Labour relation act assignement assignment

Course: Principles of Human Resource Management Section: Industrial Relations Assignment: Individual Assignment Question 1 How employee can be dismissed for poor performance In today’s work environment it is important that the employees meet the competitiveness of their organisation’s market locally and globally. To have employees that are not performers (Dead Woods) can cost the company an arm and a leg. Poor performers can cost companies a lot of money, not only due to service but due to mistakes they make.

More over dealing with them take up a significant part of management time. Most organisations do not have a system that addresses, and deal away with poor performers openly and honestly. In these sections we will be looking at the best way to issue a dismissal by following the right process. When dismissing an employee it is important that you prove that there is a good reason and the right procedure is followed. LRA recognise that the reason for dismissal can fall into the following categories 1. The Operational requirement 2. The conduct of the employee 3.

The capacity of the employee The poor performance of the employee falls within the incapacity category not the conduct as some other managers’ turn to confuse this when addressing poor performance problems. The dismissal will be as result of incapacity therefore the Performance Management procedure must be followed not the disciplinary procedure. This is not advisable because the Code of Good Practise: Dismissal (Section 8 of the LRA) provides different guideline for procedure to be followed when dealing with an employee who is not performing to the required standard.

It is important to have a separate procedure and guidelines for managing poor performance so that management is not misled into using the disciplinary approach instead of Performance Management Procedure when dealing with dead woods (Poor Performers) in the organisation Setting up standard that is expected from Employees As an employer you are entitled to set the reasonable standard that both the employer and employee agree upon. This is normally done with the Performance Management process by means of performance appraisal (standards).

The standards need to be clearly communicated to the employee. There must be an evaluation of these performance standards on a timely basis preferably quarterly. It is important that the employer provide the employee with sufficient instruction of how to perform the tasks he is suppose to do and how the employer requires those tasks to be done. The employer must provide the employee with the training unless the employee has been hired with the basis that he has certain qualification.

The employer must provide also the guidance along the way on how to meet the set standards to which the employee needs to improve. The following shows how the performance standards are set when an employee under performed (IDP for under performers) * Set the performance KPA areas for the job that requires the employee to deliver * Set the targets and time frame for the targets * Give the employee a specific list of task The most important aspect for a fair dismissal to be taken into consideration is wether Procedural fairness and Substantiative Fairness is fairly applied.

Below are these facts that you need to establish before finalising the dismissal of an offender (poor performer). Procedural Fairness This relate to the process used for discipline or dismissing an employee, the processes includes 1. Giving of counselling and prior warnings 2. Process followed prior corrective meetings or disciplinary hearing 3. Process followed at the actual corrective meeting or disciplinary hearing including the way in which the employee is given the opportunity to answer to the charges Substantive Fairness

This relates to wether there was a fair reason for dismissal. This refer purely wether there was a substantial gist on the decision to dismiss or impose a penalty The substantive fairness test must meet the following rules 1. Did the employee break a workplace rule? 2. Was the rule or standard valid or reasonable 3. Was the employee aware, or could reasonable be expected to be aware of the rule or standard 4. Did you apply the rule or standard consistently 5. Was the dismissal an appropriate sanction for the contravention?

If all the steps above have been followed, it is assuring that the dismissal will be substantially fair Poor performance infringement must be dealt with via a process of more than one to three warnings at progressively higher levels of severity, depending on the adherence or compliance of the infringement. The warning accumulated on a progressive basis can culminate in a disciplinary hearing and a possible dismissal. In the case of poor performance only the infringement of the similar kind accumulated in the line of progression stand a reason to a discipline. The standard generic corrective procedure to be followed . Make sure that the infringement

occurred and has been committed by the employee in question, that is to have a proof that the employee under performed 2. Meet privately with the employee and explain the poor performance, ensuring the employee understands and making summarised notes of the entire corrective meeting discussion 3. Give the employee the opportunity at the meeting to put his reasons for poor performance 4. Carefully consider the his reason for poor performance and decide on the facts and balances of probability as at to wether the employee is guilty or not 5.

Inform the employee of the decision and reason for it 6. Inform the employee of what is expected in future and how his progress towards meeting the requirement will be measure and monitored 7. Consider what assistance within the reason the employer can render to overcome obstacles 8. Inform the employee that he will be issued with a first or final written warning 9. Issue the employee with the warning on the official warning Form of the company which has the letter heads.

The warning letter must confirm, clearly and concise the following * Date and time for the corrective meeting that was held and a brief summary of the employees explanation of his case * What is expected of the employee in future and any agreement reaches * What the employee is been warned of, that is the employee must be clearly warned of the poor performance and the consequence of more sever discipline if he does not improve If the employee performance was found to be unacceptable after the first warning then 1.

Remind the employee of the standard of employment required at the first meeting 2. Stipulate the steps to be taken by the employee to ensure the achievement of the required standard 3. Offer the employee counsel, advise and other assistance toward improving his performance 4. State the additional steps where relevant, to be taken by the employer towards the improvement of the employees performance. This must include actions such as Training, Supervision, or removal of obstacles if there is any 5. Issue the employee with the second warning The warning must also contain The date and time of the corrective meeting that was held and a brief summary of the employee’s explanation of his poor performance * The nature of the complaint and the level of warning * What is expected of the employee in future and any agreement * What the employee is been warned of, * What the employee is been warned of, that is the employee must be clearly warned of the poor performance and the consequence of more sever discipline if he does not improve 6. Make sure that the performance was poor and unacceptable, as per the performance management captured 7.

When all is exhausted and the employee still under performed despite the effort attempted to remedy his under performance arrange for final performance hearing or a meeting at which the has the chance to be heard before making a final decision to dismiss 8. At this stage the employee must be allowed to be represented by a co-employee or a shop steward 9. Keep a record of the last meeting at which you take the decision to dismiss in case the employee refers a dispute and there is a need to prove that the dismissal was fair 10.

The letter must stipulate the reason for dismissal, which in this case is incapacity to perform his duties. Explain to the employee that his have the right to refer the matter to CCMA or Bargaining Council and provide him with information such as contact number and address of such an office. Example of a real work place case Ragman Lesilo (not real name) was employed by Company, as Support Engineer. During the first few months of employment everything runs smoothly. However, we begin to discover that the tasks that have been set are not being performed properly within the acceptable standards.

For instance, all the work that he has done need to be redone by another support engineer because of quality, created mistakes, seems to struggling on understanding concept that he claimed to understand when he joined the company. He does not finish his tasks in time and efficiently and always been reprimanded for not delivering. He has failed to maintain the required standard of performance as set in his performance appraisals He is aware of this as we hold regular weekly meetings; his performance standard is a way too low as compared to other engineers with the same roles.

He knows as well that he is expected to know that he should maintain an acceptable level of effectiveness and efficiency in terms of Support function and competence while performing his role. Substantiative Aspect we took into consideration He was given a reasonable opportunity to improve. Several formal discussions regarding his failure to maintain the required work standard before dismissal becomes an option. He acknowledged in the discussion that he knew he breached a work standard. We gave him an

opportunity to improve by providing support in form of training, coaching and mentoring.

Evaluation was done after 3 months and there was no improvement base on the standards that we agreed upon. We had a discussion with him to make him aware that his performance has not improved and gave an opportunity to deliberate his side of the story, with the balance of probability we ruled out the story as not a mitigating factor that contributed to his poor performance. We finally summarily realises that there have been an accumulation of factors on the same offence of poor performance which he has been receiving written warning.

Due to the poor work performance been an ongoing, we warranted a dismissal and we applied it as a last resort. Procedural Requirements we took to consideration * We provide Ragman appropriate evaluation, instruction, training, guidance and counselling * We investigated to establish the reasons for the unsatisfactory performance and tried remedy the situation * We briefed the employee about his right to refer his dispute to CCMA I believe this warrant a fair dismissal that qualifies both procedural and substantiative fairness Question 2

Discuss Industrial relations under the Labour Relations Act 66, 1995 (as amended by Act 2, 2002) emphasizing on the following The right to strike Definition of a Strike, it is a partial or complete concerted refusal to work or retardation or obstruction of work by persons who are or have been employed by the same employer or by different employers for the purpose

remedying a grievance or resolving a dispute in respect of any matter of mutual interest between and employer and employee.

The strike is considered a lawful when it is protected; there are procedural requirements that must have been complied with before the employees may embark on a strike. The requirements are Step 1: The dispute must have been referred for conciliation A dispute of mutual interest must be referred to the CCMA or bargaining council Chapter 5 (Section 64(1)(a)) LRA, and the employee acquire the right to strike if a certificate of outcome stating that the issues has been issued or 30 days period has elapsed since the referral was first received by the CCMA or barging council Step 2: They must have given the intention to strike

The employers must be served with the notice of intention to strike from employees or union in a form of writing at least 48 hours before the strike commences. The notice should indicate when the strike is going to begin. The notice must be served to the relevant bodies that are party to the dispute. Step 3: If the issue in dispute concerns a refusal to bargain, employees or unions must have obtained an advisory arbitration award. The employees must have obtained an advisory award before the issue out notice of intention to strike from CCMA or Bargaining Council.

There is a limitation to the right to strike which is applicable to essential services But there are certain circumstances when employees can embark on a protected strike without following the procedure as set out above (Conciliation and Notice Procedure as prescribed in Section 64(1) of LRA. If an employer unilaterally introduces changes to the employees’ term and

conditions of employment, employee can refer the dispute and require the employer not to implement the change or remove the changes if the employer already implemented the change.

In this case if the employer does not comply within 48 hours the employees can immediately engage on a strike without following the procedure. Example Macdonald introduces a 24 hours service without consultation process and notifies employees within short notice, this change impact all the employees and they are not happy about this decision. The employees are angry and decide to strike. Under normal process the employee will have to issue a notice of intention to strike and refer the dispute to conciliation.

However as this situation is regulated by Section 64(4), the employee may in referral to the dispute require McDonalds to stop implementing the 24 hours service and if already implemented the change then McDonalds has 48 hours to comply. Then after complying McDonalds must maintain the status quo for 30 days from the date of referral during this time the normal conciliation process will take place to deal with the dispute. Secondary Strike is a conduct to further a strike to support a strike by other employee against their employer.

In this case the employees do not have grievance or dispute with their employer and does not have a direct outcome of the dispute. The Secondary Strike must comply with the following three requirements for it to be protected 1. The primary strike by the primary employee must be protected 2. The secondary employees must give their employer at least seven days; notice of the secondary strike 3. The nature and extent of the secondary

strike must be reasonable in relation to the possible direct or indirect effect it could have on the business of the primary employer

Fundamental Labour rights contained in the constitution of South Africa Chapter 23 of the constitution which was passed and came into effect in 1996 after the new dispensation was to close the gap of the imbalance of labour relation in South Africa which existed prior 1994. Black South African labourers though they were majority they experienced marginalization in relation to labour relation and labour law among other things from the Afrikaner Nationalism leadership. An example of the strict act that was meant to have black workers under tougher and strict control with regard to abour relations was the amendment of the 1956 Industrial Conciliation and other laws that where racially biased. The Constitution contains a Bill of Rights, Chapter Two, which enclosed the rights of all South Africans. The following fundamental labour rights are enshrined in the Constitution as the majority of black South African where deprived this rights in a long time 1. Everyone has the right to fair labour practices. 2. Every worker has the right a. to form and join a trade union; b. to participate in the activities and programmes of a trade union; and c. o strike. 3. Every employer has the right d. to form and join an employers' organisation; and e. to participate in the activities and programmes of an employers' organisation. 4. Every trade union and every employers' organisation has the right f. to determine its own administration, programmes and activities; g. to organise; and h. to form and join a federation. 5. Every trade union, employers' organisation and employer has the right to engage in collective bargaining. National legislation may be enacted to regulate collective bargaining.

To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36(1). 6. National legislation may recognise union security arrangements contained in collective agreements. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36(1). These rights where meant for employment protection which is applied to all employees who ordinarily work in South Africa. Therefore, the legislation also covers employees who work partly outside South Africa and partly inside South Africa.

It also applies regardless of the stated governing law of any employment contract or the nationalities of either the employee or the employer. With the help of labour unions orchestrating this legislations in several sectors of employment they have been a positive benefit which seen a lot of black workers being able to realise the reward financially, personally and socially with regard to Industrial Relations issues. The right to freedom of Association Chapter 2 of the LRA sets out basic labour rights.

Amongst this right there is Freedom of Association, the right of employees and employers to join and participate in the lawful activities of unions and employer organisations respectively. On the employee’s side, the right to freedom of association protects against interference, state interference and the union discrimination on the part of an employer. Now that the unfair labour practices remedy has been limited to individual employees, considerable union attention is now given to the anti-discrimination provisions contained in the LRA (Labour Relation Act) and the EEA (Employment Equity Act).

The Constitution recognises the right to freedom of association, the right to form and join a trade union and the right to participate in trade union activities These rights alleviated victimisation among majority of black and few of white employees. Most of the employers respects their employees and treat them with dignity due this legislation being in place. The violation of this legislation is punishable by law and as such employee, unions or employers will respect the Freedom of Association as legislation.

The difference between protected and unprotected strikes Protected Strikes| Unprotected Strikes| Comply with section 64(1)(a)(b) of LRA, Procedural| Contravene section 64(1)(a)(b) of LRA, Unprocedural strike| Strike over un-prohibited issues| Strike over prohibited issue| Employee cannot be dismissed unless for operational reasons| Employee can be fairly dismissed| Cannot institute a civil proceeding against employees| Can institute a civil proceeding against the employees| Question 3

Discuss the dispute resolution mechanism of the Labour Relations Act third party intervention (after all internal procedure have been exhausted) indicate all the key steps that need to be followed The external dispute resolution process in a sequential order Third party Intervention 1. CCMA / Bargaining Council 2. Conciliation 3. Arbitration 4. Labour Court 5. Labour Appeal Court Definitions Commission for Conciliation, Mediation and Arbitration (CCMA): It is a body appointed by parliament to resolve labour disputes between employees and employers Bargaining Council: Is a body that established and properly registered for a particular sector.

Its function is to determine by agreement between employers and trade unions in the specific sector and it attend the resolution for disputes in that sector. Conciliation: Is the process that takes place at the CCMA and at Bargaining Council, it is essentially a negotiation process whereby the parties should try to reach settlement agreement to resolve a dispute Arbitration: Is the process that takes place at the CCMA and at Bargaining Council if conciliation has not been successful. Both the Arbitration and conciliation are conducted by neutral officials (Commissioners).

CCMA/Bargaining Council When the employee seeks external third party intervention for his dispute, he will refer the matter to the CCMA or the Bargaining Council. Certain Bargaining Councils are authorised to conciliate and arbitrate labour disputes in the same way as CCMA would. Below is a graphical representation of dispute resolution process Step 1 Step 2 Step 3 Step 4 Step 5 Referral to the CCMA| | Conciliation| | Arbitration| | Labour Court| | Labour Appeal Court| | | | | | | | | Or Step 1 Step 2 Step 3 Step 4

Referral to the CCMA| | Conciliation & Arbitration| | Labour Court| | Labour Appeal Court| | | | | | | There are circumstances where Conciliation and Arbitration process is handled as one process on order to save time and money for both parties and CCMA. This is shown in the above tables on step 2. Conciliation Process Conciliation falls within the CCMA procedure but LRA does not provide the guideline or give proper definition. It is effectively a settlement negotiation; its idea is for the ex-employee and employer to try reaching mutual acceptable settlement.

Form 7. 11 is used to register this referral at the CCMA. At this stage the conciliating mediator is appointed to mediate the dispute in order to conduct the fact finding exercise and to make recommendations to both parties (Section 135 of the LRA). The ex-employee, Employer and a presiding Commissioner attend the conciliation process which is conducted along informal lines. The trade union representative may accompany the ex-employee while the employers as well might bring along the company representative. At conciliation no legal representative is permitted.

The consolation process normally begins with opening statement from both parties, in which each side gives details of their respective cases and specify what remedy they require. The important thing about this process the proceedings are without prejudice (what each parties say in this session could not be used against each other). The advantage of the settlement at this stage is that it makes a win/win situation. If the dispute is resolved at conciliation the Commissioner will issue a certificate to indicate settlement.

After the signing of the certificate of settlement neither party can withdraw from the agreement without written consent of the other party. In case that the parties do not resolve the issue, it can then be referred to CCMA for Arbitration or the Labour Court. Arbitration When no settlement is reached, the matter is then referred to Arbitration within 90 days of certificate of non-settlement being handed down in the Conciliation process and copy of the Certificate of Outcome from the Conciliation must be attached during the referral to Arbitration. LRA 7. 3 form is completed by the ex-employee at CCMA; the CCMA will notify the employer about the date, time and venue of the Arbitration hearing. At this stage is where a full re-hearing of the entire

case including the investigation of the fairness of the procedure leading up to dismissal is tested. The test involves the presentation of all evidence and, cross examination of witnesses. Once their entire case has been presented the commissioner make a decision in a form of an arbitration award stating his reason for reaching such a decision and should justify any compensation awarded.

The award must be handed down within 14 days of the conclusion of the arbitration. If the reason given by the Commissioner do not justify the award made, then in principle the award is reviewable, which means that the matter can be taken to Labour Court and request a review. Over and above the award the commissioner hands down at arbitration he can make an order for certain cost to be paid depending if the dispute has little or no chance of succeeding, the party who brought the dispute before CCMA will find himself having to pay CCMA the costs. Conciliation and Arbitration

The process was introduced in the first amendment of the LRA in 2002, this enables the CCMA to finalise disputes much faster and does not consume time for all the parties. It is also less expensive for the parties and CCMA. The combination of Conciliation and Arbitration is a process in which a dispute is conciliated and if the dispute is not settled during conciliation, the commissioner moves straight into holding arbitration. This process is effectively a one stop process, which is quicker than the normal two stages process for resolving a dispute.

It takes place as continuous process on the same day. This process is compulsory for certain disputes such as dismissal for any reason relating to

probation and unfair labour practise on probation. It maybe used on other dispute but is not compulsory meaning that either of the disputing parties might reject it. Labour Court The Labour Court is like the Supreme Court, but is only concerned with labour, or employment disputes. The Labour Court will only hear a case if the case was first referred to the Commission for mediation, and if the conciliation process failed to resolve the dispute.

If the conciliation or mediation process is properly handled, therefore, the intention is that less and less cases will actually be referred to the Labour Court. Only time will tell if this is a correct prediction. The Act specifies which cases are to be referred to the Commission and which disputes must be referred to the Labour Court. Disputes that should be referred to the Labour Court include – * Automatically unfair dismissals. * Illegal strike dismissals. Remember, persons who embark on legal or protected strikes may not be dismissed, and * Operational requirement or retrenchment dismissals.

These are all cases that must be referred to the Labour Court. However, the Director of the Commission for Mediation and Arbitration may also, upon request of a party, refer a matter to the Labour Court, if the Director is satisfied that the dispute is sufficiently complex, or if it is in the public interest to refer that dispute to the Labour Court. Labour Court of Appeal In addition to the Labour Court, the new Act also establishes a Labour Appeals Court. The Labour Appeals Court may hear Appeals from the Labour Court and is the final Court of Appeals in relation to all labour disputes.

There are no further Appeals from the Labour Appeals Court to another Court. Question 4 Discuss industrial relations changes, Collective Bargaining,

the social partners and employment legislation impact on industrial relations in the post Wiehahn era One of the major functions of the trade unions is to ensure better working conditions, wages and salaries for its members. This is achieved through the process of collective bargaining. The most essential instrument tool for serving the interest of the union members is through collective bargaining.

This a process in which organise groups and employer seek to reconcile their conflicting goals into mutual agreement and accommodation. Post Wiehahn, the commission gave the unions power to form unions and participate in strikes. Unions did not react positively on the inclusion in the existing official centralised system of collective bargain that they where deprived of. Unions continued to bargain collectively on the plant level in terms of recognition agreements entered into with relevant employers.

There was a resistance from the employer to sign the recognition of unions on a plant level; gradually employers started signing this recognition which led to the growth of the unions. The unions continued embarking on strikes for the promotion of economic, political and civil rights which eventually led to the un-ban of political organisation and political prisoners. Ultimately there was an agreement of an interim constitution and bill of rights which constituted the workers fundamental rights.

Chapter 3 of LRA, Collective Bargaining is part of this right which is still in existence in three levels and is practised in today’s Industrial Relation discipline. After the first democratically held elections in South Africa in 1994, the new Government of National Unity introduced the Labour Relations

Act (LRA) No. 66 of 1995, which aimed at normalising the relationship between politics and industrial relations. This Act has redefined South African labour relations. The Act brought about fundamental changes to employment relations and collective bargaining in all levels (Sectoral, Centralise and Plant).

It also introduced important new concepts such as workplace forums and unfair discrimination into South African workplaces, while a comprehensive system of trade union, organisational and individual workers' rights, including the all-important and fundamental right to strike, was statutorily regulated. It made provision for four dispute resolution bodies, namely the Commission for Conciliation, Mediation and Arbitration (CCMA), the bargaining council, Labour Court and Labour Appeal Court.