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DO NOT MAKE DISCIPLINE IN YOUR COMPANY A LEGAL MINEFIELD

FOCUS ON THE OBJECTIVES OF DISCIPLINE BEFORE THE PROCESS

IN DISCIPLINING STAFF, DEAL WITH THE ISSUE, NOT THE FORMALITY

DISCIPLINE FOR THE RIGHT REASONS AND THE PROCESS WILL LOOK AFTER ITSELF

I was recently privileged to listen to Halton Cheadle, a key architect of our current labour laws, express some clear views on the state of discipline management in organisations. The gist of his lecture was that the drafting of the Labour Relations Act, which in part determines the procedures required to effect fair discipline, was not designed to create the intense over-legalisation which has subsequently permeated the field.

Surprising but gratifying sentiment.

Our experience over the past ten years has been of an increasingly complicated set of rules and obligations to give effect to organisational standards, and a focus so much drawn to the legalism of the process that we have begun to lose sight of the objective of the process, which is to assess whether an action has occurred that stands in breach of the contractual obligations of an employee to the organisation, and if so, whether that action destroys any hope that the relationship can continue.

Our team has often had to assist clients who have failed to exercise discipline because they are paralysed by the fear of entering into a legal minefield. Result? We begin to deal with the disciplinary process when it should already have been concluded. Result? The process of discipline becomes a window-dressing, a procedural tap dance, the decision already having been made, and the trick simply to place the decision within the “legality” of “fairness.” Get the point?

In our efforts to ensure fairness, we have created a vehicle for lip service to integrity.

A disciplinary process is a form of performance management. It is an opportunity for the employer to express his concerns and lay down the standards that are expected if the relationship is to endure. It is the moment for an employee to place his perceptions on the table and for the two parties to work out what each needs to do to assist the other to make it right, or better.

Underlying the process is the obligation to ensure that the behaviours in the organisation are concomitant with the business objectives and the values of the organisation.

In other words, discipline is mechanism to ensure that all employees are acting to support and enhance the business standards of the organisation, and when not, to provide a checkpoint to refocus the behaviours accordingly. At worst, when the matter becomes serious, and the continuing employment of a person is placed in jeopardy, then the process becomes a problem solving one.

Ideally, discipline starts at the beginning of a relationship, and not when it goes wrong!

All that is required is that the parties – both, but particularly the employer, acts in good faith in the dealing with the situation. Efforts must be designed to set and maintain the standards necessary to excite the customer, and to provide reasonable opportunity for the employee to demonstrate his will and capacity to meet those standards.

There is no law that demands three warnings prior to dismissal – only a law that demands the employer apply his mind to encourage an employee to meet the standards he has set. The idea of three warnings originates simply from a logic that stipulates opportunity and guidance to meet the requirements of the employer. Three warnings do not provide a structural or automatic right of dismissal, nor does a single warning deny the right of dismissal. Reasonable and logical assessment of a situation and its effect on the relationship determines the right of an employer to bring the relationship to an end.

Have we lost sight of this in our efforts to define the terms, to interpret what constitutes fair conduct? We have developed legalistic frameworks for managers who never intended to become legally trained – and never should. They have more important things to do.

In dealing with deviations from standards, the employer should not feel paralysed by the fear of what he can or cannot do. Are our complicated processes taking away the capacity of managers to have a direct and honest discussion with their people, to express openly their concerns and lay down their expectations of performance? Discipline is not about power, but efficacy and relationships.

If disciplinary action is not taken for the right reasons and at the right time, no procedure or code can protect a company from the results in turnover costs and reputation. Is our system acting against itself?

Michael Jarvis is an Associate Director with Work Dynamics in Port Elizabeth. For more information, call her on 041 582 4447 / jane.workdyn@telkomsa.net.

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