



UNIT-14

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

Unit 14

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. When an organisation is not satisfied with the actions, or lack of action, of an individual, this 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?

A distinction can be made between dissatisfaction, complaint and grievance:

- **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 range from a severe safety hazard to a sexual assault. Sometimes, grievances may be viewed as less serious but, to the employee they may be 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 spread like an infection, causing unnecessary pain and suffering. This may result in lower productivity and/or a decrease in co-operation and commitment. The grievance procedure must ensure that the employee's grievance is heard quickly, the employee has a fair hearing and is provided with an opportunity for full discussion, and a response from management is obtained as quickly as possible. The procedure must be clear regarding the person to whom the grievance should be addressed, time limits for the meeting and decision, who should accompany the employee if necessary, and any appeal stages.

Causes of Grievances

Grievances may occur for various reasons, such as the following:

- a) **Economic:** Wage stagnation, overtime, bonus, wage revision, etc. Employees may feel that they are paid less when compared to others.
- b) **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 to the employee such as perceived notions of bias, favouritism, nepotism, caste affiliations, regional feelings, etc.
- d) **Work group:** Employees are unable to adjust to or connect with their colleagues; they suffer from feelings of neglect and 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

Failure to identify and redress grievances can negatively affect employees, managers and the organisation as a whole. There may be effects on:

1) Production:

- 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:

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

3) The managers:

- Strained relations between subordinate and manager.
- Increases in the degree of supervision, control and follow-up.
- Increases in disciplinary 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 on how they are best formulated; 3) Any issues that arise about operating the procedure and putting it into practice.

Rules

There are rules in every workplace, and they should be 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. They cover the operation of plant and equipment, the wearing of safety gear, and limiting people's access to certain work areas, 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, and 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 evolve 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; hence, common sense assumes that, for example, violent behaviour will 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 simply to have rules in place. These rules must also be followed or they will end up being ineffective. How can organisations ensure that their employees follow the rules? There are several ways:

1. **Information:** This is necessary to ensure 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; thus, 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 reduce the risk of the rules being broken. It is done by placing a new recruit in a working team that has high standards of compliance. If there are any signs of disciplinary problems, then a quick relocation will place 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 reduce the risk of any safety offences, negligence or unreliability.
5. **Reviewing the rules regularly:** This will ensure that all of the rules are up to date and that people within the organisation are following them and using them as guidance. It is appropriate to review safety rules at staff council meetings once or twice a year, depending on whether there are any issues. Merely discussing the rules will ensure that the level of awareness of rules is maintained.
6. **Penalties:** These are in place to strengthen justice within the organisation, especially if employees clearly understand what penalties will be imposed for certain transgressions. A set scale is unrealistic but penalties should not depend on individual managerial whim. This

area has been codified partially by legislation on dismissal; however, there 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. At other times, an employee may be testing management's resolution. Managers often 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 little more serious because it is then recorded. This involves making a note of what rule(s) have been broken and an explanation of the offence, but it is not a procedure for dismissal.
- c) **Warnings:** When managers start to issue warnings, they should take a great deal of care. This is because unfair dismissal laws have made the system of warnings 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 might even mean a lower salary. This would be a serious matter as the other staff, especially the employee's immediate colleagues, would know the reason because it would be made public. For example, an employee might 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 sense, '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 without 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 further very important point about 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 transferred or demoted at a manager's whim, nor can they be suspended without pay unless the employment contract allows as much.

Disciplinary Procedure

Operating the Disciplinary Procedure

There are three main aims of disciplinary procedures. First of all, they are necessary to point out to employees the errors of their ways. Employees must be made to realise when there is a gap between the level of performance and behaviour expected of them and their actual performance or behaviour. If an employee has poor attendance, for example, it would be necessary to check and match his/her record against the company's 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, further investigation must take place. Employees must be encouraged to give explanations for their failings. Some of them may be acceptable; for example, poor attendance may be 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 to suspend the employee without

pay. This will allow time 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 will ensure that cause and effect are appreciated because the aim of imposing penalties is to prevent a recurrence.

Procedural Sequence

Procedures make things clear. For example, procedures ensure that everyone knows who has and does not have the power to dismiss. An unhappy employee who is thinking about making a formal complaint, and 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

General respect for the framework of justice is ensured by managers using self-discipline as they must be careful 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 sufficiently comfortable to approach these managers at any time to 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. They may also begin to view the settlement of grievances as reliant on the personal goodwill of a particular individual and not on any employment or human rights or any business logic, which is what settlement of grievances should be based on.

All grievances and/or disciplinary issues must 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 through fear of punishment. Therefore, it is important that managers handle grievances properly in a quick and consistent manner. They will then 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 of dealing with a problem? This question should be asked in 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 a lack of training. It is important to analyse each situation carefully before making any allegations, as they may be unjustified. Disciplinary issues often disappear under careful analysis.

Grievance Procedure

Resentment at the formality of the grievance procedure may be felt by 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 with immediate superiors any issues that may be seen as contentious, 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 making inconsistent or ad hoc decisions and employees know from the beginning that the matter will be heard and where it will be heard.

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

1. **Fairness:** This is necessary for the sake of justice, but it also ensures that the procedure remains viable. If employees think that the procedure is merely a pretence, any value it has will evaporate 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 that fairness is supported. It would also be much better for appeals to be dealt with by a joint body or taken to independent arbitration because management will then avoid being seen as 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, there is still a risk that a representative's presence may produce a defensive attitude in management as the union official and manager may have opposing views on certain issues. The managers must therefore place the representative in the correct role for the occasion.
3. **Procedural steps:** It is best to limit these to just three steps. 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 on which company policy is being tested.

- b) If a grievance reaches the hearing stage, 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 have perhaps eluded 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.
 - c) It is usually designated to a more senior manager in the case of an appeal. The outcome of this will either be a confirmation or a modification of the decision at the hearing.
4. **Promptness** This is vital when trying to avoid bitterness or frustrations born of 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; thus, it is 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 beneficial 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 has followed correct procedure in dealing with the matter in a fair and consistent way. This is necessary to enable the organisation to 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, including 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.

Fair Dismissal

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:

- Ñ Employee conduct – gross insubordination, theft or fraud in the workplace, and fighting etc.
- Ñ 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.
- Ñ 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, it could be considered unfair.

Wrongful Dismissal

A wrongful dismissal would be one 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 such as 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 in law (apart from redundancy):

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:

- Ñ A statutory restriction, such as an employee not having a work permit or security clearance in parts of the public sector.
- Ñ 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 reasons:

- Ñ 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, restructuring central services (especially head offices) and generally wanting to put their own mark on the new organisation.
- Ñ 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 international competition.
- Ñ A recession, even if short, can lead to sharply reduced demand and a demonstrably over-manned situation which will, of course, need to be remedied.
- Ñ Advances in technology can have a major effect on process and assembly industries where, for example, a robotised paint shop can reduce the number of employees involved by a factor of four or more.
- Ñ 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:

- Ñ Selecting employees who volunteer.
- Ñ Last in–first out.
- Ñ Performance measurement.

Ñ Skills and competencies.

Redundancy Pay

The final aspect of legislation concerns 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 and 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 it is increased each year. These pay entitlements only start when employees have completed two 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, perhaps 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 it is necessary to avoid exacerbating a difficult situation.

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, 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*