safely kept by the researcher and not shared with anyone, and this information was used strictly for the purpose of this study alone. The raw data that was shared with the Supervisor and The Graduate School of Business and Leadership only comprise codes instead of actual names of participants.

3.10 CONCLUSION

Thus, the research was based on a natural setting – employee misconduct and disciplinary hearing at UW, South Africa – specifically focusing on the aspect of employee misconduct and how POs and line managers dealt with the process. The research design was exploratory and qualitative in nature, approached from a phenomenological paradigm. Research participants of this study were line managers and POs with in-depth knowledge, experience and insight presiding over employee misconduct. These participants were selected using non-probability purposive sampling method, and interviewed to gain new insights, discover new ideas and increase knowledge on employee misconduct at UW. Descriptive qualitative data was collected

from interviews and concurrently analysed through continuous iterations of note compilations based on thoughts and reflections of the researcher, data reduction of interview notes, as well as categorising the data from all interviews and linking it to other data sources (i.e. literature review, as well as sample disciplinary hearing procedures and other documents referred by participants)". The next chapter presents data and analysis.

CHAPTER 4: DATA PRESENTATION AND ANALYSIS

4.1 INTRODUCTION

In the previous chapter, the focus was on the research methodology employed in this study. The current chapter presents and analyses the data collected through responses gathered from the interview narratives. Data collected was interpreted and analysed, to examine whether fair misconduct hearing procedures take place at UW and what problems are encountered in trying to adhere to fair hearing proceedings.

4.1.1 Summary of Findings

Data were collected through an open-ended interview guide, responded to by 16 randomly selected UW staff, 12 of whom are managers and four are workers. The following graph shows the number of targeted respondents in terms of position at UW.

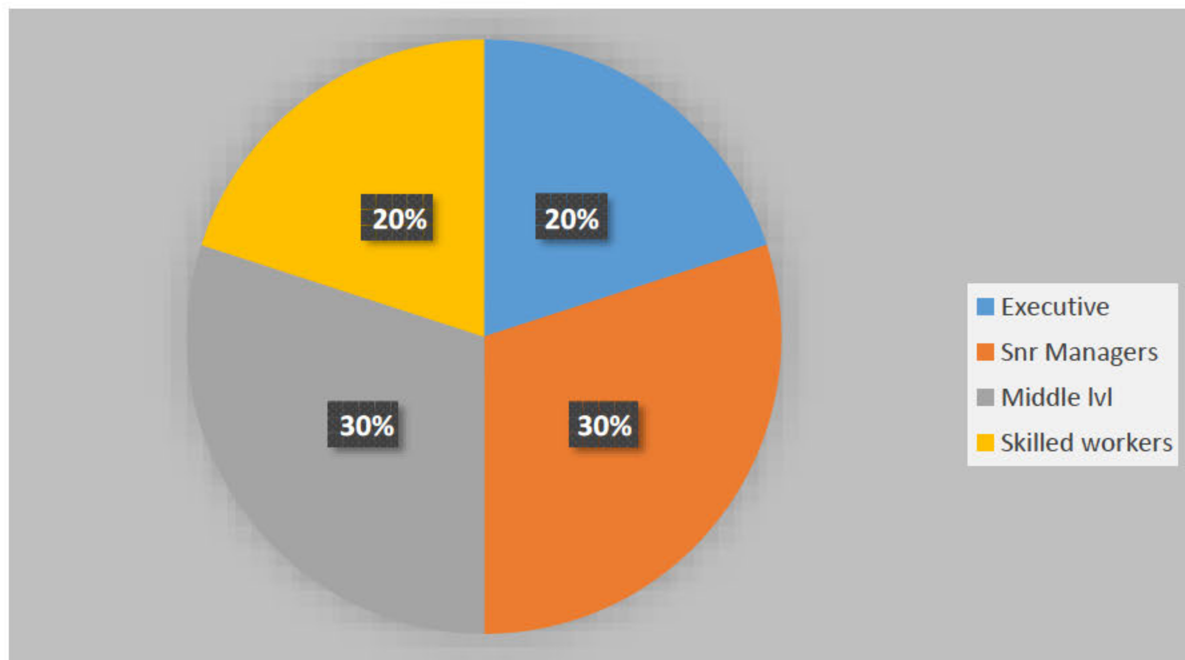

Figure 4.1: Respondent positions

Figure 4.1 shows representation of respondents by position which include an equal representation of middle level managers, and senior managers at 30% as well as an equal representation of skilled workers and senior executives at 20% respectively.

Figure 4.2: Response ratio

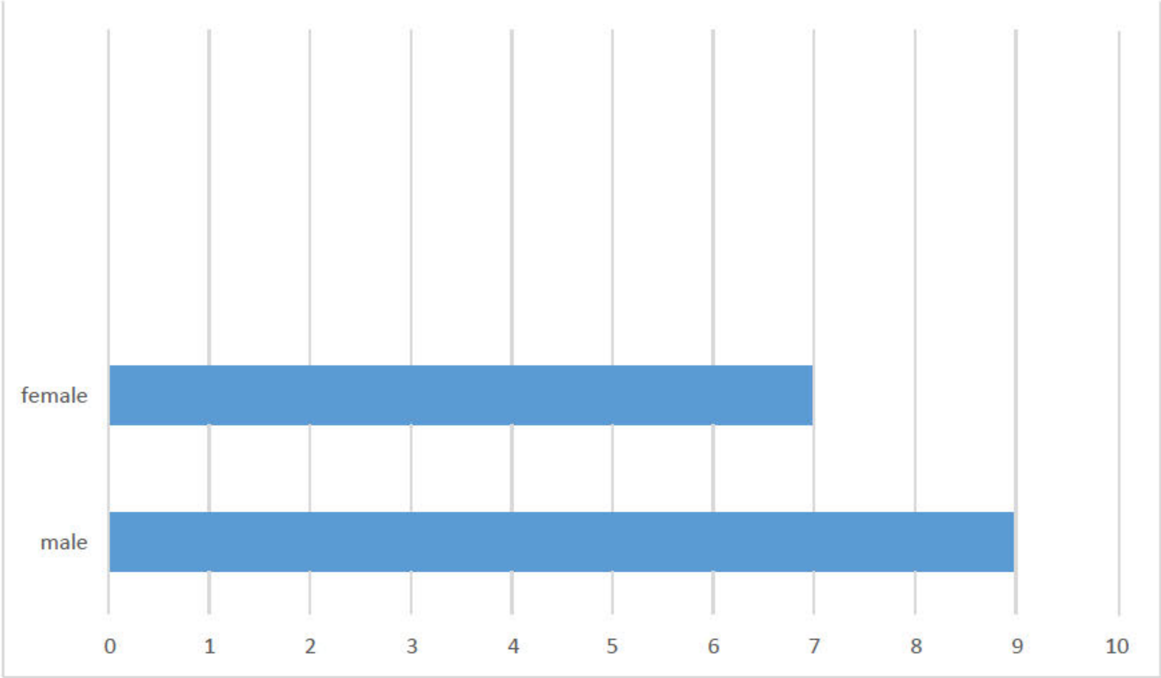

Figure 4.3: Respondent gender

Figure 4.3 shows respondents by gender with males reflecting 56.25% of the while 43.75% of the respondents were females.

4.2 PRESENTATION AND ANALYSIS

Data gathered through interviews was thematically analysed with eleven themes emerging from the analysis as tabulated below (Table 4.1).

Table 4.1: Study themes

Theme 1	Disciplinary procedures
Theme 2	Criteria for Appointing POs
Theme 3	POs selection
Theme 4	Procedural fairness
Theme 5	Capability to handle disciplinary hearings
Theme 6	Negative Influence
Theme 7	Personal Vendetta
Theme 8	Fair sanction for misconduct

Theme 9	POs Improvement
Theme 10	Legal representation during internal hearing

Table 4.1 shows the eleven themes which emerged from the interview narratives to address the study aims and objectives. A non-quantifying approach was taken in analysing this data and no statistical analysis was considered relevant (Collis & Hussey,

2003). Data analysis method used in this study was thematic analysis, which enabled the researcher to move the analysis from a broad reading of the data collected from interviews towards discovering patterns and developing themes (Harvard, 2008). Thematic analysis, while it minimally organises and describes your data set in rich detail, is also relatively easy to conduct without prior detailed theoretical and technical knowledge of the method, which was of great benefit to the researcher (Braun & Clarke,

2006).

The use of purposive sampling, qualitative interviews and phenomenological approach to this study allowed data review and analysis to be done in conjunction with data collection (Collis & Hussey, 2003; Babbie & Mouton, 2009). Data analysis was therefore in continuous iterations of note compilations based on thoughts and reflections of the researcher, data reduction of interview notes, as well as categorising the data from all interviews and linking it to other data sources (i.e. literature review, as well as sample business rescue plans and other documents referred by participants). Once, data was categorised and themes were identified, the next step was to display the data in a tabular format reflecting the themes in an orderly manner. A theme reflects a pattern, or meaning, that emerges from the research data set, which embodies critical aspects responding to a research question. (Braun & Clarke, 2006). The tabular format was suitable for displaying reduced data in an organised and orderly manner, which assisted when discerning patterns and establishing connections of themes and patterns, and any other further analysis of data. Below is a discussion of each of the themes. Descriptive qualitative data was collected from interviews

*4.2.*1 *Theme 1: Disciplinary procedure at Umgeni*

The study sought to establish the disciplinary procedure at UW. This is meant to determine whether such a procedure can match standard procedures as per the dictates of the CCMA and labour law in SA. One interview question was crafted to achieve the said objective, to which all participants concurred that disciplinary hearings take place at UW for misconduct, which may result in dismissal.

4.2.1.1 Theme 2: Criteria for Appointing POs

At UW, middle- to senior-level managers are selected to preside over various disciplinary cases. Some of these employees are not well versed in basic labour law and disciplinary hearing procedures. As per the findings, the Chairperson should be someone experienced in handling disciplinary proceedings. **Respondent 13** stated that the '*Chairperson of the disciplinary Committee must be knowledgeable in both procedural and technical aspects of the matter they are dealing with.'*

This means that selection of POs at Umgeni is limited to seniority. Though the respondents concur the Chairperson should be someone experienced in dealing with disciplinary hearings, such experience was not quantified. A person who presides over a single disciplinary hearing may claim to be 'experienced' when he or she presides over the second case, which is not ordinarily true. Experience should thus have set timeframes or the number of cases that one presided over, with the minimum being five.

Ten percent of respondents tried to define what experience entails by proposing that a PO should have successfully conducted at least three mock disciplinary enquiries. **Respondent 13** highlighted that each PO *'must have completed a disciplinary hearing training course, conducted three mock enquiries and observed three enquiries'.* The misgiving here, is that a mock disciplinary enquiry does not translate to an actual hearing, where emotions are high, witnesses are refusing to testify, the accused is defending themself well, in addition to the POs facing threats, counter threats, duress and undue influence from both management and the accused's co-workers. Experience

should be real, characterised by a person who has presided over actual and not perceived disciplinary hearings.

Another critical issue raised by the respondents is the need for constant capacity building workshops for POs, so as to equip them with basic labour law and disciplinary hearing procedure technicalities.

According to **Respondent 5**, '*Presiding Officers should be selected based on experience in disciplinary hearings and must have been trained in dispute resolution.'*

Capacity building workshops are important, in the sense that they offer participants an opportunity to learn, interact and share ideas on labour and disciplinary procedure. POs may also gain probing skills, as opposed to ending up using emotions and personal vendetta during disciplinary proceedings.

Respondent 4 pointed out the need to outsource an independent, transparent and trustworthy disciplinary chairperson, who will be assisted by other officers from UW in hearing disciplinary matters. Outsourcing the services of the chairperson is critical in eliminating bias, unfairness, and injustice.

The findings under this theme corroborates the views by Du Toit, Bosch, Woolfrey, Godfrey, Cooper, Giles, Bosch and Rossouw (2019) who argue that there is need for an independent transparent and trustworthy disciplinary chairperson who should deal with matters of unfairness in a labour dispute of any nature. Du Toit, Bosch et al. (2019) argue that independency of an arbitrator is key in any dispute resolution. Basson, Christianson, Garbers, Roux, Mischke and Strydom (2017), support this view stressing that workplace disagreements are better understood and solved by outsiders to the dispute and these would be in most cases persons or individuals regarded as
independent.

4.2.1.2 Theme 3: POs selection

The respondents raised the existing challenge of victimisation of POs by co-workers when an accused employee is dismissed or suspended from work. In a bid to avoid such a scenario, all respondents recommended the need for UW to outsource all POs.

According to **Respondent 3,** '*Umgeni water must outsource Presiding Officers. This will preserve fellow employees from victimization.'* Outsourcing will mean that such POs may give a fair, candid and balanced recommendation to UW before they leave. There is no chance of co-workers victimising the outsourced POs, as they are not employed by UW.

Respondent 14 was of the view that outsourcing was not a solution as it was expensive. Rather, the respondent suggested the line managers available must be trained on how to deal with disciplinary hearings in a fair and transparent manner. Those trained should always be guided by UW's policies to avoid bias.

When dealing with disciplinary hearings, fairness is key and likely to reduce the number of overturned cases at the CCMA. This entails that POs must be neutral, and cannot take sides, whatever the circumstances. As per the responses gathered from the interview guide, particularly from **Respondent 10**, the chosen POs must always be neutral and resist any advancement from management to hand over certain outcomes. It is, however, difficult for POs to resist orders from senior managers, resulting in flawed judgments that can be easily overturned by the CCMA.

This again highlights the issue of outsourcing, which was previously raised by the respondents. The outsourced POs should remain professional and guided by UW policy. Respondents also mentioned the organization's policy should clearly stipulate what constitutes acts of misconduct, as well as sanctions that should follow such acts. This finding aligns with Roux and van Niekerk (2014) finding that state that POs to a dispute ought to maintain a high level of professionalism, and this can only be achieved if the POs are outsourced. According to Roux and van Niekerk (2014), selecting POs from within the orgnaisation may compromise the PO fairness.

4.2.2 Theme 4: Procedural fairness

The study also sought to analyse whether such a procedure is fair. In this instance, fairness is judged by the constitution of the hearing committee, whether procedures are strictly followed, and whether the POs can manage the hearing in a just manner, amongst other reasons.

4.2.2.1 Theme 5: Handling disciplinary hearings

Interview narratives also showed that POs at UW lacked basic labour law training in conducting disciplinary hearings, in the process compromising their ability and capability to hand over a fair judgment. The respondents unanimously agreed that POs during the disciplinary hearings are lacking in technical expertise and know-how of conducting hearing procedures.

At UW, line managers and other senior management personnel are chosen to preside over disciplinary proceedings. It was further established through the interview that these POs are neither lawyers nor human resources personnel and are not fully aware of the standard legal procedures in conducting disciplinary hearings in a fair and balanced manner. Some of the respondents had this to say:

Respondent 1 is of the view that*, 'The Presiding Officers have little to no exposure in handling disciplinary procedures.'*

Respondent 12 stated that, '*the Presiding Officers at UW lacked basic training in labour laws and conducting disciplinary procedure*.'

Fairness entails that the PO must be well-versed in the subject under interrogation. As highlighted by the respondents during the interview, POs are not versed with the dictates of the labour law. Consequently, proceedings are rushed without following due diligence and procedure, resulting in internal disciplinary hearing outcomes being overturned at the CCMA. It is noteworthy that the legal field is a matter of facts, law and procedure. Once the disciplinary committee fails to adhere to these, an appeal or review would be unavoidable, and the CCMA will not hesitate to overturn such decisions.

It can also be submitted that lack of knowledge, skill and exposure in dealing with disciplinary procedures at UW can be a major let down on the side of the Institution. POs are not knowledgeable and skilled enough to conduct the disciplinary hearings and, subsequently, the possibility of having the proceedings overturned by the CCMA are high. In addition, it should be noted the CCMA commissioners have to undergo mandatory, extensive training and mentorship prior to their receiving accreditation; it is advisable the same should be applied at UW to ensure the POs are fully equipped with the right skills. In line with this finding Govender and Reddy (2012) ague that POs that

are not well versed with handling the misconduct often worsen the sitiuation and what we experience in South African courts in particular the CCMA dispute resolution is a function of POs that may not be knowledgeable enough to handle a dispute.

4.2.2.2 Theme 6: Negative influence

Important to note is that fairness entails there must not be any external influence on the decision by the POs. The research established, through 50 percent of the responses given, that the POs, under undue influence, force or duress, make judgments favourable either to the management or the employee under investigation.

Respondent 4 gave the following opinion*: 'People put pressure on presiding officers to give verdict that will favour them. There is also hatred from colleagues of the accused employee that is being disciplined, more especially if the disciplinary enquiries had resulted in dismissal.'*

This obviously results in unfairness and injustice, as cases are neither heard nor decided on merit, hence, they are overturned at the CCMA. Fairness is the basis for any legal judgment; without such fairness, the case can be subjected to appeal and review.

With regards to judgments in favour of management, some respondents were of the view that the POs were senior employees of UW and they would, therefore, naturally side with the Institution and cannot hand a fair judgment in the eyes of the employees under investigation.

Respondent 2 expressed their thoughts regarding influencing disciplinary hearings as follows: '*In most cases as a Presiding Officer, you are influenced to hand over an expected outcome.'*

The key word in the above statement is 'most'. It means POs are more often guided by management to make a certain, expected judgment. An employee is thus dismissed before the hearing itself is concluded, because that is what management expects. The only negative from the raised issue is when an employee is under investigation for insubordination, POs would side with other managers and may label the employee under investigation as rude, thereby passing a labour law judgment with bias. This is against the dictates of the LRA, which seeks to enhance democratic governance at

workplaces. Democracy entails that there is fairness and equality. Govender and Reddy (2012: 76) support that the LRA protects workers against unfair labour practice (ULP). Unfairness in this instance, emanates from undue influence on POs to pass a certain judgment (Govender & Reddy, 2012).

In addition, it was further established that in some cases of insubordination, a PO may be the very same manager who raised the insubordination against an employee, or such a manager's immediate junior at work. For such a manager or his immediate junior to preside over the case is against the common law principle of nemo judex in sua causa,
as no person can be a judge in his or her own case (Gibson & Flood, 2015).

4.2.2.3 Theme 7: Personal Vendetta

When managing disciplinary hearings with an expected fair outcome, there is need to keep away personal grudges and vendetta. A question was asked whether personal vendettas are used at UW disciplinary hearings to settle personal scores. Issues of personal vendetta and attitude towards the accused during the disciplinary hearings were also raised by respondents when responding to the interview questions. It was offered that some POs hold grudges against employees emanating from personal affairs and would want such employees to be dismissed from work, under any given circumstances, hence the proceedings would be characterised by emotions as opposed to facts and the law. **Respondent 10** had *this to say, 'Presiding Officers must be objective rather than being subjective in handling any case.'*

The respondents also raised the issue of questionable character and negative attitude by some POs, which may be linked to the point above on personal vendetta. **Respondent 5** stated that some POs are short-tempered, resulting in the disruption of proceedings and subsequent removal of the accused from the hearings before any conclusion is made. The respondent's words, in verbatim, are as follows: *'The Presiding Officer would lose his/her temper, and become abusive, thereby adding to the disruption.'*

In such instances, the proceedings may continue without the accused, and the judgment passed without his or her input. This is against the common law principle of audi alterum partem*,* which states that before reaching any decision in administrative law, the other

side must be fully heard. Such practices are also against the dictates of the Code of Good Governance, which stipulates employees should not be treated arbitrarily, due processes must be followed. This is also in line with Section 185 of the LRA, which states a dismissal is unfair when not effected in accordance with the laid down procedures.

Twenty percent of the respondents argued that failure to hear the other side is tantamount to injustice and, as a result, they view such proceedings as personal, with POs seen as enforcers and collaborators of the independent officials. According to **Respondent 5**, '*After losing his temper, the Presiding Officer would immediately evict the accused or his/ her representative from the proceedings.'* Any judgment made disregarding the audi alterum partem principle is, therefore, void and a miscarriage of justice that would likely be overturned at the CCMA.

Noteworthy however, is that force, duress or undue influence is two-way, as the employees may also apply pressure on the POs to make certain judgments in favour of the accused employees. The research established that co-workers would threaten, express hate or even abuse POs should they make a judgment against an accused worker, particularly dismissal or suspension judgments. **Respondent 4** had this to say; *'The exposure to victimization and guilty of taking away fellow employee's job should a succession be disciplinary.'*

In certain circumstances, co-workers would reject giving evidence or testifying during disciplinary proceedings, leaving UW with a weak case. According to **Respondent 9,** *'During the disciplinary enquiry, evidence leaders are not able to submit evidence which is required to prove cases.'*

Cases without evidence are usually overturned on appeal as cases of insubordination require tangible evidence that should be proved on balance of probabilities. What is important to note however is that the disciplinary hearings at UW are characterised by undue influence, force and personal vendettas (RMS Global, 2020). As such, it becomes extremely impossible to pass a judgment that may be deemed fair by both the management and workers.

4.2.3 Theme 8: Fair sanction for misconduct

In addition, the study sought to establish what constitutes misconduct and why most cases of misconduct at UW were being overturned at the CCMA. In response to the interview question, **Respondent 8** submitted that most outcomes of disciplinary cases are overturned at the CCMA because the sanctions are not consummate with the misconduct. Respondents outlined various reasons and factors that may be considered in determining a fair sanction for misconduct. One such factor is ensuring the employee accused of misconduct is provided with sufficient time to respond to a charge, contrary to current practices. It has been noted that some workers were once dismissed or suspended without being properly charged, and without being heard. As noted earlier in the submission, this is against the administrative principle of audi alteram partem, as the other side must be heard.

As highlighted by Grogan (2014), when dismissing an employee, the employer should consider all relevant factors to include, such as any disciplinary record and length of service. This is supported by Gibson and Flood (2015), who argue that discipline should be ‘corrective and progressive’, where the goal should be to correct the employee’s behavior through a system of graduated disciplinary measures, such as counselling and warning. The respondents further mentioned that the accused must be afforded the opportunity to be legally represented during the hearing for a trial to be fair, and for fair sanction to be given. This is contrary to the current procedure, where legal representation is not allowed; only a Union representative is allowed during the disciplinary procedure. Such a Union member may have the necessary skills or exposure to defend the accused during the hearing.

Noteworthy, however, is that in terms of section 8 of the UW’s Code of Conduct, legal representation during the disciplinary hearing is prohibited. Though the LRA is silent on legal representation, section 187 of the same Act highlights that dismissal is automatically unfair when it infringes the rights of employees. In a complicated matter, the worker should be allowed legal representation for fairness. Further to note, is that Grounded Theory allows for flexibility, and as such, UW can be flexible and allow legal representation when the offence is serious.

Respondent 4 highlighted that the issue of precedence should be taken into consideration to allow fairness. This means the Disciplinary Committee should be guided by previous decisions when dealing with similar cases and pass the same sentences. This will facilitate POs to pass judgment on a similar issue. The only negative to the proposal is, when in a previous, similar case, an unfair and overturned judgment, was made. This means that under precedence (on internal hearing), a same judgment must be made in the current case. What is vital in implementing precedence is, therefore, to stand guided by the review and appealed decisions made by the CCMA.

In addition, the respondents raised that before passing judgment, the POs must consider the seriousness of the offence, whether it amounts to dismissal or forced leave without pay. **Respondents 1, 2, 3, 6, 13 and 14** concurred that aggravating and mitigating factors should be taken into cognisance before passing a dismissal judgment. In such scenarios, due diligence should be conducted to ensure the least possible sanction is effected to avoid job losses. A further critical point was raised by respondent s regarding the need to follow laid down disciplinary procedures in the processes evaluating the merits and demerits of each case. To achieve this, POs must be well-versed with UW's Code of Conduct.

There is also a need to consider mitigating and aggravating circumstances prior to passing judgment. **Respondents 13, 14, 15 and 16** highlighted that, despite being on the wrong side of the law, other employees are remorseful, had no intention of causing trouble and depend on the job for their livelihood. Such employees must be given a reduced sentence, compared to those who are not remorseful and remain stubborn.

According to Nel et al. (2016). every employee has a right not to be unfairly dismissed. After an employee proves that he or she was dismissed, in the case of dismissals that are not automatically unfair, the employer may establish that the dismissal was effected for a fair reason, after following a fair procedure. Section 188 of the Act provides that if a dismissal is not automatically unfair, it is unfair if the employer fails to prove that the dismissal is for a fair reason related to the employee's conduct or capacity or based on the employer's operational requirements, and that the dismissal was affected in accordance with a fair procedure. The Code of Good Practice: Unfair Dismissal notes that whether or not a reason for dismissal is a fair reason is determined

by the facts of each case and the appropriateness of dismissal as a penalty. It is the latter enquiry that has proven particularly problematic (Nel et al., 2016). This contribution will not consider the procedural fairness of a dismissal; I discuss only the more limited issue of the fairness of dismissal as a sanction, given that the employer has established the existence of misconduct (Nel et al., 2016).

4.2.4 Theme 9: POs improvement

It was also critical to establish areas of improvement for UW disciplinary hearings to be fair. Respondents were of the view that POs were not legally and technically equipped to preside over disciplinary hearings in a fair and balanced manner at UW.

According to **Respondent 9,** '*The Presiding Officer lack knowledge in handling internal disciplinary hearings.'* The remedy to such a problem, as unanimously agreed to by the respondents, is the need to equip the POs legally and technically with basic labour law and procedure requirements, to be conversant in such matters. This was supported by **Respondent 12** who proposed that: '*Umgeni Water must provide training for its Presiding Officers.'*

Forty percent of the respondents are of the view that there is a need to identify and train personnel from the HRD so they can chair all disciplinary proceedings at UW.

Respondents 2 and 11 concurred that there is '*need for Umgeni to invite CCMA official to train personnel in the Human Resources Department on disciplinary hearing procedures.'*

The remaining 60 percent are of the view that there is a need to outsource an independent commission or a legal consultancy company, who do not have prior knowledge of the case, to preside over disciplinary hearings, and of course, through following the institution' policies and Code of Conduct.

Respondent 4 specifically stated that the UW institutions must seek the services of an independent consultancy company to conduct hearings on behalf of the company.

It was further raised by the respondents that there should be another independent review committee responsible for reviewing dismissal or suspension judgments by the

internal disciplinary hearing committee. This may minimize the number of turned down cases at the CCMA. It is worth noting that after a disciplinary hearing, the report is sent to management for a decision. Respondents are also of the view that POs must be objective, professional, independent and follow laid down procedures. **Respondent 7** stated that '*The Presiding Officers must be objective than being subjective in handling any case. They should avoid being perceived as more aligned to the employer.'*

Neutrality may help to minimize the use of emotions as much as possible during the hearings, further reducing bias, unfairness, and injustice, resulting in few to no cases being referred to and overturned by the CCMA. In the words of Grogan, (2014). Neutrality is the tendency not to side in a conflict (physical or ideological), which may not suggest neutral parties do not have a side or are not a side themselves. In colloquial use neutral can be synonymous with unbiased.

4.2.5 Theme 10: Legal representation during internal hearing

In terms of UW policy, neither the employer nor the employee are allowed legal representation during disciplinary hearings. Employees are, however, allowed to be represented by Union members. All the respondents concurred that workers should be allowed legal representation, particularly after considering the veracity of the allegations, giving examples of gross misconduct and gross insubordination that usually lead to expulsion. This point is supported by section 66 of the LRA, which offers the accused a right to be represented by a Union member or a fellow employee. The court held in the *Hamata case* that a disciplinary body has power to exercise discretion whether or not to allow legal representation (Hamata & another v chairperson, Peninsula Technikon Disciplinary Committee & others, 2002).

As a rule, a fair hearing entails allowing a worker legal representation. This is because some workers are not well versed in the law and may provide self-incriminating evidence and statements. The point is buttressed by the nemo judex in sua causa principle, which states that denying an accused legal representation during an administrative hearing is a fertile ground for appeal and review. In addition, **Respondent 9** raised the point that the UW's Code of Conduct should be crafted with precision so it can be as clear as possible. This will allow employees to be fully aware of what constitutes misconduct.

This advancement is supported by the principle of legality, which states that the law must be precise, and clear as possible and not vague. The POs should interrogate each case only after being fully satisfied that the law is clear and can be understood by a lay person.

The study also assessed the impact of employee misconduct at UW. The 16 respondents concurred that misconduct affects team spirit and unity, as some workers may be siding with the accused, whilst the others may be siding with management. This, in turn, affects productivity at UW. It is important to harness mutual understanding and unity at the institution so that it cannot be affected by petty issues such as misconduct hearings.

Gross misconduct and gross insubordination usually lead to dismissal. No organization would want to keep a troublesome employee who continuously engages in acts of misconduct. Nonetheless, misconduct hearings are also time-consuming and result in contestations from an internal disciplinary level to the CCMA, up to the LC through reviews and appeals. Once an aggrieved party is not convinced with internal disciplinary hearing outcomes, appeal at the CCMA is inevitable. Further aggrieved by the CCMA decision, the party may appeal at the LC. The process is extremely tedious and cumbersome, in the process affecting production due to legal contestations. It is, however, important to note as highlighted by Ndulula (2013, 33) that misconduct is a justification for dismissal and as such, employees must be made aware in a clear manner what constitutes misconduct.

Respondent 4 stated that misconduct creates bad behavioural and disciplinary tendencies amongst employees. This is even worse when the co- workers are in support of their colleague during a hearing. Bad behavior and ill-discipline should be treated as such and condemned in the strongest terms, no matter who is at the receiving end.

The Labour Relations Act, Act 66 of 1995 ("LRA") does not deal expressly with the question of whether legal representation should be allowed during disciplinary hearings. However, Item 4(1) of the Code of Good Practice ("the Code") contained in Schedule 8 of the LRA states that, when an employee is charged with misconduct, "[t]he employee should be entitled to a reasonable time to prepare the response and to the assistance

of a trade union representative or fellow employee". No mention of legal representation is made in the Code.

In addition, South African courts have consistently held that, unless the applicable disciplinary code provides otherwise, legal representatives are not entitled to appear on behalf of employees in internal disciplinary proceedings without the consent of the employer. Therefore, as a matter of general legal principle, an employee is not entitled to legal representation in internal disciplinary hearings as of right. In this regard, the Supreme Court of Appeal held in Commission for Conciliation, Mediation and Arbitration and Others v Law Society of the Northern Provinces (Incorporated as the Law Society of the Transvaal) (2013) 34 ILJ 2779 (SCA) that "The courts have consistently denied
entitlement to legal representation as of right in fora other than courts of law."

Having determined the entitlement to legal representation as of right, the next question to determine is whether the right to a fair hearing in general would nonetheless oblige the chairperson of such a disciplinary hearing to consider whether to allow legal representation in any event. The most often quoted authority in this regard is Hamata and Another v Chairperson, Peninsula Technikon Internal Disciplinary Committee and Others 2002 (5) SA 449 (SCA). In Hamata, the court dealt with disciplinary proceedings against a student of an academic institution, and considered the argument that employees have a general and unrestricted constitutional right to legal representation
in all disciplinary proceedings.

There has always been a marked and understandable reluctance on the part of both legislators and the Courts to embrace the proposition that the right to legal representation of one's choice is always a sine qua non of procedurally fair administrative proceedings. However, it is equally true that with the passage of the years there has been growing acceptance of the view that there will be cases in which legal representation may be essential to a procedurally fair administrative proceeding. In saying this, the study uses the words 'administrative proceeding' in the most general sense, that is to include, inter alia, quasi-judicial proceedings. Awareness of all this no

doubt accounts for the cautious and restrained way the framers of the Constitution and the Act have dealt with the subject of legal representation in the context of administrative action. In short, there is no constitutional imperative regarding legal representation in administrative proceedings discernible, other than flexibility to allow for legal representation but, even then, only in cases where it is truly required in order to attain
procedural fairness."

It is important to note that the court in Hamata held that any rule requiring the outright rejection of requests for legal representation in all circumstances cannot be accepted. The court held further than in exercising his or her discretion to allow legal representation, the presiding officer should consider, inter alia, the following factors: (i) the factual or legal complexity raised by the charges, (ii) the potential seriousness of a possible finding against the accused employee and the prejudice the accused employee might suffer as result of not being permitted legal representation. Grogan (Dismissal Third Edition, 2017), moreover holds that other relevant considerations include, the expertise of the person presenting the employer's case, the availability of other representatives, the status of the employee and the fact that witnesses testifying for the employer might intimidate non-professional representatives. The Supreme Court of Appeal followed Hamata in the matter of MEC: Department of Finance, Economic Affairs
& Tourism, Northern Province v Mahumani (2005) 2 All SA 479 (SCA) and ultimately held that in cases where an accused employee seeks legal representation, the presiding
officer must give serious consideration to the request.

Whilst the aforegoing considerations are important, presiding officers should bear the following in mind that the Labour Court has repeatedly noted that the purpose of the Code is to permit disciplinary action to proceed with a minimum of legal formality.

The mere fact that disciplinary proceedings may result in dismissal should not be a compelling factor in determining whether legal representation should be permitted as it implies that every accused employee charged with allegations which could result in dismissal would therefore be entitled to legal representation.

Whilst the parity of parties is an important consideration in matters which have factual or legal complexity, case law regarding the question of legal representation in internal disciplinary hearings does not dictate that there must be parity between the ability and expertise of the parties to a disciplinary hearing, but only require the procedure should be fair (See for example, Volschenk & another v Morero (2011) 32 ILJ 983 (LC)).

Having regard to the aforegoing, an accused employee therefore does not automatically have the right to a legal representative during a disciplinary hearing held at their workplace. However, the accused employee may bring a formal application prior to the hearing for the presiding officer to consider allowing a legal representative to assist the accused employee at the disciplinary hearing. When exercising such discretion, the presiding officer should take into account the factors discussed above, and the decision in respect of such an application is final, although the accused employee may still refer a dispute to the Commission for Conciliation, Mediation and Arbitration or applicable Bargaining Council for procedural unfairness. (See for example, Volschenk & another v
Morero (2011) 32 ILJ 983 (LC)).

4.3 CONCLUSION

This chapter offered an insight into data obtained from respondents through an open-ended interview, to extract themes relevant to the study. The next chapter concludes the study, offering recommendations based on the findings.

CHAPTER 5: CONCLUSION AND RECOMMENDATIONS

5.1 INTRODUCTION

The previous chapter presented study findings and analysis backed by the relevant literature. This chapter presents the study conclusions and recommendations aligned to objectives of the study. The study sought to address to assess the process and procedure used by POs in concluding a fair sanction on employee misconduct at UW, establish who is entitled to preside over employee misconduct at UW, and to assess whether legal representatives are allowed to act for either employer or employee at an internal disciplinary enquiry at UW.

5.2 CONCLUSIONS

5.2.1 Conclusions aligned to objective 1: To assess the process and procedure used by POs in concluding a fair sanction on employee misconduct at UW

The first objective of the study sought to assess the process and procedure used by POs in concluding a fair sanction on employee misconduct at UW. Aligned to objective, the study concluded that UW does have flawed disciplinary hearing process characterised by bias, unfairness, use of emotions, and personal vendetta in settling scores, along with prejudice. Consequently, most disciplinary hearing outcomes at UW were overturned at the CCMA or at the LC. In addition, the study concluded that such a flawed procedure was a result of unqualified POs who lack training and technical know-how on basic labour law and disciplinary procedures, as well as failure to adhere to principles of natural justice.

5.2.2 Conclusions aligned to objective 2: To establish who is entitled to preside over employee misconduct at UW

The second objective of the study sought establish who was entitled to preside over employee miscount at UW. In line with this objective, the study concluded that POs at

UW were entitled to presiding over employee misconduct, however they were influenced or forced by either management or workers to pass a certain judgement. Arising from such influence, the study then concluded that an external POs would fairly preside over employee misconduct at UW and elsewhere in South Africa.

5.2.3 Conclusions aligned to objective 3: To assess whether legal representatives are allowed to act for either employer or employee at an internal disciplinary enquiry at UW

The final objective sought to assess whether legal representatives were allowed to act for either employer or employee at an internal disciplinary enquiry at UW.

Although respondents were not overly clear on legal representation, triangulation of factual information from senior managers and employees revealed that legal representation was not permitted, thus the study concluded that legal representation for both employer and employees was not accepted, although the latter are allowed to bring a member of the Union to represent him or her.

5.3 RECOMMENDATIONS

Drawing from the above conclusions, and aligned to study objectives, the following recommendations were made:

5.3.1 Recommendations aligned to objective 1: To assess the process and procedure used by POs in concluding a fair sanction on employee misconduct at UW

Selecting qualified POs

Considering that the process, and procedure used by POs in concluding a fair sanction on employee misconduct at UW found to be flawed, the study recommended that UW should selected qualified POs as opposed to randomly picking senior managers to serve as POs. The study further recommended the need to select qualified and experienced personnel to preside over such hearings. However, seniority does not equate to being experienced at presiding over disciplinary hearings, therefore, only POs who are legally trained should be chosen to preside over such. Accredited labour law experts should train POs at Umgeni on how to conduct disciplinary hearings, with those trained also accredited, as the accredited POs are likely to recommend an appropriate sanction.

Selecting area Managers to be POs

To enhance the flawed process, the study recommends that UW selects ***area*** *managers from different regions to preside over proceedings in other regions. This may reduce allegations of bias and victimisation, as the chosen managers would not be familiar with the working environment of another region.*

***Providing** capacity building workshops*

Considering that POs were unaware of policy and disciplinary procedure leading flawed procedures, the study recommends that UW must invited CCMA members or even labour lawyers to educate a selected pool of their managers on how to deal with disciplinary procedures. Through capacity building workshops This will go a long way to capacitate the managers with requisite knowledge and skills, to give fair judgments, informed by the law and UW's policy.

Harmonizing working relations

Aligned to the objective, the study recommends that UW to harmonise working relations between the management and workers so that disciplinary hearings are not translated to emotional and personal vendetta contestations. This may bring teamwork and unity spirit.

5.3.2 Recommendations aligned to objective 2:To establish who is entitled to preside over employee misconduct at UW

Mindful of the finding that senior managers at UW despite being entitled to preside over employee misconduct, lacked procedural justice due to bias and influence from the employer, the study recommended the need to consider outsourcing the POs otherwise all existing managers at UW should undergo training on how to deal with a misconduct. The POs may consider perusing and reviewing the overturned CCMA and LC decisions. These may help the committees to understand where they went wrong and areas of improvement enabling them to correct such in the future. Such CCMA and LC decisions may be used as precedence for future similar cases.

5.3.3 Recommendations aligned to objective 3: To assess whether legal representatives are allowed to act for either employer or employee at an internal disciplinary enquiry at UW

Following the conclusion that legal representation not allowed at the workplace, the study recommended that employees were allowed to utilize union representatives. In addition, the study recommended that employees were also allowed to use internal members of the organization provided they were knowledgeable on labour issues. Legal representation is a constitutionally entrenched right and as such, for fairness and justice's sake, UW may consider reviewing its policy and allow workers to be legally represented, particularly when the case is serious and may lead to dismissal. Workers shall meet the legal costs incurred. It is further of paramount importance to note that outsourcing an attorney to preside over the disciplinary hearing creates a huge imbalance, as workers are not allowed legal representation.

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5.4 SCOPE FOR FURTHER RESEARCH

Since this study was conducted on UW, an organisation in KwaZulu -Natal, there is need that such a similar study be conducted at another institution in order to have a balanced view before making inferences. A quantitative study or a mixed study could also be conducted on the same organisation (UW), to gain a deeper understanding from the general workforce in comparison to the line mangers views and POs.

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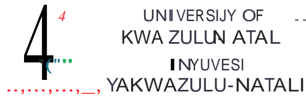
APPENDICES

Appendix A: Ethical clearance



03 June 2022

Zethu Ngcobo (202526243)
Grad School Of Bus & leadership
Westville campus

Dear Z Ngcobo,

Protocol reference number: HSSREC/00004255/2022
Project title: Dealing with employee misconduct by Presiding Officers towards a fair sanction at Umgeni Water.
Degree: Masters

Approval Notification – Expedited Application

This lener serves to notify you that your application received on 01 June 2022 in connection with the above, was reviewed by the Humanities and Social Sdences Research Ethics Comminee (HSSREC) and the protocol has been granted FULL APPROVAL.

Any alteration/s to the approved research protocol i.e. Questionnaire/Interview Schedule, Informed Consent Form, Title of the Project:t. location of the Study, Research Approach and Methods must be reviewed and approved through the amendment/modification pr or to its implementation. In case you have further queries,
please quote the above reference number. PIEASE NOTE: Research data should be securely stored in the discipline/depanment for a period of 5 years.

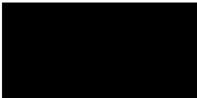
This approval is valid until 03 June 2023.
To ensure uninterrupted approval of this study beyond the approval expiry date, a progress report must be submitted to the Research Office on the appropr ate form 2 - 3 months before the expiry date. A close-out report to be submitted when study is finished.

All research conducted during the COVID-19 period must adhere to the national and UKZN

guidelines. HSSREC is registered with the South African National Research Ethics Coundl (REC-

o40414-040).

Yours sincerely,



Professor Oipane Hlalele
(Chair)

/dd

Humanities and Social Sciences Research Ethics Committee
Postal Address: Pfl\lalle Sag X54001, Ourbaf\ d000, South Africa
Thlone: +27 (0)31 260 8350 l45S7/3S87 Email: hssrec@ukln.ac.za Website: hnp:lfnoseat<:h.ukM.ac.la/Research-Ehks

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INSPIRING GREATNESS

Appendix 8: Gatekeepers Jetter

UMGENI
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'Improving Quality of Life and Enhancing Sustainable Economic Development'

24 September 2020

Me ZETHU NGCOBO (Student No. 202526243)
Graduate School of Business & LeadershiP
College of Law and Management Studies
University of Kwa-Zulu Natal
E-Mail elbunocobo@umgeni co za

Dear Sir/Madam

RE; Gatekeeper's letter !or a Master's Research project

Zethu Ngcobo is a student (Student No. 202526243) at the Umverslly or Kwa-Zulu Natal and an employee or Umgenl Water. Gatekeeper's permission has been granted for her to conduct research at Umgem Water towards her Master's degree note the title of her research project is: De1ermm1ng reasons for ci1Sm1ssal as a fa" sanct1on at Umgenl Water

111s noted lhat she WID oonstitute her sampling by handing out quesnonnaires to employees holding interviews with some or Umgeni Water employees ranging from the execunves. middle managemenskilled, semisklled andil 1terate employees. and Willbe oonducted Within the premises of Umgeni Water.

Itiis further my understanding that ell nformation collected from individuals/employees will be done With dufy 1nformed consent from the participating individuals and that the participant can refuse participabon with no negabve consequences and any input cannot be traced back to partJapants

I oonfirm that Iam aware of the methodology that will be used in her research and support the conduct of this research tn this organization.

Yours sincerely

THULASIZWE DERRICK SHANGASE
SENIOR HUMAN RESOURCES MANAGER

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Chief Executive: Mr TB Hlongwa

Non-Executive Directors: Z Mathenjwa (Chairperson) • N Chamane • S Shabalala • M Zakwe •V Reddy• W Mapena • T Mthembu• T Nahahla• L Ngcobo • B Zulu • S Badat • M Ndlovu • S Chamane •

Appendix C: Consent form

Information Sheet and Consent to Participate in Research

Date: 18/01/2021

Dear Sir/Madam

My name is Ms. Zethu Ngcobo a Master of Commerce in Leadership studies student from the University of KwaZulu-Natal, Humanities and Social Sciences department.

You are being invited to consider participating in a study that involves research (Dealing with employee misconduct by Presiding Officers towards a fair sanction at Umgeni Water.) The aim of the research is to determine reasons for dismissal as a fair sanction: A Case Study of Umgeni Water.

We hope that the study will benefit with improvement in handling employee misconduct and handing out fair sanctions at Umgeni Water.

With the outbreak of Coronavirus, you are encouraged to participate in this research electronically/telephonically to prevent any physical contact that might spread the virus.

In the event of any problems or concerns/questions you may contact the researcher at 202526243@stu.ukzn.ac.za/ 0 or the researcher's supervisor Dr. Emmanuel Mutambara at mutambarae@ukzn.ac.za/ or UKZN Humanities & Social Sciences Research Ethics Committee, contact details as follows:

HUMANITIES & SOCIAL SCIENCES RESEARCH ETHICS ADMINISTRATION
Research Office, Westville Campus

Govan Mbeki Building

Private Bag X 54001
Durban
4000
KwaZulu-Natal, SOUTH AFRICA
Tel: 27 31 2604557- Fax: 27 31 2604609
Email: HSSREC@ukzn.ac.za

You are advised that participation in this research is voluntary and you may withdraw your participation at any point, and that in the event of refusal/withdrawal of participation the participant will not incur penalty or loss of treatment or other benefit to which they are normally entitled.

No costs will be incurred by participants as a result of participation in the study. There is no incentive or any reimbursement for participation in the study.

Statements of Confidentiality:
Please take note of the following:
•You are not compelled to disclose your name or identity on any document of the study
•Your participation is voluntary and you are assured confidentiality and anonymity at all times.
•The information gathered from this study will be used solely for this study purposes only. No response information will be given or divulged to your organization.

CONSENT (Edit as required)

I________________________, have been informed about the study, Determining reasons for dismissal as a fair sanction: A Case Study of Umgeni Water by Ms. Zethu Ngcobo, the researcher.

I understand the purpose and procedures of the study.

I have been given an opportunity to answer questions about the study and have had answers to my satisfaction.

I declare that my participation in this study is entirely voluntary and that I may withdraw at any time without affecting any of the benefits that I usually am entitled to.

With the outbreak of Coronavirus, l have been informed that the research will be conducted electronically/telephonically to prevent any physical contact that might spread the virus and that there is no available compensation or medical treatment if injury occurs to me as a result of study-related procedures.

In the event of any problem or further questions/concerns or queries related to the study you may contact the researcher at **202526243@stu.ukzn.ac.za** or [redacted] 0r Dr. Emmanuel Mutambara at mutambarae@ukzn.ac.za / [redacted] or the UKZN Humanities & Social Sciences Ethics Committee, contact details as follows:

If I have any questions or concerns about my rights as a study participant, or if I am concerned about an aspect of the study or the researchers then I may contact:

HUMANITIES & SOCIAL SCIENCES RESEARCH ETHICS ADMINISTRATION
Research Office, Westville Campus

Govan Mbeki Building

Private Bag X 54001
Durban
4000
KwaZulu-Natal, SOUTH AFRICA
Tel: 27 31 2604557 - Fax: 27 31 2604609
Email: HSSREC@ukzn.ac.za

______________________ ______________________

Signature of Participant **Date**

______________________ ______________________

Signature of Witness **Date**

(Where applicable)

INTERVIEW GUIDE

SECTION A

1. What is your position?
2. What is your gender?

SECTION B – DEALING WITH EMPLOYEE MISCONDUCT

3. Could you please explain challenges encountered by Presiding Officers of disciplinary enquiries at Umgeni Water during and after conducting a disciplinary hearing
4. In your opinion, what are areas of improvement that Umgeni Water should give priority to in order to avoid decisions made by the Presiding Officers of the enquiry being overturned by the Commission for Conciliation, Mediation and Arbitration (CCMA).
5. What is the impact of employee misconduct in the workplace?
6. What can be done to minimize employees' misconduct Umgeni Water leading to internal disciplinary hearings?

SECTION C: PROCEDURE USED BY POs IN CONDUCTING A FAIR SANTION

7. Explain criteria should be used by Umgeni Water when appointing Presiding Officer to preside over internal disciplinary hearings?
8. With the current criteria, what would you recommend Umgeni Water should consider when selecting Presiding Officers.
9. Outline the reasons that the Presiding Officer should consider in determining a fair sanction for misconduct.

SECTION D: WHO DEALS WHO IS ENTITLED TO DEAL WITH MISCONDUCT AT UW

10. Based on what we have discussed above, who do you think is entiled to deal with employee misconduct, and why?
11. Which gender is usually selected as Presiding Officers on internal disciplinary hearings?
12. With reference to your answer above, what in your opinion are the reasons for utilizing that particular gender?

SECTION E: THE NEED FOR LEGAL REPRESENATIVES

13. For an employer, why should an external legal representative be allowed during an internal disciplinary hearing?
14. For the employee, why should an external representative be allowed during an internal disciplinary hearing? "

Appendix E Editor's Letter

06 April2023

To whom it may concern

CERTIFICATE OF EDITING & AUTHENTICATION

I have proofread and language edned llle MCLS dissertation btled:

"Dealing with employee misconduct by presiding officers: towards a fair sanction at Umgeni Water"

by

Zethu Ngcobo

To the best of my knowledge, the worl< is free of spelling, gramm<r, SIJUCIUral and SlytisbC errors and the contents are certified as the authOr's OWll work.

With lilanks.

H. S. Richter

UNIVERSITY OF
KWAZULU-NATAL
INYUVESI
YAKWAZULU-NATALI

College of Law and Management Studies

Supervisors Report of Revised and Corrected Thesis/ Dissertation

Name: Zethu Ncgobo	No: 202526243		
Dissertation title: **Dealing with employee misconduct by presiding officers: towards a fair sanction at Umgeni Water**			
Qualification: Mcls	School: GSB&L		
		Yes	No
I certify that the following student has made the changes/corrections to his/her dissertation/thesis as requested in the examiner's report/s.		X	
Comments if necessary: Approved by supervisor			
Supervisors Name: Mutambara E			
Signature:			
Date:		06 July 2023	
Head of Masters Research:			
Signature:			
Date:			

Student report to confirm error corrections

Student name: Zethu Ngcobo
Student No.: 202526243
Dissertation title: Dealing with employee misconduct by presiding officers: towards a fair sanction at Umgeni Water
Supervisor/s: Professor Mutambara
Qualification: Mcls
School: GSBL

Date: 06 July 2023

Student Signature:

Page	**Error**	**Corrections**
	INTERNAL EXAMINER	
	EXTERNAL EXAMINER	
	Most issues highlighted in the previous report for research design and methodology have been addressed except Streubert-Speziale and Carpenter is acknowledged as a 2033 publication.	Corrected : Streubert-Speziale and Carpenter is acknowledged as a 2013

53	The candidate to revise chapter 4; majority of the issues pointed out in the previous report have been attended except that:	Chapter 4 revised as recommended in sections that follow
53	The researcher should further edit Figure 4.1 has two headings (respondents inside as well as at the bottom). Figure 4.1 also does not have a key representing what yellow is for. Figure 4.2 does not show the respective figures in percentages.	The heading in side figure 4.1 has been removed, and the key has been provided. Figure 4.2 was found to be misplaced and irrelevant, thus removed/deleted
54	The key issues established – page 54. Where are these key issues coming from? The researcher should be clear.	The key issues were found to be misplaced and irrelevant and have been removed/deleted
56,- 69	No strong linkage of the results to existing literature (theory) has been presented by the researcher in Chapter 4. Why? The researcher is basically generalizing the results.	A links to literature have been provided and a discussion provided thereof under the respective findings
55	Data analysis needs to be improved. Introductory Letter to Participants to be attached	Manual thematic analysis was performed, and the themes tabulated on table 4.1. The themes are then discussed. A detailed explanation is provided on page 55 Letter attached on page 85
	Rectify the issue relating to the attached consent letter. Appendix talks to a questionnaire and not interview guide.	The consent letter has been rectified and the word “questionnaire” replaced by interview guide
71 -75	In chapter 5, student must discuss the findings in line with research objectives and highlight how the findings relate to existing body of knowledge, instead of just provided a conclusion and recommendations	The chapter has been revised. Conclusions and recommendations now presentation/aligned to objectives as highlighted in yellow