

Disciplinary action against shop stewards: Importance of consultation with union

Shop stewards are responsible for assisting union members with labour-related issues but what happens when a shop steward faces disciplinary action. The first crucial step will be for the employer to begin consultation with the union that the shop steward represents.

According to item 4(2) of the *Labour Relations Act's (LRA) Code of Good Practice: Dismissal matters* "Discipline against a trade union representative or an employee who is an office-bearer or official of a trade union should not be instituted without first informing and consulting the trade union."

It is envisioned that consultations take place with the intention of parties exploring ways of resolving the problem without resorting to discipline. The purpose is thus to allow parties to find a solution that will reduce the likelihood of industrial unrest provoked by the dismissal of a shop steward.

A shop steward is also an employee and, as such, is subject to the same rules and regulations as fellow employees. Being nominated as a shop steward does not afford an employee any special rights. Taking up the office of a shop steward does come with added responsibilities and the courts have shared their view that the added responsibilities that a shop steward bears may well play a role in disciplinary action that is taken against him or her.

For example, in *NUMSA on behalf of Muroa and Van der Wetering (Pty) Ltd t/a Afrit (2011) 32 ILJ 1000 (BCA)*, the court found that shop stewards should be granted more latitude when they are acting in their capacity as shop stewards (in this case a shop steward had told a manager to "shut up" during a disciplinary hearing).

Shop stewards enjoy protection by the *LRA*, and employers should approach shop stewards differently than ordinary an employee during misconduct. However, it does not mean that shop stewards cannot be subjected to disciplinary action regardless of the capacity in which they act.

Failure by the employer to comply with item 4(2) of the *LRA's Code of Good Practice* could taint proceedings with procedural unfairness. In addition, having a sound relationship with a shop steward is advisable, as this may alleviate various labour challenges.