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Right to Fair Hearing in Employment Disciplinary Proceedings Related to Misconduct in Tanzania

Kelvin M Mwita[1*], Matilda Lameck[2]

[1,] School of Public Administration and Management Mzumbe University, Morogoro, Tanzania.
[2,] Faculty of Law, The Open University of Tanzania, Dar es Salaam, Tanzania.
: kelvinmwit@gmail.com
Corresponding Author*

Abstract

Introduction: *The right to fair hearing is one of the principles of natural justice that is constitutionally provided for in Tanzania. Number of principal and subsidiary legislations have been enacted to promote the right to fair hearing in employment proceedings. Despite the legal protection, disciplinary proceedings related to misconduct have been persistently decided without affording the accused the right to a fair hearing.*
Purposes of the Research: *The study aimed at examining the gap that exists between the law protecting the right to fair hearing and the actual practice in organisations.*
Methods of the Research: *The study made use of library and field research. Data was collected by using documentary review to collect data from legal documents and published material. Semi-structured interviews were used to collect data from 14 respondents obtained from one of local government authorities in Tanzania.*
Results of the Research: *The study found that existing law have established standards that are capable of promoting the right to fair hearing in disciplinary proceedings. Further, the study observed that there is a gap between law and practice when it comes to promoting the right to fair hearing in disciplinary proceedings related to misconduct. The gap has to do with failure to adequately comply with procedural fairness during hearing. As per the reviewed literature this is the first study to examine the gap between law and practice relating the right to fair hearing with focus on disciplinary proceedings related to misconduct.*

Keywords: Right To Fair Hearing; Employment Misconduct; Audi Alteram Partem.

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INTRODUCTION

Disciplinary procedures in courts of law and administrative tribunals are required to apply the principles of natural justice including the right to a fair hearing (*audi alteram partem*). The right to a fair hearing is a broad concept that is more than just allowing parties to present their side of the case; rather a person should be given sufficient notice of a hearing[1]. It is an important principle that facilitates fair procedures in the adjudication of both civil and criminal cases. Firstly, the principal helps the accused to know the case which has been made against him. Secondly, it helps to give the accused enough time to digest information about the accusation made against him and formulate a response. Thirdly, the right to a fair hearing helps those who cannot speak for themselves to find legal

[1] N Parpworth, *Constitutional and Administrative Law: Core Text Series*, 9th ed. (New York: Oxford University Press, 2016).

representation from people who understand well technicalities of law[2]. Yet, the breach of natural law principles and the right to a fair hearing, in particular, is often reported[3].

In Tanzania, the right to a fair hearing is constitutionally protected under Article 13 of the Constitution of the United Republic of Tanzania (CURT). Precisely, Article 13(6) (a) requires the decision-making bodies to observe the right to a fair hearing when determining the rights and duties of persons. In employment matters, section 37(1) of the Employment and Labour Relations Act (Cap 366 R.E 2019) prohibits unfair termination of employees. To ensure procedural fairness the law requires an accused to be notified about his allegations and be given a chance to respond as provided in the case of *Higher Education Students Loans Board vs Yusufu M. Kisare*. In the case of public servants' disciplinary proceedings, section 23 of the Public Service Act (Cap 298 R.E 2019) also warrants the right to a fair hearing.

Despite the legal protection, disciplinary proceedings related to misconduct have been persistently decided without affording the accused the right to a fair hearing (LHRC, 2021). Several claims of unfair termination of employment due to failure to observe the right to fair hearing in disciplinary proceedings are evident[4]. Labour disputes referred to the Commission for Mediation and Arbitration (CMA) and other decision-making bodies have been increasing and the final decisions to the large extent have been in favour of the claimants on the ground of unfair termination which includes not affording the accused the right to be heard. Some of these cases include *Lukindo International Co. LTD vs Bakari Kusewa* and *Masija Macunde vs Alaf Limited.* This study, therefore, examines the law and practice of the principle of fair hearing in employment disciplinary proceedings.

LITERATURE REVIEW

A. Natural justice

Natural justice is not a new concept, it has been in application since early times. According to Chauhan, the principle of natural justice comprises certain fundamental rules which are so necessary to the proper exercise of power that they are projected from the judicial and administrative spheres[5]. These are the common law's procedural requirements for the valid exercise of decision-making powers. Hence, even in the absence of procedural rules imposed by statute, the rules of natural justice enable the courts to insist that public bodies make decisions by certain minimum standards of procedural fairness. These are encapsulated in two general principles which are the right to a fair hearing (*audi alteram partem*); and the rule against bias (*nemo judex in causa sua*)[6]. While the right to a fair hearing concerns the hearing procedures, the rule against bias requires the decision-making body to be impartial.

B. Right to Fair Hearing

Audi alteram partem is a Latin word that means 'hear the other side'. It is one of the principles of natural justice that no one should be condemned unheard. Traditionally, only courts of law would apply the principle to judicial decisions. However, it was concluded in

[2] Parpworth.
[3] D. K Nziku and J. M Lelo, *Sustainable Education and Development*, 2021, https://doi.org/10.1007/978-3-030-68836-3_28.
[4] C. E Kiweha, "Factors Influencing Unfair Termination of Employment in the Private Sector in Tanzania," *Global Scientific Journal* 9, no. 10 (2021): 45–67.
[5] V. S Chauhan, "Reasoned Decision: A Principle of Natural Justice," *Journal of the Indian Law Institute* 37, no. 1 (1995): 92–104.
[6] H Carrol, *Constitutional and Administrative Law*, 5th ed. (Harlow: Pearson Education Limited, 2009).

Batulis Civil Law Rev, 4 (2) November 2023: 143-157
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the case of *Ridge v Baldwin* that whether the decision is judicial or administrative an accused person must be allowed to be heard.

As Loveland[7] put it, a fair hearing could require one or more of the following depending on the facts of the case; notification of a hearing, being informed of the case against, the opportunity to respond to evidence, an oral hearing, legal representation before and at the hearing; and the ability to question the witness. Fundamentally, if the principle is violated, its decision will be vitiated[8]. This implies that no matter how good the decision is if the accused person was not offered an opportunity to present his case that decision is considered as no decision.

C. Encounters of the Right to be heard

Some authors write about the reasons for the breach of the right to a fair hearing. Chigozie[9] found that one of the reasons why there is an abuse of the principle of fair hearing is because some officials involved in adjudicating cases are biassed and do not consider the presumption of innocence. The study of Odeku[10] which was done in South Africa found that the principle of the right to a fair hearing is infringed because organisations lack specific guidelines relating to handling labour disputes in their organisations. Further, the study observed that employees are denied this fundamental right because of a lack of knowledge of labour laws among Managers and Labour Relations Officers in government departments.

The two above studies identify challenges that make the right to fair hearing difficult to fully put into practice. However, the studies failed to show how victims of the situation seek remedies for the same. These studies also offer findings from different geographical contexts other than Tanzania. The current study is conducted in Tanzania and offers country-specific observations.

Ballard and Easteal[11] observed that procedural fairness in disciplinary handling proceedings is challenged by how investigations on allegations at workplaces are done. The study found that the investigation process can be flawed by a lack of fairness, neutrality, and timeliness. This study reminds us that issues regarding procedural fairness at work do not only have to do with whether the accused person was given the right to be heard or not but consideration should be made on whether the investigation was just and fair. This is due to the reason that investigations can provide evidence that may be used to convict a person unfairly if not properly undertaken. Although the study offers insightful findings on procedural fairness, it focused on one area which is the investigation, and other aspects of fair hearing were not addressed.

The study by LHRC[12] shows an increased number of cases of unfair termination of employees as the result of denying them the right to be heard in Tanzania. The study confirms that procedural fairness in disciplinary offences is not sufficiently observed in

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[7] I Loveland, *Constitutional Law, Administrative Law and Human Rights: A Critical Introduction*, 6th ed. (Oxford: Oxford University Press, 2012).

[8] D Chipeta, *Administrative Law in Tanzania: A Digest of Cases* (Dar es Salaam: Mkuki na Nyota, n.d.).

[9] M Chigozie, "The Role off Fair Hearing in the Dispensation of Justice in Nigeria - A Legal Perspective," *International Journal of Innovative Legal & Political Studies* 4, no. 4 (2016): 1–10.

[10] K. O Odeku, "Precautionary Suspension in the Workplace and the Employees' Right to Be Heard," *Mediterranean Journal of Social Sciences* 4, no. 4 (2013): 797-804.

[11] A Ballard and P Easteal, "Procedural Fairness in Workplace Investigations: Potential Flaws and Proposals for Change," *Alternative Law Journal* 5, no. 4 (2018): 1–7, https://doi.org/10.1177/1037969X18772134.

[12] LHRC, "Human Rights and Business Report 2020/2021: Tanzania Mainland" (Dar es Salaam: Legal and Human Right Centre, 2018).

Batulis Civil Law Rev, 4 (2) November 2023: 143-157
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many cases which makes the problem alarming. Although this study forms a base for further investigation it only reported the presence of cases of unfair termination due to denying employees an opportunity for a fair hearing without detailed information on specific aspects of the problem. This study went into detail to probe the extent to which the right to fair hearing principle is applied in employment disciplinary proceedings and factors associated with failure to effectively apply the principle.

Lusewa[13] investigates legal representation during disciplinary proceedings in Tanzania organisations. The findings show that in general view employees working in Tanzania are not aware that they are entitled to legal representation in disciplinary proceedings. There is an assumption among Tanzanian employees that legal representation can only be done before courts of law and not during disciplinary hearings in organisations. This denies the right to a fair hearing to so many people unknowingly. While this study reveals how legal representation is misunderstood it does not explain the extent to which the right to a fair hearing is applied in a disciplinary hearing. Further, the study had a narrow focus by focusing only on legal representation, something that is not required in all disciplinary proceedings.

The study of Mtemvu[14]explored the effectiveness of disciplinary committees in handling disciplinary proceedings at workplaces. One of the significant findings of this study is related to awareness of principles of natural justice including the right to a fair hearing and how it is exercised. The study showed that there is a significant number of committee members whose understanding of the right is not adequate to enable them to make fair and just decisions, particularly regarding the accused. The study suspects that this may be denying the accused their naturally inherited right to a fair hearing. The findings of this study highlight an important issue of knowledge of the right to fair hearing though it has not shown how the right is exercised. Therefore, the issue of whether the knowledge of committee members leads to infringement of the right to a fair hearing remains to be a speculation that needs empirical proof or disproof of something that this study addresses.

The study of Kiweha[15] pointed out that employees are offered the right to be heard in some cases. This has been attributed to employers' errors in procedures hence rendering the termination unfair. Another reason is finding the procedures to be too bureaucratic to follow, that leads to making premature decisions that deny the accused the right to a fair hearing. This study admits the existence of the problem of unfair termination as the result of not affording the accused the right to a fair hearing. However, the study does not show how disciplinary proceedings are handling remedies that the aggrieved parties seek after unfair decisions have been made. This study, therefore, seeks to examine the whole procedure and its shortfalls that lead to unfair termination and further examine the remedies that the aggrieved parties tend to seek if any.

Similar findings were reported in the study of Mhando and Mramba[16]. As per their study women working in the food vending sector experience job insecurity because disciplinary

[13] L Lusewa, "The Right to Legal Representation in Disciplinary Proceedings in Tanzania Organizations: Nexus between Law and Practice" (Morogoro, Tanzania, Mzumbe University, 2020).

[14] B Mtemvu, "Assessment of Knowledge of Principles of Natural Justice among Disciplinary Committee Members in Tanzanian Organizations" (Morogoro, Tanzania, Mzumbe University, 2021).

[15] Kiweha, "Factors Influencing Unfair Termination of Employment in the Private Sector in Tanzania."

[16] N. E Mhando and N. R Mhamba, "Improving Young Women's Working Conditions in Tanzania's Urban Food Vending Sector," *United Nations University World Institute for Development Economics Research*, WIDER Working Paper 2021/157, 2021.

Batulis Civil Law Rev, 4 (2) November 2023: 143-157
P-ISSN: 2722-4465, E-ISSN: 2746-8151
Published by: Faculty of Law Pattimura University

proceedings are poorly handled by their employers. The study reported that a tenth of women are fired or suspended unfairly, in a harsh, unjust, and unreasonable manner. They were not given room to defend themselves against what they were charged with. These findings show that problems associated with unfair hearing procedures cut across different sectors and therefore need to be addressed. Although the study uncovers the problem, still it does not offer detailed information on the reasons attributed to denying the right to a fair hearing and the study focused on women employees alone. This study offers detailed information on factors contributing to unfair disciplinary proceedings about the right to be heard and it focuses on both male and female employees.

Thus, although the reviewed studies have addressed the issue of fair hearing in workplace disciplinary proceedings yet the extent to which the right is exercised is inadequate. The reviewed literature offers general findings on fair hearings with no specific focus on proceedings related to misconduct which are reported to be common and persistent at workplaces in Tanzania[17]. This study intends to address this research gap.

METHOD

The study used library and field research in collecting qualitative data. While the documentary review was employed through library research, a face-to-face interview was conducted in field research. Document analysis was done by consulting various legal documents which are the constitution of the United Republic of Tanzania, Principal and Subsidiary legislations, case law, books, and journal articles. The use of library research helped to make comparisons and analyses of what has been documented and what is in practice. In the field research, interviews were done with 11 employees of one of local government authorities in Tanzania mainland. The interviewees comprised Two (2) Human Resource Officers, three (3) Members of a disciplinary committee, and six (6) ordinary employees of the organisation. The sample size was determined by the saturation principle that requires a researcher to stop collecting data after realising that no more new insights can be obtained from the respondents, that is, reaching the saturation point[18]. Data from document reviews were analysed by using content analysis while data from interviews were analysed using thematic analysis.

RESULTS AND DISCUSSION

A. The Right To Fair Hearing In Employment Disciplinary Proceedings

The study found that like other Local Government Authorities in Tanzania, where the study was found there was frequently experiencing incidents that led to administering disciplinary procedures to handle them. In 2022 only, the council had a total of 9 disciplinary cases and 6 related to misconduct. Out of the nine (9) cases, four (4) ended, and five (5) were referred to CMA. Out of the five (5) cases referred to CMA four (4) were determined at CMA and were taken to the High Court (Labour Division) and its litigation is in progress. The CMA determined 3 cases in favour of employees and 2 in favour of the council. The study found that all the cases that the CMA decided in favour of employees

[17] LHRC, "Human Rights and Business Report 2020/2021" (Dar es Salaam: Legal and Human Right Centre, 2021).

[18] K. M Mwita, "Factors Influencing Data Saturation in Qualitative Studies," *Nternational Journal of Research in Business and Social Science (2147- 4478)* 11, no. 4 (2022): 414–20, https://doi.org/10.20525/ijrbs.v11i4.1776.

Batulis Civil Law Rev, 4 (2) November 2023: 143-157
P-ISSN: 2722-4465, E-ISSN: 2746-8151
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were due to procedural inappropriateness including denying the employees the right to a fair hearing.

B. Legal Adequacy In Promoting And Protecting The Right To Fair Hearing In Disciplinary Proceedings Related To Misconduct In Workplaces

The respondents were asked to express their opinions on the adequacy of Tanzania laws in protecting the right to a fair hearing. Generally, it was in the view of the respondents that the current operational laws are adequate to protect the right to fair hearing in disciplinary proceedings related to misconduct in the workplace. This was noted based on themes that emerged in the interviews as explained below;

Presumption of innocence

As noted earlier the CURT provides for the presumption of innocence. When respondents were asked about the adequacy of Tanzania law in protecting the presumption of innocence, generally, the respondents opined that the presumption of innocence is adequately protected by the law.

One of the respondents interviewed commented that,

"The laws that are in place are good enough to protect the right to a fair hearing and I find no problem with them. The laws are there to protect the interest of the accused with the view that the accused might be innocent and for that reason, they are given the benefit of the doubt."

The above response shows that the respondents believe that there is legal adequacy in terms of how the law presumes that any accused person of disciplinary misconduct has to be treated innocent until proven otherwise by bodies with authority to do so.

It was further noted that the presumption of innocence is manifested by various issues including the fact that an employee accused of misconduct keeps on receiving all his/her benefits while proceedings are going on. This was well narrated by one of the respondents, who commented,

"There is no problem with our laws, they are there to make sure the welfare and interests of an employee are well protected from employers who might have evil intentions. The fact that an employer is barred from affecting employee benefits such as salary and other benefits that an accused person has been enjoying before accusations is a sign that the law forces employers to presume that any accusations are not valid until proven by a fair trial"

The above quotation gives a glimpse of what a good law has to be as far as the presumption of innocence is concerned. If employers would have loopholes to expel or reduce benefits that an employee has been enjoying before the accusations it would amount to condemning a person unheard which is against the principle of fair hearing.

It should be noted that disciplinary proceedings related to misconduct are likely to affect the contract that exists between an employer and an employee since if an employee is found guilty it may result in termination of employment. The Section 37 of the Employment and Labour Relations Act protects this relationship by expressly condemning the termination of employment unfairly. The law further shows what amounts to unfair termination if an employer fails to prove the reason for termination was valid, that the reason is fair, and that the employment was terminated based on a fair procedure. The above provisions were established to challenge an employer to prove that an employee is guilty (not innocent)

Batulis Civil Law Rev, 4 (2) November 2023: 143-157
P-ISSN: 2722-4465, E-ISSN: 2746-8151
Published by: Faculty of Law Pattimura University

before deciding to terminate his or her employment. This gives an assurance that those accused of disciplinary misconduct could not be terminated until an employer proves that they are not innocent based on valid reasons whose determination was based on a fair procedure.

Further, the law bars an employer from terminating an employment contract due to misconduct if it is the first offence unless it is proved that the misconduct is serious and that it makes the employment relationship intolerable. This provision helps to give an employee time to correct his/her behaviour by giving him/her second chances to act according to the laid down standards of conduct. This implies that if an employer terminates a contract of an employee in a circumstance where an offense was not serious and it was the first offence it may amount to unfair termination. The offences that can justify termination are listed in rule 12(3) of the Employment and Labour Relations (Code of Good Conduct) which includes gross dishonesty, willful damage of property, willful endangering the safety of others, and gross negligence. The list includes assault on a co-employee, supplier, customer, or member of a family of, and any person associated with an employer.

Procedures for handling disciplinary hearing

Rule 10 of the Employment and Labour Relation Act (Code of Good Practice) requires employers to implement disciplinary policies and procedures that establish the standard of conduct required by their employees. In other words, what is considered to be misconduct should be pre-defined by the policies to avoid unnecessary ambiguity before and during the disciplinary hearing. Further, the laid down procedures have to be sufficiently followed for the same. This helps to protect fair hearing since the ground rules have to be well established, known, and implemented.

Rule 13(1) of the code requires an employer to institute an investigation before starting any disciplinary hearing. This is consistent with Regulation 44(2) of the Public Service Regulations which provides that an employee should not be charged without a preliminary investigation of the case. This is done to ascertain if there is any ground for hearing. The investigation is an important aspect of the procedure that forms the base of the case. The law forbids postponing a hearing to conduct further investigation as stated in the case of *Huruma H. Kimambo* v *Security Group (T) Limited.* After the investigation has been carried out, the investigation report is an important document that has to be given to an employee before appearing for a hearing. It was held in the case of the *Higher Education Students Loans Board Vs Yusufu M. Kisare* that failure to accord the employee with the investigation report which is the basis of the allegation amounted to a denial of the right to be heard.

Further, during the hearing the law intends to promote fairness and impartiality. Guideline 4(2) of the Guidelines for Disciplinary, Incapacity and Incompatibility Policy and Procedures requires a chairperson to be impartial and if possible, should not be involved in the matter that gave rise to the hearing. This helps to protect the accused from being treated unfairly during the hearing since it restricts any conflict of interest that might arise.

Before the hearing commences, guideline 4(3) requires an employer to inform the accused employee of all his allegations, and the time and date of the proposed hearing, giving an employer a reasonable time to prepare for the hearing. This is one of the essential elements of a fair hearing intended not to surprise an employee during the hearing or leave him without relevant information to the case. Rule 13(3) considers not less than 48 hours to be a

Batulis Civil Law Rev, 4 (2) November 2023: 143-157
P-ISSN: 2722-4465, E-ISSN: 2746-8151
Published by: Faculty of Law Pattimura University

reasonable time. On the other hand, the committee of inquiry is obliged by regulation 47(1) of the Public Service Regulations to give a notice of at least seven days before the hearing to the accused public servant to notify him of the date, time, and place at which the inquiry shall be held.

To promote fair hearing, it is advised that hearing may be done through a representative. Guideline 4(4) requires an employer to inform an employee of the right to choose another employee to represent him or her during the hearing. This offers an employee an opportunity to present his/her case even in his absence if circumstances bar him/her from doing so in person.

An opportunity to challenge accusations

The responses from interviews were of the general view that the laws are of legal adequacy to protect the right to fair hearing as long as the accusations related to misconduct are not left unchallenged. Guideline 4(6) requires an accused person to present his case against the accusations so that a fair verdict can be given. One of the respondents commented that,

"I think the employment and labour laws are adequate to the right [to fair hearing] because a person who is accused of a disciplinary offence is allowed to express his or her opinions on the accusations. This makes our law good enough to protect employees when they get into these disciplinary issues in our workplaces"

Another respondent explained how relevant and logical Tanzania labour laws are about an opportunity that the law offers of challenging or responding to accusations,

"although we all agree that an opportunity to be heard offered by our laws is important in protecting the right to fair hearing, we cannot underscore the truth that they have helped so many employees from being condemned unfairly. There are several cases even in our organisation when employees speak their sides of the story you find out the accusations were not true or were exaggerated in the charges"

This gives the impression that the laws have been helping some employees from being punished by their disciplinary committees after presenting their cases. The above findings on the legal adequacy of the law to promote the right to a fair hearing show that the law adequately promotes the right to a fair hearing by having provisions that lay down the procedures on how a hearing has to take place without jeopardising the right to the fair hearing for an employee.

C. The Law And Practice Of The Right To Fair Hearing In Employment

The last objective of this study was to discuss the law and practice of the right to fair hearing in employment disciplinary proceedings related to misconduct at workplaces. The respondents were asked to offer their views concerning their experiences and observations in explaining whether the law is consistent with the practices or otherwise.

Investigation

Rule 13(1) of the Code of Good Practice and Regulation 44(2) requires an employer to first conduct a preliminary investigation to establish whether an accused person has a case to answer or not. As per the law, this has to be done by a special team whose findings will help to determine whether to proceed with the proceeding to further steps or not. This means

Batulis Civil Law Rev, 4 (2) November 2023: 143-157
P-ISSN: 2722-4465, E-ISSN: 2746-8151
Published by: Faculty of Law Pattimura University

failure to investigate before initiating disciplinary proceedings against an employee may affect the procedural fairness of the whole process. In the case of *Puma Energy Tanzania Limited V. Azayobob Lusing & 2 Others,* it was held that failure to accord an employee with an investigation report which is the basis of the allegation amounted to denying the employee the right to be heard. This means conducting an investigation is not enough if the investigation report has not been given to the accused before the commencement of the hearing. This allows an employee to go through the allegations and the basis for the allegations so that he/she can be in a good position to present his/her case before the disciplinary committee.

In this study, the respondents were asked whether the investigation is conducted and whether it is consistent with what the law requires. The respondents agreed that the investigation is always conducted whenever there is an issue related to disciplinary misconduct. However, the majority of the respondents had concerns about the composition of the team and the intentions of the committee that is involved in the exercise. One of the respondents commented that,

"undoubtedly, the investigation is always conducted but in most cases, their findings are in favour of the employer because of what I can say is a conflict of interest. Just imagine, an employer who in the case is a complainant forms a team of employees to investigate the matter that their employer has an interest in, what do you expect?"

The above narration shows that the respondents doubt whether the investigation is fairly done based on the composition of teams that are involved in the investigation process.

Some of the respondents thought that the investigation had to be done by a third party who has no interest in the matter.

"I think if we want these investigations to be done with fairness and justice, people who take part in investigating these issues should not be part of the organisation because when an employee has been appointed [by an employer] to be part of the team, he might be biassed knowingly or unknowingly."

The above quotation offers an important observation on matters relating to conflict of interest. Perhaps, that is the reason some respondents believed that investigation is always done just to meet procedural requirements not to find out whether the accused employee has a case to answer.

Notification of hearing

The employer has a legal obligation to notify the employee in writing of the upcoming disciplinary hearing that will be conducted against them. The notice should clearly state the specific allegations that are being made against the employee, as well as the date and time of the proposed hearing. The employer needs to provide the employee with a reasonable amount of time to prepare for the hearing, which should be not less than 48 hours. This will allow the employee to gather any necessary information or evidence to defend themselves during the hearing.

Respondents had a concern about whether 48 hours are enough for employees to prepare themselves for the hearing. It was the opinion of the respondents that although at the council they are given not less than seven days, 48 hours are not sufficient since the duration does

Batulis Civil Law Rev, 4 (2) November 2023: 143-157
P-ISSN: 2722-4465, E-ISSN: 2746-8151
Published by: Faculty of Law Pattimura University

not give them enough time to prepare for the case. This can be summarised by the following quotation from one of the respondents;

"disciplinary proceedings, especially those relating to misconduct are very serious since they can lead to termination of employment. They tend to leave the accused vulnerable before, during, and after the hearing. Bearing this in mind, enough time has to be given before the hearing starts. There are several consultations; seeking representation, convincing witnesses, and collection of evidence that have to be done before one appears for a hearing. It is my opinion that employees have to be given at least five days for that before they appear for a hearing."

This argument was also supported by one of the Human resource officers who were involved in the study. The respondent shared his experience,

"We understand that 48 hours in most cases are not enough for one to adequately prepare him/herself but the law has set that as a minimum standard. In our practices here we normally give employees not less than seven days so that they would not have an excuse for the time factor. But I do agree that something has to be done because in other places [in the private sector] one might use that and it is okay as per the law".

The concern of not less than 48 hours has to be seriously taken into consideration as the respondents explained. It has to be noted that the Public Service Regulations that are used by the council since it is the public service require the inquiry committee to give a notice of at least seven days as per regulation 47(1).

In addition to providing notice of the hearing, the employer is also required to inform the employee of their right to have a representative present during the hearing. This representative can be a fellow employee or a trade union representative, and their role is to assist the employee in presenting their case and to ensure that their rights are protected during the disciplinary process. The employer should also inform the employee that if they do not have a representative, they will be allowed to appoint one.

The employer also must furnish the employee with a copy of the investigation report. This report should include a detailed account of the allegations made against the employee, as well as the evidence that has been collected during the investigation. The employee should be provided with a copy of the report well before the scheduled hearing date so that they have sufficient time to review it and prepare their defence. This will ensure that the employee has the opportunity to challenge any evidence that may be presented against them during the hearing. This requirement was held in the case *of Higher Education Students Loans Board Vs Yusufu M. Kisare*

Guideline 4 (Guidelines for Disciplinary Hearing) which is the schedule to G.N No. 42 of 2007 (herein called the Guideline) requires that an employee is notified about the allegations through a notification of hearing that further states the date of hearing, place of hearing, and other issues that might be relevant to the case. The respondents were asked to explain whether the notification is served as required by the law. It was found that the respondents opined that notification of hearing in most cases is accurately served as the law requires.

"In this part, we do not have serious issues, people who are accused of disciplinary misconduct and even other types of misconduct are usually adequately served with the notice."

Batulis Civil Law Rev, 4 (2) November 2023: 143-157
P-ISSN: 2722-4465, E-ISSN: 2746-8151
Published by: Faculty of Law Pattimura University

The respondents further explained that the notification of hearing is always supplied with all the relevant information that is required. This gives the impression that no gap exists between law and practice as per the findings.

Hearing

The law requires senior management representatives to be the chairperson. The chairperson should be impartial and not involved in the events that led to the case. However, if the employee is a senior manager, then in such appropriate circumstances a senior manager from a different office may serve as a chairperson.

In the part of hearing the study sought to understand whether the hearing process allows the accused to sufficiently present his case. It was found that the hearing stage has numerous hurdles on the side of the accused. The respondents expressed that the hearing stage in most cases is considered to be done as a matter of complying with the law not to find out the truth or otherwise of the accusations. One of the respondents commented that,

"When you reach the hearing stage is when you can notice that the whole process was just to comply with the procedures. The accused are not presumed innocent but rather guilty before even they have presented their cases. You can notice this through words spoken during the process and sometimes the witnesses and evidence are presented."

Further, it was observed that the hearing process in some cases seems to be suspicious since employers do not have sufficient evidence to prove the case. In probing the reasons why employers fail to adhere to the presumption of innocence, one of the respondents had this to say,

"I think in some cases, if an employee has a problem or misunderstanding with those having authority [including having different opinions in some matters] the employee might be victimised by falsely accused as a way to make him/her obedient to them. If they fail to transfer that employee to another organisation, he/she might be implicated in a case that he/she was not involved"

This gives an implication that disciplinary hearings may be used as a means to silence employees who are considered vocal and critical to the policies, decisions, and conducts of their organisations and or leaders.

The study further probed the role of the chairperson of the disciplinary hearing to promote fairness and justice in the process. It was noted that the respondents were not satisfied with how the Chairperson of the disciplinary hearing is appointed. Guideline 4(1) establishes that the Senior manager should be appointed as a chairperson to convene a disciplinary hearing. Guideline 4(2) requires the chairperson to be impartial and should not, if possible, have been involved in the issue giving rise to the hearing. The same Guideline further establishes that in appropriate circumstances, a senior manager from a different office may serve as a chairperson. These two Guidelines leave loopholes to be misused in the promotion of fairness during hearings. Under clause 4(2), the use of the words "if possible" (that senior manager should not have been involved in the issue giving rise to the hearing) leaves room for impossibilities and hence a chairperson who has been involved in the issue giving rise to the hearing may be appointed something that puts fairness during the hearing at stake. In the same Guideline, the words 'in the appropriate circumstances' (a senior manager from a different office may serve as a chairperson) still leaves room for a chairperson from the same office to chair the disciplinary hearing sessions.

Batulis Civil Law Rev, 4 (2) November 2023: 143-157
P-ISSN: 2722-4465, E-ISSN: 2746-8151
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It is an opinion of one of the respondents that the chairperson of the disciplinary hearing committee is to be appointed from a different office in all circumstances. The respondent's opinions are presented in a quote below,

"*the fact that I have an issue with my employer, impliedly, I have an issue with the whole management who are appointed to prevent the interest of my employer. Appointing a chairperson of the hearing from the same management team and expecting him/her to be impartial, fair and just leaves so many questions that put employees [the accused] at risk*"

The above quotation is a wake-up call to scrutinise clauses 4(1) and (2) for the sake of looking for a better way of forming a disciplinary hearing team that will not leave questions on whether the chairperson has an interest in the matter that may challenge his/her impartiality to the case at hand.

Presentation of evidence and calling witnesses

According to Tanzania labour law, the evidence that was collected shall be presented at the hearing and the witness who can testify on the allegations should be brought up, both the employer and the employee have the right to call witnesses and present the evidence on the alleged misconduct. The chairperson shall rely on the evidence and witnesses present at the hearing to make a decision. Respondents argued that most of the accused face some challenges when it comes to seeking witnesses who have to testify for their cases. The respondents argued that colleagues at work who in most cases are needed to stand as witlessness in their cases are hesitant and, in some cases, refuse to become witnesses due to fear of being victimised by their employers. One of the respondents commented that,

"*People are not ready to stand with you as your witnesses even when they have information that is essential to prove your innocence. They are afraid that management will consider them as traitors and therefore risk their relationships. Some people see disciplinary proceedings not as mechanisms to seek justice but as a place of competition between employer [management] and employees.*"

The above quotation presents a scenario that needs closer attention and perhaps more investigation into challenges that witnesses may encounter in the course of testifying in disciplinary proceedings. The situation may be affecting dispensing of justice on the side of the accused since he/she might be found guilty simply because a witness who had important information to a case is not willing to testify for fear of being victimised in the future by the management.

Legal representation

The issue of legal representation during the hearing emerged during interviews with the respondents. It was noted that due to some legal technicalities, it is important for the accused to be represented by an advocate based on the seriousness and [legal] complications of the case. This right is sometimes denied to the accused for some reasons mainly being a failure of the accused to afford legal charges from advocates even when allowed or insisted to be represented. This observation can be well summarised by the words of one of the respondents interviewed,

"*cases of this nature have so many legal technicalities and [we] employees are not conversant with those technicalities. Hiring an advocate is very important in these cases to promote justice and fairness, however, many employees are not capable of hiring lawyers whose charges cannot be afforded by some employees*".

Batulis Civil Law Rev, 4 (2) November 2023: 143-157
P-ISSN: 2722-4465, E-ISSN: 2746-8151
Published by: Faculty of Law Pattimura University

If an employee is aggrieved with the decision from the hearing the law gives him/her the right to appeal to a more senior level of management as provided by clause 4(12) of the code.

On probing whether employees exhaust the right to appeal the respondents had divided opinions. However, the responses provided show that a considerable number of employees are not willing to appeal as they fear being victimized by the management team. One of the employees had to this to say,

"the relationship between an employee and an employer is a fragile one, when one [an employee] engages in a dispute with an employer in most cases, an employee is considered to be in a disadvantageous position since it is easier for an employer to choose another employee and not an employee to choose another employer. To maintain this relationship in most cases aggrieved employees normally choose not to proceed with the dispute in a way of appeal even when he/she feels the decision reached was not reached fairly"

The above quotation sends a very serious message about the relationship between an employee and an employer as far as disciplinary proceedings are concerned. This means an aggrieved employee may deny him/herself the right to appeal just to maintain his/her relationship with an employer.

D. Other Factors Associated With Failure To Effectively Apply The Right To Fair Hearing Principle

The respondents were asked to identify factors associated with failure to effectively apply the right to fair hearing principle. The following are the factors. Knowledge of labour laws among employees. The respondents thought that employees are not familiar with labour laws governing disciplinary proceedings. This bars them from knowing their rights when a dispute or disciplinary matter arises.

Weak trade unions. Trade unions are established to protect the interests of their members in the employer-employee relationship. Respondents had an opinion that these trade unions do not play their primary role of educating their members and protecting their rights including the right to be held.

Another potential factor associated with the failure to effectively apply the right to a fair hearing is the impartiality of decision-makers. Some employees raised concerns that decision-makers in disciplinary proceedings are not entirely neutral and impartial, which can lead to a perception of bias and unfairness.

CONCLUSION

The principle of fair hearing is a fundamental right that is protected by international and national laws. It requires that individuals be allowed to be heard and to defend themselves before a decision is made that may affect their rights and interests. In the context of employment, a fair hearing is especially important in disciplinary proceedings, as employees can be subject to penalties such as demotion, suspension, or termination. The failure to effectively apply the right to fair hearing in employment disciplinary proceedings can have serious consequences for both employees and employers. This paper recommends the following: Provision of knowledge on labour law to employees by employers, paralegals, and organisations established to promote justice in the country should be done; Preliminary investigations that are done before the hearing have to be done by independent

Batulis Civil Law Rev, 4 (2) November 2023: 143-157
P-ISSN: 2722-4465, E-ISSN: 2746-8151
Published by: Faculty of Law Pattimura University

committees of inquiry that do not have any conflicting interest; Although the law allows outsourcing a senior member of another organisation to be a chairperson of the committee in circumstances where the organisation does not have a senior member, this should be in all circumstances to avoid conflict of interest since in the disciplinary proceedings, management is the one alleges an employee of misconduct; Trade unions that established to protect and promote the interest of employees in workplaces should play an active role in raising awareness of employees on labour laws as well as safeguarding their right to a fair hearing. Decision-makers in disciplinary proceedings have to play their role with neutrality and impartiality. Having good laws that safeguard employees' right to fair hearings would be fruitless if those that are responsible for dispensing the right are biased and impartial. This calls for scrutiny of those who are included in disciplinary committees to ensure people with integrity and high moral values are included in these committees.

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