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Grievance and disciplinary procedures

Chapter objectives

This chapter examines the importance of rules and regulations in the employment relationship, focusing on grievance and disciplinary procedures. Specifically, the chapter aims to:

- Consider the complementary nature of grievance and disciplinary procedures.
- Identify sources of employee grievances.
- Assess the differing severity of organizational responses to breaches of discipline.
- Recognize the need for fairness in dismissing employees.



Introduction

It is generally accepted that there is a need for procedures in the employment relationship to ensure that both managers and employees are aware of the expectations of the organization (Marchington and Wilkinson, 2005). In this sense managers need a framework in which to direct and guide behaviour of employees in the workplace. Similarly employees need to understand their place in the organization and its expectations. Thus, there is a need for some articulated order which is likely to be important to sustain organizational effectiveness. Consequently rules are needed which cover the whole range of human resourcing, such as what work is done, how jobs are constituted, training and promotion, hours of work, health and safety and standards of behaviour and performance. Equally, there is a need for procedures to provide a framework which allows for notions of organizational justice and reciprocity. This point is particularly true when we think of grievance and disciplinary procedures. We can conceptualize grievance and disciplinary procedures as being complementary, but also distinct. In this way the former is a mechanism whereby employees can challenge management's power, either collectively or individually, and the latter is a way of establishing and maintaining standards which are acceptable to management. Whilst much of this discussion may seem rather prosaic it is important to recognize that all managers should have at least a working knowledge of grievance and disciplinary procedures, particularly with regard to the ultimate sanction of dismissal. Edwards (2005) notes how dismissal represents the 'dark' or 'murky' side of HRM and is often omitted in many discussions of the subject. It is though a fact of organizational life, in much the same way as employees choosing voluntarily to leave the organization. Ultimately, then, as Torrington et al. (2005: 554) rather neatly express it, 'The two complementary processes are intended to find ways of avoiding the ultimate sanction of the employee quitting or being dismissed, but at the same time preparing the ground for those sanctions if all else fails'.

Setting the scene on grievance and disciplinary procedures

Salamon (1992: 568) defines grievance as, 'a formal expression of individual or collective employee dissatisfaction primarily, but not exclusively, in respect of the

application or non-application of collective agreements, managerial policies and actions or customs and practice'. In recognizing the distinction between individual and collective aspects of dissatisfaction many writers suggest that grievances are usually about individual concerns, whilst collective dissatisfaction is likely to become a dispute, especially if a trade union is involved. On the other hand, discipline is defined by the same author as, 'formal action taken by management against an individual or group who have failed to conform to the rules established by management within the organization' (Salamon, 2000: 565). Often grievance and disciplinary procedures will be conceptualized in quasi-judicial terms wherein a body of recognized rules is administered under a judicial-type procedure.

Although the argument in support for the establishment of clear rules and regulations in an organizational setting seems compelling research undertaken in the tourism and hospitality industry suggests that in the past some organizations have been slow to develop policy. For example, Price (1994) found that only 24 per cent of 241 organizations she surveyed had a well-developed disciplinary procedure. More recently though there is greater prescription emanating from legislation and since 1st October 2004 all employers, regardless of size, have to have a disciplinary and grievance procedure and to notify their employees of it, in order to comply with the Employment Act 2002 (LRD, 2006). In developing a policy an obvious starting point is the influential Advisory Conciliation and Arbitration Service (ACAS) Code of Practice on disciplinary and grievance procedures. Originally produced in 1977 and most recently revised in 2004 the code of practice provides a series of recommendations on how best to approach grievance and disciplinary procedures. Indeed, an awareness of procedure may be particularly apposite for tourism and hospitality managers as evidence suggests that they may be more likely to find themselves enmeshed in either a grievance or disciplinary situation. For example, the Chartered Institute of Personnel and Development (CIPD, 2004) in a recent survey of nearly 1200 UK and Irish companies (including 142 tourism and retail employers) found that private sector service employers had twice as many grievance and disciplinary cases compared to the manufacturing, public and voluntary sectors.

Grievance procedures

What is a grievance? Generally, as we have noted a grievance is the right of employees to express and attempt to resolve dissatisfaction that they might have



in the work situation. Pigors and Myers (1977: 152, cited in Torrington et al., 2005) outline degrees of discontent which employees may have in the workplace:

- *Dissatisfaction*: anything that disturbs an employee, whether or not the unrest is expressed in words.
- *Complaint*: a spoken or written dissatisfaction brought to the attention of the supervisor and/or trade union representative.
- *Grievance*: a complaint that has been formally presented to a management representative or to a union official.

Review and reflect

What makes you unhappy at work? Would you be willing to articulate this dissatisfaction as a grievance? If not, why not?

Grievances can take a number of forms and Salipante and Bouwen (1990) have provided a widely used schema to categorize sources of conflict and grievance. They suggest that conflict can be distinguished in three ways:

- *Environmental conflict* is primarily concerned with working conditions and nature of work. These problems will encompass the economic terms and conditions of the job, the physical job conditions and job demands either being too great or too little for the individual's skills and abilities.
- *Social substantive* these grievances stem from perceived inequalities in treatment or disagreements over goals or means. Conflict of this nature may be precipitated by organizational policy or management action, which creates a perception of inequity arising from how decisions are taken.
- *Social relational* grievances arise from the relationships between individuals and groups within the organization, for example, personality conflicts, racism and sexism.

The findings of the 2004 Workplace Employment Relations Survey echo the above categorization, whilst also suggesting that the bulk of grievances raised are more likely to be in relation to Salipante and Bouwen's environmental and social

substantive aspects. In that sense pay and conditions, relations with supervisors/line managers and work practices, work allocation and the pace of work were the most common grievances raised by employees (Kersley et al., 2006).

As suggested by our earlier recognition of Pigors and Myers work all of us at some point in our organizational lives will have a degree of dissatisfaction with our work situation, though the extent to which we will be willing to formally articulate this will vary. Ordinarily, it is unlikely that we will choose to formally register our dissatisfaction as a grievance. Instead, employees may express their dissatisfaction in a number of ways short of formally registering a grievance. For example, employees may simply impose their own unilateral solution through things like increased absenteeism, withdrawing their goodwill or in a reduction in morale/motivation. Ultimately the dissatisfaction may be such that the employee chooses to leave and the high rate of labour turnover in hospitality and tourism suggests that many employees take such a course of action. If however an individual chooses to stay in the organization and decides to formally present a grievance it is important that it is properly considered and addressed. The ACAS code of practice offers a clear procedure for addressing grievances, based on a three-stage approach (ACAS, 2004):

- The employee informs the employer of their grievance in writing.
- The employee should be invited by the employer to a meeting to discuss the grievance where the right to be accompanied will apply and be notified in writing of the decision. The employee must take all reasonable steps to attend this meeting.
- The employee is given the right to an appeal meeting if they feel the grievance has not been satisfactorily resolved and be notified of the final decision.

Ordinarily, employees would initially raise the grievance with their line manager, unless somebody else is specified in the organization's procedure. Once received a grievance will then lead to a meeting between the employee and manager where the grievance will be discussed (and see Torrington et al., 2005 for details of how to approach grievance and disciplinary interviewing). Finally, the decision will be communicated in writing to the employee, who if they are still unhappy will then have the right to appeal, which ordinarily would be dealt with by a more senior manager, who again will write to the employee with the final decision. Importantly, if an employee is to subsequently seek to take a grievance further through the employment



tribunal (ET) system, then they automatically have to have first gone through the organization's grievance procedure.

Disciplinary procedures

Having examined grievance procedures we can now consider discipline in the organization. In discussing discipline in the organization it is interesting to note the extent to which we are likely to be predisposed to obey rules and authority.

Review and reflect

What might explain our pre-disposition to respect rules and authority?

Torrington et al. (2005: 555–556) draw on the work of the famous social psychologist Stanley Milgram to suggest a number of features which explain our propensity to be obedient towards authority and how this is likely to shape workplace behaviour:

- *Family*: the inculcation of respect for adult and parental authority encourages us to generally respect authority.
- *Institutional setting*: in school, university and work we learn how to function in an organization, often accepting our subordinate position.
- *Rewards*: compliance brings rewards, disobedience brings punishment.
- *Perception of authority*: authority is normatively supported, so we are generally predisposed to follow organizational and managerial rules, but where this does not happen the organization may have to take disciplinary action.

Again in developing a disciplinary procedure the ACAS code of practice provides a template suggesting that good disciplinary procedures should (ACAS, 2004):

- Be in writing.
- Specify to whom they apply.
- Be non-discriminatory.
- Ensure matters are dealt with without unnecessary delay.

- Allow for information about proceedings, witness statements and records to be kept confidential.
- State the disciplinary actions which may be taken.
- Specify the levels of management which have the authority to take the various forms of disciplinary action.
- Provide for employees to be informed of complaints against them and where possible all relevant evidence before any hearing.
- Give employees the opportunity to state their case before a decision is reached.
- Provide employees with the right to be accompanied by a trade union representative or fellow employee at any hearing.
- Ensure that except for gross misconduct, no employee is dismissed for a first breach of discipline.
- Ensure that disciplinary action is not taken until the case has been carefully investigated by management.
- Ensure that employees are given an explanation for any penalty imposed.
- Provide employees with rights to appeal, normally to a more senior manager.

Implicit in the guidelines is recognition of the differing severity of organizational responses in terms of misconduct and ordinarily the distinction is made between minor misconduct, serious misconduct and gross misconduct. For many instances of minor misconduct or unsatisfactory performance a quiet word from a manager may be all that is needed to improve an employee's performance and resolve the issue. However, if this informal action does not bring the desired improvement then an employer may take a more formal approach. As with grievance procedures the ACAS code of practice outlines a three-stage approach to discipline. First, the employer signals to the employee in writing what they have done wrong. There will then be a meeting to discuss the problem, where the employee will be allowed to ask questions, present evidence, call witnesses and be given an opportunity to raise questions about information provided by witnesses. Lastly, the employer must then decide on the basis of the meeting whether the disciplinary action was justified and if that is the case the nature of any sanction against the employee. The decision on disciplinary action will clearly be influenced by the nature of misconduct and in that sense Figure 12.1 outlines a typical disciplinary procedure with commensurate organizational responses.

Examples of minor/serious misconduct could include things such as persistent absenteeism, poor timekeeping, failure to adhere to dress codes or appearance

| Nature of the disciplinary matter | Management response and action |
|---|---|
| Minor misconduct | Recorded oral warning |
| Serious misconduct or repeated minor misconduct for which a written or oral warning has been received | Written warning followed by final written warning |
| Gross misconduct or further misconduct for which a final written warning has been received | Action short of dismissal: <ul style="list-style-type: none"> • Transfer • Demotion • Reward deferment • Suspension |
| | Dismissal |

Figure 12.1 Typical disciplinary procedure

standards or unacceptable performance and if employees do receive a oral or written warnings they are likely to have a specified 'life', after which they are disregarded. For example, for an oral warning the period is likely to be for 6 months, whilst for a written warning it will be 1 year and a final written warning, 2 years (CIPD, 2005). For gross misconduct ACAS (2004) notes how instances of such misconduct are likely to be decided by the organization given their own particular circumstances, whilst still noting some typical examples, including:

- theft or fraud;
- physical violence or bullying;
- deliberate and serious damage to property;
- serious misuse of an organization's property or name;
- deliberately accessing internet sites containing pornographic, offensive or obscene material;
- serious insubordination;
- unlawful discrimination or harassment;
- bringing the organization into serious disrepute;

- serious incapability at work brought on by alcohol or illegal drugs;
- causing loss, damage or injury through serious negligence;
- a serious breach of health and safety rules; and
- a serious breach of confidence.

Recent research undertaken by Industrial Relations Services (IRS, 2005) is useful in pointing to the reasons for disciplinary action. In a survey of over 100 employers in all sector of the economy they found that the most likely issues for disciplinary action were attendance, performance and capability, timekeeping and general behaviour and conduct. Clearly, most of these aspects are likely to fall into the minor/serious misconduct category so it is likely to be rare for employees to be dismissed for gross misconduct. Regardless though of whether an employee is dismissed for gross misconduct or repeated minor or serious misconduct a key point is that any dismissal should follow due procedure, something that we now consider.

Employers need to ensure that disciplinary procedures are fully utilized to ensure that any dismissal is considered 'fair', both in a legal and moral sense. For example, an organization might consider it has acted ethically in dismissing an employee, but even if an organization or individual acting on behalf of the organization has acted in good faith, an ET may decide the dismissal was unfair if the correct procedure is not followed. Clearly, then, a key point in any dismissal is the notion of whether the organization has acted in an reasonable, equitable and procedurally fair manner, if not then the organization could be faced with a claim for unfair dismissal. In considering whether a dismissal is fair or unfair we should firstly consider acceptable reasons for dismissal. Taylor and Emir (2006) note how the number of potentially fair reasons was originally five as outlined in the Employment Rights Act 1999, with a sixth being added under the Employment Relations Act 1999 and further reasons relating to Transfer of Undertaking Regulations (TUPE) and mandatory retirement being added in 2006. The most likely reasons for dismissal though are likely to be (and see HRM in practice 12.1):

- *Lack of capability*: this may refer to when employees may encounter difficulties in their performance and struggle to fulfil their responsibilities; alternatively there may also be situations where an employee is unable to do their job due to ill-health.
- *Misconduct*: as we noted above this can range from minor to gross misconduct with differing sanctions.



HRM in practice 12.1 Prime candidates for dismissal?

Rayner (1998) reports on the controversy created in the late 1990s when it emerged that some local authorities were sending managers on a course to learn how to sack troublesome employees. The course was run by an American company, Padgett-Thompson. Amongst other things the course offered participants advice on how to 'deal with employees who drive you crazy' or good performers who had 'know it all attitudes'. The course also offered 'a tried and tested technique for silencing employees who want to argue about being dismissed'. In addition the course identified four employee types who managers are likely to want to dismiss. These types were the chatterbox (who keeps everyone away from work by constantly talking with colleagues), the plotician (who collects the dirt on colleagues and enjoys manipulating those around them), the shark (who enjoys making people squirm and chews up anyone who gets in their way) and the snoop (who delves into other people's personal things and private lives).

- *Redundancy*: the law in redundancy is quite complex, though in simple terms a redundancy will arise when a business is closing, a workplace is closing or there is a diminishing need for employees to do particular kinds of work in an organization.
- *Statutory bar*.
- *Some other substantial reason*: this category is deliberately vague as it is intended to give employers scope to dismiss employees in circumstances that were not envisaged when the legislation was drawn up.

Review and reflect

To what extent is a course of the nature described in Box 12.1 ethical?

In further considering the notion of whether a dismissal is fair it is important to recognize that there are a number of things which would be considered automatically unfair regardless of the qualifying period, these being (LRD, 2006):

- Dismissal on grounds of pregnancy or assertion of paternal paternity or adoption leave rights.

- Dismissal on grounds of trade union membership or stating an intention to join a trade union.
- Refusing to work on a Sunday (in the case of retail workers).
- Dismissal on grounds of actual or proposed trade union activity undertaken at an appropriate time.
- Dismissal resulting from individual's refusal to join a trade union.
- The dismissal of an employee without going through the required disciplinary procedure.
- Dismissal connected with the transfer in the organization's ownership – TUPE (2006).
- Where no reason for dismissal is given.
- Where the employee has been unfairly selected for redundancy.
- Dismissal on basis of past criminal offence which is spent.
- Unfair dismissal on the basis of sex, race, disability, sexual orientation or religion/beliefs.
- During the first 12 weeks of official industrial action (i.e. action sanctioned by a trade union executive body).
- Asserting a statutory right, for example the national minimum wage (NMW).
- 'Blowing the whistle' on malpractice in the workplace.
- Refusal to do something on health and safety grounds.

In 2004–05 there were nearly 40 000 claims for unfair dismissal submitted to the Employment Tribunal Service (ETS, 2005). Of these, the vast majority were withdrawn or settled with the intervention of ACAS. Ultimately, just over 7500 cases reached a formal ET hearing. Of those cases that were heard by the tribunal service over 50 per cent were dismissed, with 46.3 per cent being upheld (ETS, 2005). Clearly in assessing the fairness or otherwise of the dismissal the ET will assess whether dismissal was carried out in line with procedures (reiterating the need for organizations to have well-established and transparent procedures related to disciplinary issues). To judge whether a dismissal is fair the ET is likely to consider the following issues:

- Was dismissal for admissible reason?
- Was dismissal fair in sense of equity of treatment between employees?
- Was dismissal fair in the sense of the offence or the employee record justifying the dismissal?
- Did the employer follow proper procedures?

As noted above the success rate for employees in ETs is not very high, but if they win their case then there are several options open to the ET. The first is the basic award, which depends on length of service and age and is based on the same rate as statutory redundancy pay (LRD, 2006):

- *aged under 22*: half a week's pay for each complete year worked under this age;
- *aged 22–40*: one week's pay for each complete year worked between these ages; and
- *aged 41–65*: one and a half week's pay for each complete year worked between these ages.

In addition, there is also a compensatory award, which considers aspects such as loss of earnings, loss of pension rights and the cost to an employee of time and effort in seeking new work. In awarding a compensatory award the ET can also award an amount that it considers 'just and equitable' given the circumstances (LRD, 2006). Recent changes in the law now mean that there is no upper limit for cases where dismissal was based on discrimination, for health and safety or whistle blowing reasons. For other cases the maximum compensatory award is £58 400 (LRD, 2006). In 2004–05 the highest award was £75 250, though the median award was £3476 and average award £7303 (ETS, 2005). The final option is either reinstatement (where the employee gets their old job back) or re-engagement (where they are given a different but comparable job). In reality, very few people take this option and in 2004–05 just 14 successful claimants chose this course of action (ETS, 2005).

Conclusion

The chapter has considered the need for a clearly articulated order in the organization, particularly with regard to grievance and disciplinary procedures. Evidence suggests that these issues may have a particular resonance within tourism and hospitality; yet at the same time tourism and hospitality organizations often seem to lack the formal policies which sustain a sound approach to towards these issues. Although the predominance of small and medium-sized enterprises (SMEs) may go some way to explain this lack of formal policies and procedures, legislation means

that all organizations should now have well-established grievance and disciplinary procedures. Establishment of such procedures mean that employees have a channel in which to express their dissatisfaction and employers a means by which to articulate concerns about employee performance or behaviour. Though characterized as the 'murky' or 'dark' side of HRM, dismissal is an organizational reality and all managers should be aware of what constitutes a fair or unfair dismissal. Although a relatively small numbers of cases end up at the ET those that do may lead to an organization facing significant costs for a badly handled dismissal. In this way it is clear that rules and procedures in the employment relationship are integral to ensure that decisions taken by organizations are both ethically and procedurally fair and a sense of natural justice prevails in the organizational setting.

References and further reading

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Websites

ACAS has a number of useful resources at <http://www.acas.org.uk/index.aspx?articleid=360&detailid=548>

The Department of Trade and Industry's page on dispute resolution can be found at http://www.dti.gov.uk/employment/Resolving_disputes/index.html