



Grievance Procedures, Disciplinary Actions, and Employee Dismissals

Learning Outcomes

By the end of this unit the learner will be able to:

- ✓ Explore the grievance procedures
- ✓ Explain redundancy and its implications

Grievance Procedures, Disciplinary Actions, and Employee Dismissals

When an individual employee is aggrieved due to an action, or a lack of action, by management, this can lead to a formal grievance process. In the case of an organisation that is not satisfied with the actions, or lack of action, of an individual, it can lead to a formal disciplinary process. If the situation is serious enough, it may also lead to the employee's dismissal.

Grievances

What is meant by Grievance?

Distinguishing between dissatisfaction, complaint and grievance is as follows:

- **Dissatisfaction** Anything that disturbs an employee, whether or not it is expressed in words.
- **Complaint** A spoken or written dissatisfaction brought to the attention of a manager or other responsible person.
- **Grievance** A complaint that has been formally presented to an appropriate management representative or to a union official.

There can be many situations or incidents that may lead to individual employees holding grievances. These can be something like a severe safety hazard or as serious as a sexual assault. Sometimes, grievances may be viewed as less serious but, to the employee, are serious concerns, such as a critical appraisal report, a new shift rota, being overlooked for a promotion, too much work pressure, or lack of overtime opportunities.

A grievance should be dealt with quickly and efficiently, otherwise it will fester and may spread like an infection causing pain and suffering that is not necessary. This may then lead to lower productivity and/or a decrease in co-operation and commitment. The procedure to deal with this must ensure that the employee's grievance is heard quickly, that the employee has a fair hearing and is provided an opportunity for full discussion, and a response from management is obtained as quickly as possible. The procedure must be clear regarding who the grievance should be addressed to, time limits for the meeting and decision, who should accompany the employee if necessary, and any stages of appeal.

Causes of Grievances

There are a number of reasons grievances may occur. These can be:

- Economic:** Wage fixation, overtime, bonus, wage revision, etc. Employees may feel that they are paid less when compared to others.
- Work Environment:** When the physical conditions of the workplace are poor, tight production norms, defective tools or equipment, poor quality materials, unfair rules, lack of recognition, etc.

- c) **Supervision:** Relates to the attitudes of the supervisor towards the employee such as perceived notions of bias, favouritism, nepotism, caste affiliations, regional feelings, etc.
- d) **Work group:** Employees are unable to adjust or connect with their colleagues; suffer from feelings of neglect, victimisation and become an object of ridicule and humiliation, etc.
- e) **Miscellaneous:** These include issues relating to certain violations regarding promotions, safety methods, transfers, disciplinary rules, fines, granting leave, medical facilities, etc.

The following Table describes the classification and causes of grievances.

Table 1: Classification and Causes of Grievances

Classification Causes	
1) Wage grievances	- demand for individual wage adjustment
	- complaint about job classification
	- complaint about incentive system
	- miscellaneous
2) Supervision	- complaint against discipline/administration
	- complaint against behaviour of supervisor
	- objection to the method of supervision
3) Working conditions- safety and health	
	- violation of rules and regulations
	- miscellaneous
4) Seniority and promotion	- loss of seniority and transfers
	- calculation/interpretation of seniority
	- promotion - denial or delay
	- transfer or change of shifts
5) Discipline	- discharge/dismissal/lay-offs
	- alcoholism, absenteeism and accidents
	- harshness of punishment and penalty
6) Collective bargaining	- violation of contract/award/agreement
	- interpretation of contract/award/agreement
	- settlement of grievances
7) Union management- recognition of union relations	
	- harassment of union bearers
	- soldiering / go-slow tactics

Effects of Grievance

If grievances are not identified and redressed, it can negatively affect employees, managers, and the organisation as a whole. The effects can be on:

- 1) **Production and include:**
 - Low quality of production.

- Low quality of production and productivity.
- Increase in material wastage, or spoilage/leakage of machinery.
- Increase in production costs per unit.

2) The employees and include:

- Increases in absenteeism and turnover rates.
- Reduction of the level of commitment, sincerity and punctuality.
- Increases the incidences of accidents.
- Reduction of the level of employee morale.

3) The managers and include:

- Straining relations between subordinate and manager.
- Increases in the degree of supervision, control and follow up.
- Increases in discipline cases.
- Increase in unrest and costs to maintain industrial peace.

Discipline

There must always be a set of rules which, to quite a large extent, regulates employees' behaviour. This is a consequence of employing people but it is necessary. Originally, the word discipline was associated with study and learning, i.e., to be a disciple. Today, however, it is more associated with punishment and penalties.

Discipline works in three parts: 1) the common rules which are in place and if broken can lead to disciplinary action. 2) The disciplinary procedures and external guidance that is given on how it is best formulated. 3) Any issues that arise regarding operating the procedure and putting it into practice.

Rules

In every workplace rules exist and it is necessary to have rules that people in the organisation will honour. In some cases, rules come from legislation such as the tachograph requirement for HGV drivers. Most rules, however, are made to specifically apply to particular organisations. Rules about personal hygiene, for example, are vital in a food factory but less so in a garage. All rules must be clear and easily understood. They should also cover all obvious and unusual disciplinary matters.

Rules can be placed into certain categories:

- Safety rules. These are an essential part of the employer's duty of care to protect employees. These safety rules cover the operation of plant and equipment, wearing of safety gear and limiting access to certain areas of work, tools and machinery unless fully trained or qualified.
- Performance rules. These relate to many aspects of an individual employee's performance including attendance, timekeeping, flexibility of hours, working practices and location, levels of

performance, willingness to work overtime, the requirement to take part in bonus schemes or raise suggestions for improvements.

- Behaviour rules. These are rules that concern the relationship with customers and fellow employees, from the need to be courteous and responsive to customers, to dressing for work in a regulation uniform and taking part in team processes.
- Rules evolved through custom and practice. Not all rules are put into writing. Rule books would be far too long if they had to include every conceivable situation so common sense assumes that, for example, certain violent behaviour would be not allowed. Nor do written rules apply if they are not implemented by management.

Ensuring that the rules are followed It is not enough to just have rules in place. These rules must also be followed or they end up being ineffective. How can organisations ensure that their employees follow the rules? There are several ways and they are:

1. **Information** This is needed so that everyone knows what the rules are. Written particulars may suffice in an employment tribunal hearing, but most people conform to the behaviour of their colleagues, so informal methods of communication are just as important as formal statements.
2. **Induction** A proper induction can make the rules more coherent and reinforce an employee's understanding. Rules can be explained, perhaps with examples, so that people not only know the rules but also understand why they need to be obeyed.
3. **Placement or relocation** This can lessen the risk of the rules being broken. This is done by placing a new recruit with a working team that has high standards of compliance. If there are any signs of disciplinary problems, then a quick relocation can put the problem employee in a new situation where offences are less likely.
4. **Training** This increases employees' awareness of the rules and improves self-confidence and self-discipline. From time to time there will be new equipment or new working procedures and retraining will lessen the risk of any safety offences, negligence or unreliability.
5. **Reviewing the rules regularly** Doing this will ensure that all of the rules are up - to - date and also, that people within the organisation are following them and using them as guidance. It would be appropriate to review safety rules at staff council meetings once or twice a year, depending on if there are any issues. Just discussing the rules ensures the level of awareness of rules maintained.
6. **Penalties** These are in place to make justice within the organisation firmer, especially if employees clearly understand what penalties will be imposed for certain things. Having a set scale is not realistic but neither is allowing penalties to rely on individual managerial whim. This area has been codified partially by legislation on dismissal, however, below are some usual forms of penalty:
 - a) **Rebuke** Usually a verbal warning is sufficient such as 'Don't do that' or 'If you're late again, you will be in trouble.' This is all that is needed in most situations. People can sometimes forget the rules or may not have taken them too seriously. Other times an employee can be

testing management's resolution. Often, managers hesitate to risk defiance and usually wait until they have good cause for more serious action rather than use their own authority at the time.

- b) Caution** A formal caution is a bit more serious because it is then recorded. This involves making a note of what rule(s) had been broken and an explanation of the offence, but it is not a procedure for dismissal.
- c) Warnings** When managers start issuing warnings a great deal of care is necessary. This is because unfair dismissal laws have ensured the system of warnings is an essential part of disciplinary action. These systems should be followed if an employer is to be successful in defending a claim at a tribunal of unfair dismissal. In order for the employer to prove they have followed procedural fairness there must be a formal oral or written warning, specifying the nature of the offence and what would be the likely outcome should the offence be repeated. Management must make it very clear that this is the first, formal stage in the process and any more misconduct will result in a final written warning. This statement should contain a written warning that any further repetition will result in a penalty, perhaps suspension or even dismissal. Every written warning must be dated, signed and kept on record for a specific period of time. It is also necessary for management to point out any means of appeal against the disciplinary action.
- d) Disciplinary transfer or demotion** This would mean moving an employee to less attractive work, the type that could even mean a lower salary. This would be serious as the other staff, especially the employee's immediate colleagues, would know the reason because it would be made public. An example of this would be working on an assembly line where certain jobs are more attractive and have a higher status attached to them than others. Those who break the rules are in a way 'pushed down' the line until they have 'learned their lesson' and are then able to move back up.
- e) Suspension** This has the benefit of being serious but not being as long lasting as a demotion. Companies must provide pay to an employee but not necessarily work. Therefore, it is easier to suspend an employee with pay as a penalty either as a punishment or if an alleged offence is being investigated. In some cases where the employment contract allows, an employee can be suspended without pay for a short time.
- f)** One thing that is very important, regarding the use of penalties, is that they must be appropriate for the specific circumstance. They must also be within the law. For example, if an employee is consistently late or absent, suspending this employee would not necessarily be appropriate. Employees cannot be either transferred or demoted at a manager's whim. Suspending someone without pay is also something that cannot be used unless the employment contract allows for it.

Disciplinary Procedure

Operating the Disciplinary Procedure

There are three main aims for disciplinary procedures. First of all, they are necessary to point out to employees the errors of their ways. They must understand that there is a gap between the level of performance and behaviour expected from employees, and the employees' actual performance or behaviour. They must also understand and accept that the gap exists. If an employee has poor attendance, for example, it would be necessary to check and match their record against any company standards and the records of his/her colleagues. This also applies to performance levels. Any accusation must be backed up with explanations of how the performance of said employee is less than what is required.

Employees have the right to question any facts put before them. If they can produce evidence that casts doubt on the claims against them then further investigation must take place. Employees must be encouraged to give explanations for their failings. Some of them might be acceptable, for example, poor attendance is due to a severe family illness. This will show any areas where assistance can be given. The next step will be to help set the employees on the path to improvement.

Disciplinary Procedure

Disciplinary procedures are very much like grievance procedures and as such, these procedures rely on fairness, representation, and promptness.

Authorisation of Penalties

By law, managers do not usually have the power to dismiss their immediate subordinates without referring the matter to more senior managers. Penalties should only be imposed by the person or persons who are authorised to do so. This usually means that more serious penalties can be imposed only by senior people in an organisation. Many companies, however, leave these decisions to the HR department.

Investigation

It is important not to take any disciplinary action until it is established that there is actually a problem that justifies whatever action will take place. One way of doing this is suspending the employee without pay. This way there will be time allowed for a thorough investigation of any dubious allegations. It is important, however, to remember that there is a stigma attached to such an action.

Information and Explanation

Where disciplinary action is possible, the employee to be disciplined must be advised of the complaint to give him/her a chance to explain or deny the matter before any penalties are decided and imposed. If any employee is to be penalised, reasons for the decision must be explained. This is to make sure that cause and affect are appreciated because the aim of penalties is to prevent a recurrence.

Procedural Sequence

Procedures make things clear. An example of this would be that procedures ensure everyone knows who has and does not have the power to dismiss. An unhappy employee who is thinking about making a formal complaint, therefore a grievance, will be aware of who will actually hear the grievance and where any appeal can be lodged. Managers and employees need the security of procedures where step B always comes after step A. It provides authority and limits the scope of their actions.

Managerial Discipline

This ensures general respect for the framework of justice by managers using self-discipline as they must be careful of how they work within it. In some cases, senior managers have good intentions and have an 'open door policy' where employees are made to feel comfortable enough to go to this manager at any time and discuss any issues they may have. There are advantages to this, of course, but there are also disadvantages regarding discipline and grievances because it may encourage employees to bypass middle managers. Another danger is that they may also begin to view any settlements of grievances as relying on personal goodwill of a particular individual and not on any employment or human rights or any business logic which is what settlements of grievances should be based on.

All grievances and/or discipline issues have to be handled in a consistent manner by the management. If rules are inconsistently enforced any moral authority they hold will be lost and they may only be followed because of fear of punishment. Therefore it is important for managers to properly handle grievances in a quick and consistent manner. This way he/she will have the support of a group of employees who know the situation and are committed to following the rules.

Another important reason for managerial discipline is to test the validity of the discipline assumption. Is discipline really necessary in each case or is there another way to deal with a problem? That is a question that needs to be asked with each individual case. For example, it will not do anyone any good to suspend an employee for negligence when the actual problem is one of lack of training. It is important to analyse each situation carefully before making any allegations because they may be unjustified. Often disciplinary issues can disappear under careful analysis.

Grievance Procedure

Resentment of the formality of the grievance procedure can occur with managers who feel that it introduces unnecessary rigidity to working relationships. The common thought among these managers is: 'I see my people all the time. We work side by side and they can raise with me any issue they want, at any time they want.' Employees are generally hesitant to raise any issues which may be seen as contentious with immediate superiors and in the same way managers sometimes avoid the rebuke as a type of disciplinary penalty. This is where formality in procedures delivers structure within which employees can reasonably discuss grievances. The procedures also avoid any risk of inconsistent or ad hoc decisions being made and employees know from the beginning that the matter will be heard and where it will be heard.

The main features of grievance procedure are: fairness, facilities for representation, procedural steps and promptness.

1. **Fairness** This is necessary, to be just, but it also ensures the procedure remains viable. If employees think that the procedure is just a pretence, then any value it has will be gone and other ways of dealing with grievances will have to be found. It is necessary to be even-handed when dealing with grievances as this will ensure fairness is supported. It would also be much better if any appeals are dealt with by a joint body or taken to independent arbitration because then management is not seen as being the judge of its own cause.
2. **Representation** This is a way of helping individual employees who are lacking in confidence or experience take on management on their own. Representatives, such as union officials, have the advantage of having dealt with a range of employee problems and are usually able to advise the aggrieved person on whether it is worth pursuing the claim. However, a risk still exists that a representative's presence may produce a defensive attitude with management as the union official and manager may be at opposite ends of certain issues. The managers therefore must place the representative in the correct role for the occasion.
3. **Procedural steps** It is best if these are limited to three steps only. There is no value in having more just because there are more levels in the organisational hierarchy. This will make dealing with matters even longer and also bring the procedure into disrepute. There are three steps because there are three types of management activity involved in resolving grievances. Despite this, there can actually be more than three steps especially in organisations with a steep hierarchy where there would be higher, more senior people to whom the matter could be referred. Having more steps does not mean more processes to handle grievances; they are solely a function of the organisational structure.
 - a) First is the preliminary step. This is when the grievance is lodged with the immediate superior of the employee with the complaint. In a normal working week managers will have quite a few queries from members of their departments, some of which could become grievances. Often, it depends upon the manager's reaction. The manager will either satisfy the employee or the employee will decide not to pursue the matter. There will be times, however, when the employee will decide to take the issue further. This is the preliminary step but it is also a tangible step because it is here that the manager has an opportunity to review any decisions that have caused the dissatisfaction. This then enables the employee with the grievance to withdraw any claims. It is usually rare for matters to be taken further, unless the subject of the grievance is something which company policy is being tested about.
 - b) If a grievance reaches the hearing stage it is here that the employee will state the grievance to a more senior manager who will be able to see things from a broader perspective than the immediate supervisor. Higher level managers can often view matters in a more dispassionate

manner and see solutions that perhaps have not been seen by immediate supervisors. Management should try to finalise the hearing where possible so that appeals do not follow. Other employees must not be made to see the hearing as just an annoying milestone on the way to the real decision makers. For this reason it is better to limit the procedural steps to three.

- d) It is usually designated to a more senior manager in the case of an appeal. The outcome of this will either be a confirmation of a modification of the decision at the hearing.
- 4. **Promptness** This is vital when trying to avoid bitterness or frustrations that comes from these delays. When an employee 'goes into procedure' it can be likened to pulling a communication cord on a train. The decision is not taken lightly and a quick resolution is expected. The manager whose decision is in question will also have a hard time until the matter is settled so it's best to settle the matter as quickly as possible. One way to speed things up is to place time limits between each step and specify that the hearing, for example, should occur no later than four working days after the preliminary notice and the appeal no more than five working days after the hearing. This is a good approach because it allows time for reflection and initiative by the manager or the employee between the steps, but does not allow time for the matter to be forgotten.

Dismissal

Some of the legal aspects that may lead to dismissal have already been discussed. If a case is being heard at a tribunal, the employer must have a good reason for dismissal and must show that the organisation followed correct procedure in dealing with the matter in a fair and consistent way. This needs to be done so that the organisation can retain its reputation and be seen as a good employer with hard-working, committed employees. Employment contracts can be terminated in a number of ways. For example, job redundancy, voluntary resignation, non-renewal of a contract, death while in service, and summary termination due to conduct, i.e., 'the sack.' Dismissals can be classified as unfair, wrongful and constructive dismissal.

Fair Dismissal

It is usually the case that when employees are dismissed the reasons are probably fair.

In the majority of situations when an employee is dismissed from employment, the reasons for the dismissal are likely to be fair. An employer can fairly dismiss an employee on several grounds and dismissal is likely to be fair if it relates to the following categories:

- Employee conduct – gross insubordination, theft or fraud in the workplace, and fighting etc.
- Job redundancy – where a job is no longer needed and the employee is dismissed, through no fault of their own, due to job redundancy. The person has been appropriately consulted about the situation and selected for redundancy fairly through an agreed selection process. In the case of an employee who has two continuous years of employment with the same employer, he/she must be compensated for the redundancy.

- Capability, competence, and qualifications - an employee can be fairly dismissed on these grounds by an employer but the company must demonstrate that the dismissal relates to job capability, not the specific employee

Unfair Dismissal

If an employer can demonstrate that the reason for the dismissal can be placed into one of five categories, then, it is a fair dismissal. If not, then, it could be considered unfair.

Wrongful Dismissal

A wrongful dismissal would be where there is a breach of contract, for example, dismissal without notice or a failure to pay all due wages and remuneration during the notice period. A lot of wrongful dismissal cases are brought by highly paid business executives who are dismissed but denied some aspect of their remuneration package.

Constructive Dismissal

This is a situation where an employee claims that the employer has acted contrary to the operation of their contract of employment and the contract is then deemed to be unlawfully and immediately terminated. Constructive dismissal includes situations like financial losses due to expected changes in pay and/or remuneration, sexual harassment, racial bias, possible relocations to undesirable areas or continual victimisation. It can be risky for employees to bring claims for constructive dismissal because they must satisfy a tribunal that they had no other choice but to leave. In most cases it is unlikely that said employees will get their jobs back.

Admissible Reasons for Dismissal

There are four situations in which dismissals may be seen as fair by law (apart from redundancy). These are:

The employee's capability - This covers the area of poor performance or the lack, or loss of a necessary qualification.

An employee's misconduct – This would include the remainder of the misdemeanours and all of the acts of gross misconduct:

- A statutory restriction, such as an employee not having a work permit or security clearance in parts of the public sector.
- Some other substantial reason, such as pressure from a customer, the inability to work with other members of the department or making false statements on an application form. Most cases fall under the first two reasons, but other cases can be found under other substantial reasons.

Three Common Reasons for Dismissal

Two further cases are set out which indicate some of the issues involved under three of the most common reasons for dismissal: dismissal for poor attendance, refusal to obey a reasonable instruction.

Redundancy and its Implications

Redundancies can occur for a number of different causes:

- The organisation, or part of it, can be sold, merged, or taken over. New owners may have seen opportunities for extracting higher returns through cost saving, closing certain operating sections due to duplication or poor performance, re-structuring central services (especially head offices) and generally wanting to put their own mark on the new organisation.
- The organisation may be part of a business that is going through a structural decline. UK shipbuilding, coal and steel industries had huge redundancy programmes in the 1970s and 1980s as they had to deal with a declining demand and also international competition.
- A recession, even if short, can lead to sharply reduced demand and a demonstrated over-manned situation, which of course, will need to be remedied.
- Advances in technology can have a major effect on process and assembly industries where, for example, a robotized paint shop can reduce the number of employees involved by a factor of four or more.
- A major efficiency drive using techniques, such as business process re-engineering, or benchmarking, can show that benefits can accrue through a reduction in manpower.

Selection for Redundancy

Common methods may include all of the following:

- Selecting employees who volunteer.
- Last in–first out.
- Performance measurement.
- Skills and competencies.

Redundancy Pay

The final aspect of legislation is regarding the payments due under redundancy. Employees are entitled to the minimum of a week's pay for each year of service. Employees who are over the age of 41 are paid at the rate of one and a half week's pay and service between the ages of 18–21 inclusive is paid at the rate of half a week's pay. A maximum figure applies to the week's pay (around £260 in 2003), and is increased each year. These pay entitlements only start when employees have completed 2 years' service.

Helping Employees obtain Alternative Employment

One of HR's important roles is to assist employees who are being made redundant to find another suitable position. This can be done internally by checking suitable internal vacancies, maybe by replacing key positions where the employee has volunteered for redundancy, against other employees selected for redundancy. This process must be handled sensitively and carefully as it is quite complex and avoidance of exacerbating a difficult situation is necessary.

Employees, who accept other positions, must be given a four week trial period. If they decide, at the end of that period, that the position is not really suitable for them, then they have a right to receive redundancy payments.

Further Reading:

- ✓ *The City Law School, (2008), Employment Law in Practice*
- ✓ *Nick Wilton, (2011), An Introduction to Human Resource Management*
- ✓ *Michael Armstrong, (2012), Armstrong's Handbook of Human Resource Management Practice*