

THE IMPORTANCE OF AN IMPARTIAL CHAIRPERSON

Employers, when tasked with the discipline of their employees who have committed offences within the workplace which have either been repeatedly committed or are of a serious nature, will have to resort to the holding of a disciplinary inquiry.

When a disciplinary inquiry is held, it is important that employers make use of a chairperson whom is impartial to the process. It is often not fully understood what is meant by impartiality and what this may constitute for an employer. The word Impartial is defined as treating all rivals or disputants equally which effectively means that all parties to a dispute are to be treated the same.

The purpose of having an impartial chairperson conduct a disciplinary inquiry is important as this is a requirement in terms of the Labour laws of South Africa to ensure procedural fairness of a disciplinary hearing and prevent bias towards any party to the inquiry, being either the employer or employee. The Impartial Chairperson within the inquiry ensures as well as notifies both the employer and employee that their role and function within the confines of the disciplinary enquiry is not to represent either of the parties in attendance but to consider the facts presented by both parties and to make a finding on whether the employee who has been charged with the alleged misconduct is either guilty or not guilty.

To further ensure the impartiality of the Chairperson, no facts or evidence prior to the hearing should be provided to the Chairperson who is conducting the disciplinary inquiry, which is to ensure that the Chairperson makes a decision solely based on the facts and evidence which is presented before them.

If it should be discovered that a Chairperson has been involved in any manner concerning the disciplinary inquiry prior to the date in which it has been set down, either party to the proceedings may

ask that the Chairperson remove themselves upon providing the necessary proof which would indicate that said Chairperson has been biased. The parties to the proceedings can ask that a new Chairperson be elected to chair the disciplinary inquiry who is impartial.

The purpose of electing an impartial Chairperson to conduct a disciplinary inquiry is to ensure that a fair process is followed and both parties to the inquiry have had an equal and fair opportunity in presenting their respective cases whereby the Chairperson can make an informed decision. The problem which arises for an employer in the event where the Chairperson is found to be biased occurs where the disciplinary hearing is referred to the CCMA by an employee indicating that the disciplinary inquiry was not procedurally fair whereby the employer will be liable to either compensate or reinstate an employee.

Therefore all employers are urged to make use of an impartial Chairperson whom is preferably an independent third party to the disciplinary hearing to ensure that a fair process is followed.