

(a) The Chairperson(i) General

- (aa) He or she must be a member of the management cadre of the office, ministry or agency in which the staff member is employed.
- (bb) He or she should not have been involved in the offence which led to the charge of misconduct.
- (cc) He or she should not have family ties with the staff member charged.
- (dd) He or she shall appoint the interpreter in co-ordination with the staff member accused.

(ii) Role, Functions And Powers

- (aa) He or she shall fix the time and place of the inquiry and shall give the staff member charged reasonable notice in writing of the said time and place.
- (bb) He or she may authorise any staff member to adduce evidence and arguments in support of the charge.
- (cc) He or she shall cause to be kept by any staff member designated by him or her a record of the proceedings at the inquiry.
- (dd) He or she shall in co-operation with the other members of the disciplinary committee find whether the staff member charged is guilty or not guilty of the misconduct with which he or she has been charged and shall inform him or her of the finding.
- (ee) If the staff member charged is found not guilty of misconduct he or she shall inform the staff member and submit a record of the proceedings, including documentary evidence adduced at the inquiry, together with a written statement of the committee's findings and its reasons therefor to the permanent secretary concerned.

- (ff) If the staff member charged is found guilty of misconduct, he or she shall submit to the Commission and the permanent secretary concerned a copy of the record of the proceedings, including documentary evidence adduced at the inquiry, together with a written statement of the committee's finding and its reasons therefor and the disciplinary measures recommended.

(iii) Guidelines In Chairing An Inquiry

When chairing an inquiry the undermentioned guidelines should be taken into account:

- (aa) To structure proceedings at an inquiry use Annexure G.
- (bb) Remain impartial - do not take sides.
- (cc) Allow all parties a chance to have their say - do not allow "butting in".
- (dd) Do not talk too much - listen and ask questions.
- (ee) Do not be side-tracked by "red herrings" (i.e. a tactic to lead one off a particular train of thought).
- (ff) Do not be side-tracked into a repetition of what has already been said.
- (gg) Do not allow parties to jump ahead. They must answer questions in the order asked.
- (hh) Focus on the facts, not the individuals involved.
- (ii) Remain calm.
- (jj) Do not allow or use vague or undefined language (e.g. I think, I feel, etc.).
- (kk) Be sensitive to feelings and if possible allow parties to save face.
- (ll) Do not allow defence/attack spirals to develop.

(mm) Do not use irritators (e.g. self flattery "I am being very fair", thereby putting parties on the defensive).

(nn) Do not discuss proposed action in the presence of persons who are not members of the disciplinary committee.

(oo) Summarise - present both sides of the argument.

~~(pp) Adjourn when unsure or if in difficulty.~~

9.2.2 Head Of Organisational Component Responsible For Personnel Administration

He or she or his or her representative is a member of the committee and may participate in the proceedings.

9.2.3 Personnel Officer

He or she or his or her representative shall be the secretary of the committee only and will not participate in any of the proceedings other than to keep minutes and other tasks as instructed by the chairperson.

9.2.4 Expert Of The Subject On Which The Charge Is Based

(a) He or she shall be appointed by the permanent secretary concerned and shall not be the head of the organisational component in which the staff member charged is employed nor the staff member's supervisor.

(b) He or she is a member of the committee and shall participate as such.

9.2.5 Representative Of A Recognised Trade Union

Should the staff member charged desire that a representative of a recognised trade union be present, he or she will serve on the committee as an observer and will not be allowed to participate in any proceedings.

~~9.2.6 Witnesses (Including Supervisors)~~

Persons who have witnessed the offence or who can provide evidence relevant to the case.

9.2.7 Investigating Officer

(a) He or she is appointed by the chairperson of the

disciplinary committee in terms of section 26(7) of the Act to investigate an alleged misconduct and his or her role is a vital and essential one. (Refer Annexure H)

- (b) He or she should not be the staff member's supervisor or head of the component in which the staff member charged is employed, should not have family ties with the staff member charged and may not be the selected representative of a recognised trade union.
- (c) Apart from what is required of the supervisor and which is also applicable to the investigating officer, he or she shall -
 - (i) investigate the alleged misconduct beforehand;
 - (ii) obtain written or oral statements from the alleged perpetrator or witnesses without any coercion;
 - (iii) obtain all relevant documentary evidence and records and impound any exhibits e.g. stolen goods, broken equipment, photographs of accidents and/or injuries etc. and sign for them if required;
 - (iv) obtain the names and particulars of witnesses and cross-examine any person who has given evidence in rebuttal of the charge;
 - (v) adduce evidence and arguments in support of the charge;
 - (vi) report any evidence which is found to the contrary to the chairperson; and
 - (vii) not be allowed to participate in the findings or recommendations of the committee.
- (d) It is advisable for the investigating officer to interview and, where applicable, take statements from witnesses as soon as possible after he or she has been appointed as -
 - (i) the offence will still be fresh in the mind and will therefore ensure the most accurate recollection of the relevant incident; and
 - (ii) it will avoid a situation where witnesses may be intimidated later into not testifying.
- (e) If a statement is signed it becomes admissible and the alleged offender and his or her representative is entitled to study it.

- (f) The accused staff member's explanation should be checked or verified if possible.
- (g) It should be established whether witnesses from outside the public service are prepared to testify. (if available).
- (h) The situation should be analysed to identify any underlying problem(s) and cause(s).

Note The investigating officer should, wherever possible, take written statements and/or interview the accused in the presence of witnesses.

9.2.8 Staff Member Charged Or His Or Her Representative

In terms of section 26(8) of the Act, the staff member charged or his or her representative (who is not the selected representative of a recognised trade union who shall serve on the disciplinary committee as an observer) has the right to be present and to be heard, to cross-examine any person called as a witness in support of the charge, to examine any documents produced in evidence, to give evidence and to call other persons as witnesses.

9.2.9 Interpreter

- (a) The selection of an interpreter to interpret the proceedings of inquiries is important as the interpreter -
 - (i) should be articulate and should be fluent in the languages to be translated; and
 - (ii) must not have or be seen to have a vested interest in the outcome of the case. An interpreter, particularly if there is no-one to check him or her, has the potential to change the meaning of statements. It is therefore very important that the person selected be impartial and trusted by both the Disciplinary Committee and the staff member charged.
- (b) Unless the role of the interpreter is clearly defined, if the outcome of an inquiry is not popular with the work force, the interpreter could be seen as being a party to management's decision. Should this be so, he or she may be subjected to ostracism, abuse or even assault by his or her colleagues.
- (c) At the onset of the inquiry the chairperson must make it clear that the interpreter is present merely to translate proceedings and that he or she has no say in any decision reached. For this reason, when the

inquiry is adjourned, the interpreter should leave the room with the staff member and the witnesses.

- (d) Some of the common mistakes made by people when speaking through an interpreter are as follows -
- (i) speaking too quickly;
 - (ii) saying too much at one time (i.e. the interpreter is not able to remember all that has been said);
 - (iii) not pausing and allowing the interpreter a chance to catch up;
 - (iv) speaking while the interpreter is still translating;
 - (v) conferring with the interpreter (i.e. using him or her as a counsellor as opposed to a translator);
 - (vi) going into a monologue (although it might be translated perfectly, if the speaker doesn't allow the other party a chance to reply, he or she will not know how that party is going to react or whether he or she has received the message);
 - (vii) using complicated words (e.g. intrinsically, altruistic, etc.);
 - (viii) using technical jargon, especially if it is not in common use and understood by the other party (e.g. pH content, LIFO, FIFO, Form Series Test, VCR, etc.); and
 - (ix) using idioms (i.e. words that mean something different from the normal meaning of the word).
- (e) The following are guidelines when speaking through an interpreter:
- (i) Keep it short and simple (short sentences, simple words).
 - (ii) Allow the interpreter ample time to translate.
 - (iii) Question the other party to ensure that the correct message was received and understood.