

SOUTH AFRICAN MEDICAL ASSOCIATION TRADE UNION



DISCIPLINARY CODE & PROCEDURE POLICY

Table Of Content	Page
<u>Section A</u>	
1. Interpretation.....	3
2. Definitions.....	3
3. Objective And Purpose.....	3
4. Scope.....	4
5. Responsibility & Authority For Implementation.....	4
6. Principles.....	4
7. Rules And Standards.....	4
8. Employees Ought To.....	5
9. Disciplinary Procedure.....	5
10. Notice Of Formal Disciplinary Enquiry.....	10
11. Time Frame/ Commencement Of The Disciplinary Enquiry.....	10
12. Arranging For A Disciplinary Hearing.....	11
13. Procedure During The Enquiry.....	12
14. Rights.....	12
15. Hearing In Absentia.....	13
16. Pre-Hearing.....	13
17. Disciplinary Hearing.....	14
18. Ensuring Substantive Fairness.....	15
19. Inspection In Loco.....	16
20. Finding.....	16
21. Suspension Policy.....	16
22. Appeal Procedure.....	17
23. General.....	18
<u>Section B: Grievance Policy and Procedure</u>	
1. Purpose.....	19
2. Principle.....	19
3. Procedural Stages in Lodging A Grievance Stage 1 (Line Manager/Supervisor)	19
4. Stage 2 (Senior Manager / Head of Department / Executive)	20
5. Stage 3 (Senior Manager / Executive – Appointed by Chairperson of The Trade Union)	20
6. Collective Grievances.....	21
7. Role Of Human Resources.....	21
8. Role Of Line Manager/ Supervisor.....	21

1. INTERPRETATION

- 1.1. Listing every possible conduct which may be regarded as misconduct is not practical, however, it is imperative that all employees and members strive to conduct themselves in a professional manner at all times, failure which will result in disciplinary action taken against them. It must be noted that the severity of disciplinary action will depend on the circumstances of each case and mitigation and aggravating factors which will be taken into account.

2. DEFINITIONS

- 2.1 In this policy, the following words shall, unless otherwise stated or inconsistent with the context in which they appear bear the following meaning and cognate words shall bear corresponding meaning:
- 2.1.1. **"DAY"** means a normal working day excluding Saturdays, Sunday and Public Holiday.
- 2.1.2. **"EMPLOYEE"** means any temporary, contract and full time staff employed by SAMATU.
- 2.1.3. **"EMPLOYER"** means the South African Medical Association Trade Union.
- 2.1.4. **"Disciplinary Code and Procedure"** means the standards of behaviour expected of employees in the workplace, and what action may be taken against employees who are proven, by means of a fair procedure, to have transgressed any part of this Code
- 2.1.5. **"Grievance Procedure"** means a formal way for employees to raise a problem or complaint to their employer.

3. OBJECTIVE AND PURPOSE

- 3.1 To provide a fair and equitable disciplinary code and procedure for all employees, which will not be discriminatory by way of race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language and birth.
- 3.2 The purpose of this Disciplinary Code and Procedure is to:
- Promote acceptable conduct;
 - Correct unacceptable conduct;
 - Support constructive labour relations;
 - Promote mutual respect between employees, and between employees and employer
 - Ensure that all managers/supervisors and employees share a common understanding of what constitutes misconduct and the disciplinary measures

applicable thereto.

4. SCOPE

- 4.1 This procedure will apply to all employees employed by SAMATU branches and business units.

5. RESPONSIBILITY & AUTHORITY FOR IMPLEMENTATION

- 5.1 Discipline is a management function and as such Management together with the HR department shall be responsible for implementing the Disciplinary Code and Grievance Procedure in exercising its function to correct misconduct in the workplace.
- 5.2 Therefore, the General Secretary or his/her delegated representative shall be responsible for communication, implementation and monitoring of this code.

6. PRINCIPLES

- 6.1. Discipline is primarily intended to be a corrective and not a punitive measure;
- 6.2. Discipline ought to be applied in a prompt, fair and consistent and progressive manner;
- 6.3. The Disciplinary Code and Procedure is intended to ensure efficient service delivery and the fair treatment of employees and that an employee:
- 6.3.1. Is timeously informed of any allegation (s) of misconduct levelled against him/her;
- 6.3.2. Knows and understands the conduct and standards required of him or her;
- 6.3.3. Is provided with an opportunity to state his or her case in response to the allegations levelled against him/her;
- 6.3.4. Is provided with the written reasons for the finding at the end of the enquiry and for the sanction imposed; and
- 6.3.5. Has the right to appeal against the findings at the end of an enquiry and for the sanction imposed.

7. RULES AND STANDARDS

- 7.1. The Disciplinary Code and Procedure shall be subject to the requirements of substantive and procedural fairness as envisaged by the Labour Relations Act, 66 of 1995 and any other applicable legislation.
- 7.2. The severity of the disciplinary sanction will depend on the circumstances of each case and mitigating and aggravating factors will be considered to determine the severity of the disciplinary sanction.
- 7.3. An employee may appeal against the findings or disciplinary sanction in accordance with Rules and Constitution.

8. EMPLOYEES OUGHT TO:

- 8.1. Comply with the employer's rules and procedures.
- 8.2. Carry out all reasonable and lawful instructions.
- 8.3. Observe the laws of the country.
- 8.4. Behave in an orderly and lawful manner and not victimise or intimidate any other employees.
- 8.5. Treat the employer's and other persons' property with care and respect and not use such property for themselves without permission.
- 8.6. Adhere to the laid down working hours.
- 8.7. Carry out their duties to the required standards.
- 8.8. Not participate in any type of un-procedural industrial action such as overtime bans, go slows, strikes, work to rule or any other form of un-procedural industrial action, or incite or encourage other employees to participate in such action.
- 8.9. Ensure that they are familiar with requirements in terms of disciplinary rules and standards in the workplace.
- 8.10. The employer reserves its right to take disciplinary action against any employee who is in breach of any of the above principles or commits any form of misconduct whether stipulated in the Rules.

9. DISCIPLINARY PROCEDURE

- 9.1. Informal Disciplinary Actions
 - 9.1.1. Corrective Action/Counselling
 - 9.1.1.1. The manager, who reasonably suspects that an employee under his or her has committed misconduct which warrants corrective counselling shall endeavor to correct an employee's behavior through a system of graduated disciplinary measures such as counselling and verbal warnings by:
 - a. Bringing the alleged misconduct to the attention of the employee:
 - b. Interview the employee or ensuring that the employee is interviewed by another employee who holds a position at a higher level than the employee accused of misconduct, to determine the reasons for the alleged misconduct and give the employee an opportunity to respond to the allegations of misconduct.
 - c. Ascertain the cause of the misconduct and reach an agreement with the employee on how to remedy the misconduct by addressing the cause of such misconduct and
 - d. Take the necessary steps to implement an appropriate course of action as agreed upon

which may include corrective counselling or any other corrective or remedial measure to bring the employee to the required standard of conduct.

9.2 Verbal Warning

A manager, who reasonably suspects that an employee under his or her control has committed misconduct which is not serious and warrants a verbal warning or where corrective counselling has failed to achieve the desired objective, must immediately:

- a. Bring the alleged misconduct and where applicable, the failure of the corrective counselling, to the attention of the employee; and
- b. Interview the employee to determine the reasons for the alleged misconduct or the failure of the corrective counselling and give the employee the opportunity to respond to the allegations.

- 9.2.1 If the employee in the circumstances referred to above, admits to having confirmed such misconduct, the manager must verbally warn such employee.
- 9.2.2 The manager must inform the employee that further misconduct may result in more serious disciplinary action and record the warning on the personal file of the employee.
- 9.2.3 If the employee has previously admitted to having committed or has been found to have committed similar or related misconduct or has received two verbal warnings for dissimilar or unrelated misconduct in the period of three months which preceded the commission of such misconduct, the manager must take the appropriate steps as provided below.
- 9.2.4 If the employee denies having committed the alleged misconduct, the manager must take the steps provided below.
- 9.2.5 A verbal warning remains valid for a period of three months.

9.3. Written Warnings

A manager, who reasonably suspects that an employee under his/her control has committed misconduct which is not serious and warrants a written warning or where the employee has admitted or has been found to have committed similar misconduct in the preceding three months, must immediately:

- a. Bring the alleged misconduct to the attention of the employee; and
 - b. Interview the employee to determine the reasons for the alleged misconduct and give the employee the opportunity to respond to the allegations.
- 9.3.1. If the employee admits to having committed such misconduct and the manager is satisfied that the employee has indeed committed such misconduct, the manager must give such employee a written warning in the form obtained from

the human resources office.

- 9.3.2. The manager has the duty to inform the employee that any further misconduct may result in more disciplinary action.
- 9.3.3. The manager, in the presence of the HR manager, must give a copy of the written warning to the employee, who must sign acknowledgement of receipt thereof. If the employee refuses to sign the acknowledgement of receipt, the Human Resource manager must sign to confirm that the warning was conveyed to the employee.
- 9.3.4. If the employee has already admitted or has been found to have committed similar or related misconduct or has received two written warnings for dissimilar or unrelated misconduct in the period of six months which immediately preceded the commission of such misconduct, the manager must take the appropriate steps. The written warning must be placed on the personal file of the employee.
- 9.3.5. A written warning remains valid for a period of six months after which it expires and ought to be removed from the employee's personal file.
- 9.3.6. An employee may only be given three written warnings in relation to the same or similar misconduct prior to a final written warning being considered.

9.4. **Final Written Warning**

A manager, who reasonably suspects that an employee under his/her control has committed misconduct which warrants a final written warning or where the employee has committed or has been found to have committed similar misconduct in the previous six months, or where the employee has received three written warnings in respect of the same or similar conduct, must immediately:

- a. Bring the alleged misconduct to the attention of the employee; and
 - b. Interview the employee to determine the reasons for the alleged misconduct and give the employee the opportunity to respond to the allegations.
- 9.4.1. If the employee admits to having committed such misconduct and the manager is satisfied that the employee has indeed committed such misconduct, the manager must give such an employee a final written warning.
 - 9.4.2. The manager must inform the employee that further misconduct may result in an enquiry which may, in turn result in his or her dismissal.
 - 9.4.3. The manager, in the presence of the HR manager, must give a copy of the final written warning to the employee who must sign acknowledgment of receipt thereof. If the employee refuses to sign Human Resources Manager must sign to confirm that the warning was conveyed to the employee.

- 9.4.4. If the employee has already admitted or has been found to have committed similar or related misconduct or a final written warning for dismissal or unrelated misconduct in the period of twelve months which immediately preceded the commission of such misconduct, the manager must:
- 9.4.4.1. If the employee denies the alleged misconduct, the manager must take appropriate steps which may include a formal disciplinary hearing;
- 9.4.4.2. The final written warning must be placed on the personal file of the employee at the Human Resource Office.
- 9.4.4.3. A final written warning remains valid for a period of 12 months after which it expires and must be removed from the employee personal file.

9.5. Formal disciplinary Actions

- 9.5.1. If the alleged misconduct justifies a more serious form of disciplinary action, then the following procedure must be carried out:
- 9.5.1.1. Notice of intention to suspend.
- 9.5.1.1.1. The Union may suspend an employee with full pay if:
- a. the employee is alleged to have committed a serious offence; and
 - b. the employer believes that the presence of an employee at the workplace might jeopardise any investigation into the alleged misconduct or endanger the wellbeing or safety of any person on the property.
- 9.5.2. The employee must be given opportunity to submit written representations stating the reasons why he or she should not be placed on precautionary suspension within five (5) working days from the date of receipt of the notice.
- 9.5.3. The employer will consider the representation and advise the employee of the outcome thereof.
- 9.5.4. A suspension of this kind is a precautionary measure that does not constitute a judgment and must be on full pay.
- 9.5.5. If the employee is suspended or transferred as a precautionary measure, the employer must hold a disciplinary hearing within a month. The chair of the hearing must then decide on any further postponement.

9.6. Appointment of the disciplinary official

- 9.6.1. The General Secretary must designate an objective employee as disciplinary official to initiate a formal disciplinary enquiry. Such an employee must hold a post at a higher level than the employee accused of misconduct.
- 9.6.2. The facts and information collected during a preliminary investigation shall be used as a basis point to collect more information on an alleged misconduct. The employer shall conduct an informal investigation on minor incidents and formal investigation where there is a serious misconduct.
- 9.6.3. The General Secretary and/ or an authorized delegate shall inform any employee of any formal investigation against him/her and be informed that the results of the investigation may be used against him/her in a disciplinary hearing. An employee alleged to have committed any misconduct shall acknowledge a notice of investigation against him/her by signing a copy and another copy shall be kept in his/her personnel file.
- 9.6.4. An investigation for any misconduct shall not be less or more than a period of seven (07) working days. The employer can extend a period of investigation to a maximum of thirty (30) working days if more information is still to be gathered on reported allegations. The General Secretary and/ or an authorized delegate shall inform an employee of any extension of the extended duration of the investigation. An employee being investigated shall acknowledge such notice and a copy be kept in his/her personnel file.
- 9.6.5. Upon the finalization of an investigation, the appointed investigator shall submit a written investigation report including all supporting documents, evidence found and written statements of witnesses or any other person found to have been involved in the alleged misconduct to the General Secretary and/ or an authorized delegate for a decision to be taken whether to conduct formal disciplinary hearing.
- 9.6.6. The General Secretary or an authorized delegate will study the investigation report, all evidence and statements made by witnesses to ascertain that sufficient evidence exists and there is prima facie case that a rule has been breached to institute disciplinary processes.
- 9.6.7. An investigation shall be regarded to have been finalized once the General Secretary or

an authorized delegate has signed acknowledgement of receipt from the investigator.

10. Notice of Formal disciplinary enquiry

- 10.1. The following process will be followed when instituting a disciplinary hearing against any employee:
- a. The employee will be given a notice of disciplinary hearing at least 7 working days before the date of the hearing.
 - b. The employee may upon being informed of a formal disciplinary hearing, request the presence of a representative or a fellow employee to assist him/her.
 - c. The employee must acknowledge receipt of notice and sign a copy. If the employee refuses to sign receipt of the notice, it must be given to the employee in the presence of the employee's supervisor who should sign in confirmation that the notice was conveyed, and the employee refused to sign the notice.
 - d. A notice of a disciplinary hearing shall contain the following information:
 - e. A summary description of an alleged misconduct and including summarized evidence to be used against him/her.
 - f. The date and place where it is alleged to have been committed.
 - g. Details of the date, time, and venue of the hearing.
 - h. The particulars of the charges against the employee.
 - i. Notification that the employee is entitled to be represented by a fellow employee representative at the enquiry.
 - j. A clear description of the rights of the employee in a disciplinary hearing.
 - k. The employer may reserve a right not to furnish details of its witnesses to protect them from possible victimization.
 - l. The employer shall also reserve a right not to present only written statements by witnesses.
 - m. The circumstances and conditions in terms of which an employee shall, prior to the enquiry, be given an opportunity to examine any physical or documentary evidence or any report that will be produced in evidence; and

11. Time Frame/ Commencement of the Disciplinary Enquiry

- 11.1. The disciplinary hearing must be held within seven (7) working days immediately after a disciplinary notice has been served to the employee.
- 11.2. The disciplinary hearing should be finalized within a period of thirty (30) days from date of completion of an investigation process.

- 11.3. If the employer cannot finalize the hearing within a period of thirty (30) working days, a written notice shall be served to the other party with reasons for any delay.
- 11.4. Should the employer fail to finalize the disciplinary hearing within a period of three (3) months after the finalization of the investigation process without valid reasons, the whole disciplinary hearing shall be regarded null and void. All documents relating to this disciplinary hearing shall be removed from the Personnel file of an employee who was subjected to such disciplinary processes.
- 11.5. The General Secretary or any delegated person must designate as chairperson of the enquiry an employee who holds a higher post than the employee charged with misconduct. Provided that the manager of the employee charged with misconduct may under no circumstances be designated as chairperson of the enquiry.
- 11.6. If at the commencement of an enquiry, it appears to the chairperson that the employee is not assisted by an employee representative, the chairperson must ascertain reasons as to why the employee is not represented.
- 11.7. If the employee has chosen not to be represented, in which case the enquiry must continue;
or
if the representative was not available to assist the employee on the date set down for the enquiry.
- 11.8. If the representative of the employee is not available on the date of the enquiry, the enquiry must be postponed to another reasonable date on which the representative will be available. On the postponed date the enquiry will continue unless good cause is shown for a further postponement.
- 11.9. The chairperson must keep the original copy of the notice of enquiry.

12. Arranging for a Disciplinary Hearing

- 12.1. The following process shall be delegated by the General Secretary and/ or an authorized delegate must be followed when arranging for a disciplinary hearing:
- a. The appointed Initiator and the Human Resources head shall together be responsible for arranging a date, time and venue for a disciplinary hearing and all appeal hearings.

- b. The venue where the hearing is conducted must be big enough to accommodate all persons involved in a hearing.
- c. The employer will ensure that there are no unnecessary disturbances and/ or interference during the proceedings.
- d. All the formal disciplinary hearing shall be recorded, and the employer will be responsible to arrange for audio recording. No external audio recordings shall be allowed in the hearing (e.g. cell phones, tape records and any other equipment that may be deemed to be suitable to do audio recording). Only the employer's recorded audio versions will be allowed as authentic records of the disciplinary hearing.
- e. The Chairperson will instruct that all cell phones be switched off once the hearing starts or commences. The audio and written records must be kept stored safe until all legal processes are exhausted including the CCMA processes. Thereafter, the employer shall reserve a right to dispose all information in accordance with internal arrangements.

13. Procedure during the enquiry

13.1. At the enquiry the following people must be present:

- a. The chairperson;
- b. The initiator/employer;
- c. The Assistant initiator where one has been appointed.
- d. The employee charged with misconduct;
- e. the representative of the employee (in instances where he or she chooses to have one);
- f. The Human Resource Representative;
- g. witnesses from both parties; and
- h. An interpreter may also be present at the enquiry where necessary.

14. RIGHTS

Employee's Rights at a disciplinary hearing or enquiry:

- 14.1.1. To be informed of the charges against him / her.
- 14.1.2. To a reasonable time within which to prepare his / her case.
- 14.1.3. To attend and participate by presenting his / her statement or evidence.

- 14.1.4. To be assisted by a fellow employee of his / her choice.
- 14.1.5. To ask questions of any person giving evidence.
- 14.1.6. To be permitted to call witnesses to give evidence on his / her behalf.
- 14.1.7. To be assisted by an interpreter.
- 14.1.8. To appeal, in writing, within five working days.

15. Hearing in absentia

- 15.1. The employer must ensure that the employee's rights in respect of the hearing are respected. The employer must ensure that the employee is notified in writing of the charges in advance of the disciplinary hearing, thereby affording the employee and his/her representative an opportunity to prepare for the disciplinary hearing.
- 15.2. The employee to be allowed to state his/her case, and defend himself/herself, both in respect of the allegations or charges as well as in the determination of a sanction.
- 15.3. Where an employee refuse and/or fails to attend the disciplinary hearing, the disciplinary hearing may be held in his/her absence without further notice to him/her.
- 15.4. Before the commencement of the hearing, the employer must convince the Chairperson on the steps taken to ensure the presence of the employee.
- 15.5. The employer must ensure that the proceedings of the hearing are audio recorded and minutes are taken.

16. Pre-hearing

- 16.1. A process of a pre-hearing is not binding to the parties. The two parties i.e. the initiator and the employee may before the commencement of a disciplinary hearing agree to have a pre-hearing meeting.
- 16.2. The purpose of a pre-hearing shall among others be to:
 - 16.2.1 exchange any relevant information/documents, give clarity on the charges.
 - 16.2.2 sort out those issues that may destruct and/or delay the disciplinary hearing.

16.2.3 and submit any additional information/documentary evidence relevant for use in the hearing and that may have been available shortly before the hearing. Parties will therefore agree if sufficient time will be needed to study such new evidence.

17. Disciplinary hearing

The objective of the disciplinary hearing is to ensure procedural fairness and to afford both parties to state their case (*i.e. audi alteram partem-rule*). The following process outlined below serves as a checklist:

- a. The Chairperson must confirm on record that all parties involved including witnesses are present in order to continue with the hearing.
- b. The Chairperson will be in charge to lead the introductions of all involved.
- c. The Chairperson must outline the process that will be followed and respected by all parties throughout the hearing. He/she must further caution the parties and clarify to the parties the following:
 - That all parties will speak through the chairperson;
 - That a process will be fair and just;
 - That the rules as shall be outlined be respected by all parties.
 - That all cell phones are to be switched off and that no other recording device not authorized by the Chairperson.
- d. The Chairperson must clarify the employee that the hearing is not a criminal conviction but a purely internal disciplinary process.
- e. The Chairperson must confirm if a notice of hearing was served in time and in accordance with the provisions.
- f. The Chairperson must check whether a Pre-hearing meeting was held and if there are any outstanding matters that he/she must rule on.
- g. The Initiator will address the Chairperson on the Pre-hearing outcomes.

- h. The employee will also address the Chairperson and confirm what has been communicated by the Initiator reflects what transpired in the Pre-hearing.
- i. The Chairperson will make a ruling based on the information presented to him by both parties.
- j. The Chairperson reads the charge sheet/charges to the employee and check if the employee understands the charges levelled against him or her.
- k. The employee must plead to the charge/s, the employee may plead as follows:
 - a. Pleading guilty: the chairperson must immediately follow the procedure on the admission of guilt.
 - b. Pleading not guilty: the normal hearing process must then follow as below.
 - c. That he/she has been found guilty on the same charge/s.
 - d. That he/she has been acquitted on the same charge/s.

18. Ensuring substantive fairness

The Chairperson must consider the following requirements when deciding for a suitable verdict and sanction:

- a. Is there a rule?
- b. Is it reasonable?
- c. Was the employee/s aware of the existing rule?
- d. Was the employee/s aware of the consequences of transgressing the rule?
- e. What previous actions or steps were taken against another employee/s who transgressed the rule?
- f. Will the sanction or verdict be consistent with previous convictions?
- g. Is the sanction and verdict fair to the employee and the employer?

19. Inspection in loco

Any party including the chairperson may request that inspection be conducted during the hearing at a place where misconduct alleged to have occurred. The hearing may be adjourned for a break and reconvene immediately after the inspection is concluded. The Chairperson must state on record after reconvening that parties took part during this process.

20. Finding

20.1. The Chairperson will submit a typed finding to the relevant HR person within a reasonable period (usually with 48-72 hours of the enquiry being concluded).

20.2. If the employee is dismissed; then the employee must be advised of his / her right to appeal* within the stipulated time, and to refer the dismissal to the CCMA / Bargaining Council within 30 days.

20.3. The employee is given the document Lodging of Appeal. Once the appeal has been heard and if the dismissal is upheld, the employee must again be advised of the right to refer the dismissal to the CCMA / Bargaining Council within 30 days.

21. SUSPENSION POLICY

21.1. Purpose

To make provision for a fair suspension policy in accordance with the latest Employment Relations decisions in this regard.

21.2. Background

In the past, employees were merely suspended pending an enquiry and it was accepted that this was an unassailable prerogative of the employer. Recent Labour Court case decisions have altered the way the suspension of an employee prior to a disciplinary enquiry should be conducted.

21.3. Procedure

21.3.1. Employees are not to be suspended pending a disciplinary enquiry unless certain conditions have been met in this regard namely:

- a. The employer must have a justifiable reason to believe that the employee has committed a serious misconduct.
- b. There must be a justifiable reason to deny the employee access to the workplace based on the integrity of any pending investigation or some other relevant factor that would place the investigation or the interests of affected parties in jeopardy. (For example, where there is reason to believe the employee will interfere with witnesses or endanger the safety or well-being of witnesses, or where there is a risk of ongoing harm to the employer if the employee is not suspended).

- c. The employee must be given an opportunity to state a case before the employer makes a final decision to suspend. This does not have to be a formal hearing, and some process of dialogue and discussion between the parties should suffice.
- d. Before suspending an employee, the employer or manager concerned should meet with the employee and his representative and indicate to him the reasons why he intends to suspend the employee.
- e. The employee and / or his representative will be given an opportunity to respond and / or argue against such a suspension.
- f. This discussion must be recorded in writing indicating the reasons for the suspension and / or any response from the employee.
- g. If a decision is made to suspend the employee, this must be done, and a copy of such suspension letter must be provided to the employee with the reasons contained therein. Attached is an example of such a suspension letter.

22. APPEAL PROCEDURE

22.1. An employee has the right to appeal against a dismissal under the following circumstances:

- a. If he / she is of the opinion that the dismissal is unfair, and the penalty is too harsh.
 - b. If he / she has new evidence or witnesses which may influence the decision of the previous enquiry.
 - c. If the disciplinary procedures were not followed.
- 22.2. An employee may lodge an appeal within five working days after he / she was notified of the dismissal.
- 22.3. The appeal hearing must be confined to considering only those aspects raised. It is not necessary that a full disciplinary enquiry be held again as the information needed can be obtained from the minutes or recording of the original enquiry.
- 22.4. The appeal must be heard as soon as reasonably possible after the lodging of the appeal by the employee.
- 22.5. The chairman of the appeal hearing should not have been involved in or be biased or prejudiced by the original disciplinary enquiry. It therefore follows that the chairman of the disciplinary enquiry should not be present at the appeal hearing.

- 22.6. If the dismissal is upheld the employee must be advised of the right to refer the dismissal to the CCMA / Bargaining Council within 30 days.

23. **GENERAL**

- 23.1. Neither the employee nor the witnesses can be compelled to make statements (written or oral) either prior to or during a disciplinary enquiry.
- 23.2. Wherever possible, disciplinary enquiries should be held within normal working hours (e.g., during day shift).
- 23.3. If the employee is absent from the enquiry, then the case may be postponed, and he / she should be notified in writing of another date on which to attend. Should the employee fail to attend again, then the enquiry may proceed without the employee. However, if the employee has indicated that he/she will not attend an enquiry, then the employer may proceed with the enquiry in the absence of the employee.
- 23.4. If an employee is dismissed in his / her absence because of failing to be at work for any reason such as desertion, or other causes, then on his/her return to work, an enquiry must be held in order to allow the employee to explain the reason for absence. If the reason is not acceptable, then the decision to dismiss will stand and the normal appeal procedures may be followed if lodged by the employee.
- 23.5. The fact that misconduct may result in criminal charges being laid against an employee does not prevent the employer from holding a disciplinary enquiry in accordance with its procedures. It is recommended that an enquiry should be held and concluded before the laying of criminal charges.
- 23.6. The chairman of the enquiry should only have knowledge of the employee's previous valid disciplinary record during the initiator's closing statement. This record should only be referred to for the purpose of determining an appropriate penalty.

SECTION B: GRIEVANCE POLICY AND PROCEDURE

1. Purpose

- 1.1. The purpose of the Grievance policy and procedure is to:
- 1.1.2. Provide a formal structure through which employees can articulate any dissatisfaction that can be resolved to the benefit of both employees and SAMATU;
- 1.1.3. Prevent or resolve conflict as quickly and fairly as possible; and
- 1.1.4. Provide protection for employees against any form of inequitable treatment or victimization.

2. Principle

- 2.1. SAMATU recognizes that employees may, from time to time, have grievances relating to work, conditions of employment, or other issues relating to the work environment.
- 2.2. This policy should not be used as a vehicle for appealing against disciplinary imposed in terms of SAMATU's Disciplinary Policy and Procedure.

3. Procedural Stages in lodging a grievance Stage 1 (Line Manager/Supervisor)

- 3.1. If an employee has a grievance or complaint, he / she should approach their immediate line manager and verbally inform the manager of the problem. It is important that the employee indicates to the manager that he / she is raising a grievance, and not discussing an issue of mutual concern, or making a complaint. This will ensure that the manager understands the seriousness of the matter and that certain deadlines apply for the resolution of the grievance.
- 3.2. The line manager should make every effort to address the employees' concerns. It is the duty of the manager to find an acceptable and reasonable solution and ensure that any action agreed upon is implemented.
- 3.3. If the employee's grievance involves his / her immediate line manager, the employee need not approach their line manager and may proceed directly to stage 2 and notify the next level of management.
- 3.4. The maximum time limit to resolve grievances at this stage is five (5) working days.
- 3.5. If the manager concerned is unable to attend to the matter within the stipulated time limits, the manager must inform the aggrieved employee in writing and request an extension of time.
- 3.6. If the manager concerned cannot resolve the matter within the stipulated time limits, the grievance should be referred to the next level of management.
- 3.7. If the employee is not satisfied with the resolution, he / she needs to inform their manager of their intention to and proceed to stage 2. The onus is on the employee and line manager to resolve the grievance before proceeding to stage 2.

3.8. The line manager is to record and inform HR of the resolution process.

4. Stage 2 (Senior Manager / Head of Department / Executive)

4.1. If, at stage 1, the grievance cannot / has not been resolved to the employee's satisfaction, or the grievance is against the manager in question, it should be referred in writing, using the attached Grievance Form to a higher level of management. The form must be signed by the employee and will serve as a formal submission of a grievance. The nature of the grievance / issues concerned:

4.2. The outcome of stage 1;

4.3. The desired resolution or proposed solution; and

4.4. The reason for the aggrieved employee's rejection of the solution in stage 1.

4.5. The manager will be responsible for resolving the grievance and may investigate the matter or meet with the parties involved. Every effort should be made for the grievance to be resolved at this level, with any feasible action taken to meet the reasonable expectations of the affected employee.

4.6. If the matter has been resolved, the solution should be recorded on the grievance form. The employee should also signify that he / she is satisfied with the outcome.

4.7. If the employee is not satisfied with the manager's solution, this should be recorded on the document, which should be forwarded by the aggrieved employee to the third (and final) level of management for resolution.

4.8. The maximum time limit to resolve grievances at this stage is seven (7) working days.

4.9. If the manager concerned is unable to attend to the matter within the provided time limits, the manager must inform the aggrieved employee in writing and request and extension of time.

5. Stage 3 (Senior Manager / Executive – appointed by Chairperson of the Trade Union)

5.1. If the grievance is not resolved at the first two stages above, the matter should be referred to the next higher authority for further investigation and resolution.

5.2. The person at this level of authority will be responsible for attempting to finally resolve the grievance.

5.3. The next higher authority will be required to call a grievance resolution meeting with the parties concerned and to take appropriate action or decide on the matter within ten (10) working days of the referral.

5.4. Any decision at this level will be considered to be final and must be indicated and communicated in writing on the Grievance Form.

- 5.5. If the matter has been satisfactorily resolved, the resolution determined must be recorded on the grievance form, with the employee confirming that he / she is satisfied with the resolution on the document.
- 5.6. If the employee is not satisfied with SAMATU's Management's final response, the grievance can only be processed further by other channels outside of this procedure in terms of the Labour Relations Act, 1995 or the Protected Disclosure Act, 2000, as appropriate.

6. Collective Grievances

- 6.1. If two or more employees have a similar grievance affecting them as a group, the grievance should be channeled according to this policy, with the same methodology as indicated herein.
- 6.2. However, if a large group of employees are similarly affected, it may become impractical and disruptive for all the aggrieved employees to be directly involved in the grievance proceedings.
- 6.3. In collective grievances, the group will elect a maximum of two (2) employees to act as their delegated representatives to attempt to resolve the grievance with management.
- 6.4. Any form of industrial or protest action, initiated by an employee or group of employees in relation to any grievance, cannot be "protected" in terms of this policy. Any such action by employees can only be sanctioned as a last resort in terms of the procedures of the Labour Relations Act. The use of this Grievance Policy does not therefore entitle any group of employees to embark on any action in breach of their contracts of employment.

7. Role of Human Resources

- 7.1. The resolution of grievances is a line management function and responsibility. The HR function is to assist in the facilitation of the grievance process / hearing by:
- 7.1.1. Advising.
 - 7.1.2. Assisting with the administration of the grievance.
 - 7.1.3. Monitoring of the process followed.
 - 7.1.4. Ensuring fair application of the Grievance Policy; and
 - 7.1.5. Personnel record-keeping.
- 7.1.6. Copies of all grievance documentation should be forwarded to HR for monitoring and record-keeping purposes.

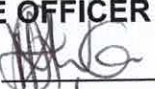
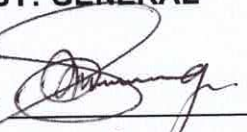
8. Role of Line Manager/ Supervisor

- 8.1. To investigate the alleged grievance.
- 8.2. To resolve the grievance.
- 8.3. Facilitate the grievance process in conjunction with HR.

- 8.4. Ensure good record-keeping of the process, relevant documentation, and outcomes.
- 8.5. Forwarding of documentation referred to in 7.4 above, to HR.

ANNEXURES

- 8.1. Annexure A: Disciplinary Matrix
- 8.2. Annexure B: Written Warning Form
- 8.3. Annexure C: Notice of Disciplinary Hearing / Enquiry
- 8.4. Annexure D: Record of Disciplinary
- 8.6. Annexure E: Grievance Form

CONTROLLED BY: COMPLIANCE OFFICER SIGNATURE:  DATE: 2024 / 01 / 25	APPROVED BY: GENERAL SECRETARY SIGNATURE:  DATE: 19-02-2024
--	--

DOCUMENT CONTROL SHEET			
Revision No	Revised By	Revisions Made	Date
01		New Document	