



**RK Corporate Consulting (Pty) Ltd**  
**Registration Number: 2025/117006/07**

Address: 1221 Embankment Road  
Zwartkop x7  
Centurion  
0157  
Phone: 0725975690 | 0746906874  
Email: [rozanne@rkcc.co.za](mailto:rozanne@rkcc.co.za) | [will@rkcc.co.za](mailto:will@rkcc.co.za)

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## **Disciplinary Hearing Readiness Guide (2026)**

*Prepared by RK Corporate Consulting (RKCC)*

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Disciplinary hearings are one of the most common points at which employment disputes escalate. In practice, many employers only realise that something has gone wrong once a CCMA referral has already been filed.

By that stage, the focus shifts from managing conduct to defending process.

At RKCC, we regularly see employers lose disciplinary disputes not because misconduct did not occur, but because procedural steps were rushed, skipped, or poorly documented. Decisions made under pressure, without a clear procedural framework, are challenging to defend after the fact.

This guide is designed to slow the process down at the right moment. It helps employers assess whether a disciplinary hearing is procedurally ready to proceed, and whether dismissal decisions are likely to withstand CCMA scrutiny.

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### **Purpose of This Guide**

Disciplinary hearings are one of the most common pressure points for employers. Decisions are often made quickly, emotions run high, and procedural steps are overlooked in the belief that the misconduct **"speaks for itself"**.

At the CCMA, that belief regularly costs employers money.

This guide is designed to help South African employers **pause before proceeding**, assess procedural readiness, and identify risks **before** disciplinary action escalates into Dismissal and dispute.

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This guide does not replace legal advice. It helps you determine whether your process is defensible, and when to seek professional support.

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## **Legal Framework: Disciplinary Hearings and Procedural Fairness**

Disciplinary hearings in South Africa are governed by section 188 of the Labour Relations Act 66 of 1995, read together with **Schedule 8 Code of Good Practice, which specifically deals with Dismissal**, which forms part of the Act.

### **Section 188, Labour Relations Act:**

A dismissal is unfair unless the employer proves:

- a **fair reason** for Dismissal; and
- a **fair procedure** was followed.

This requirement applies regardless of:

- the seriousness of the misconduct,
- the seniority of the employee, or
- the size of the business.

### **Schedule 8 of the Code of Good Practice: Dismissal**

Schedule 8 sets the minimum procedural standards for disciplinary action, including:

- explicit notification of allegations;
- a reasonable opportunity to respond; and
- consideration of the employee's explanation before sanction.

The Code allows for flexibility in formality, **not in fairness**.

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### **□ Before the Hearing: Procedural Readiness Check**

Before issuing or proceeding with a disciplinary hearing, confirm that:

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- Allegations are **clearly defined**, specific, and in writing
- The employee has received **written notice** of the hearing
- A **reasonable time** to prepare has been given
- The chairperson is **impartial and suitably independent**

**✗ Risk if overlooked:**

Vague allegations or rushed notice frequently result in findings of procedural unfairness, even where misconduct is established.

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**□ During the Hearing: Fair Process in Action**

During the disciplinary hearing, ensure that:

- The employee is allowed to **respond fully** to the allegations
- Evidence is considered **objectively and without bias**
- Mitigating factors** are invited and genuinely considered
- Aggravating factors are **identified and weighed**
- Reasons for the chosen sanction are **recorded**
- Proceedings are **accurately recorded in minutes**

**✗ Risk if omitted:**

Failure to consider mitigating factors undermines the fairness of the sanction and increases the Risk of compensation.

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## **After the Hearing: Decision and Documentation**

Once the hearing has concluded, confirm that:

- The outcome is **documented in writing** with clear reasons
- The sanction is **proportionate** to the misconduct
- Consistency** has been checked against similar cases

### **✗ Risk if overlooked:**

Poorly reasoned outcomes and inconsistent sanctions undermine credibility and increase compensation exposure.

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## **Relevant Case Law: Procedural Fairness in Practice**

South African labour courts have consistently held that **procedural fairness is decisive**, even where misconduct is proven.

In **Avril Elizabeth Home for the Mentally Handicapped v CCMA and Others (2006)**, the Labour Court confirmed that disciplinary hearings need not resemble criminal trials. However, employers must still ensure:

- The employee understands the allegations.
- The employee is given a genuine opportunity to respond; and
- The decision is not pre-determined.

The Court made it clear that **simplicity does not excuse unfairness**.

In **Sidumo and Another v Rustenburg Platinum Mines Ltd and Others (2007)**, the Constitutional Court emphasised that dismissal decisions must be **fair and reasonable**, taking into account:

- the nature of the misconduct;

- the employee's personal circumstances; and
- whether Dismissal is an appropriate sanction in the circumstances.

Together, these cases confirm that employers must be able to justify **both the process followed and the sanction imposed**.

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## MITIGATING AND AGGRAVATING FACTORS

### Mitigating and Aggravating Factors: What Must Be Considered

Before deciding on Dismissal, employers must **actively consider mitigating and aggravating factors**. Failure to do so is a common reason dismissals fail at the CCMA.

Mitigating factors may include:

- length of service;
- disciplinary record;
- personal circumstances;
- remorse or willingness to correct behaviour; and
- whether the misconduct is isolated or repeated.

Aggravating factors may include:

- seniority or position of trust;
- Repeated misconduct;
- dishonesty; or
- breakdown of the employment relationship.

### Key principle:

If mitigating factors are not invited and considered, dismissal decisions are vulnerable, even in cases of serious misconduct.

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## LEGAL CONSEQUENCES OF NON-COMPLIANCE (EXPLICIT)

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## Legal Consequences of Procedural Non-Compliance

Where employers fail to comply with procedural requirements under the **Labour Relations Act 66 of 1995**, including **Schedule 8**, the CCMA or Labour Court may order:

- **Compensation** of up to 12 months' remuneration
- **Reinstatement** of the employee
- **Re-employment** on altered terms
- **Back-pay liability**
- Adverse findings affecting future disputes
- Reputational damage and operational disruption

Notably, compensation may be awarded **even where misconduct is proven** if the process followed was unfair.

Procedural defects cannot be cured after Dismissal.

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### Practical Case Study: A Dismissal That Fails on Procedure

An employee is dismissed for insubordination following a heated exchange with management. Management believes the conduct is obvious and serious, and no formal disciplinary hearing is convened.

At the CCMA, the commissioner accepts that the conduct occurred. However, the Dismissal is found procedurally unfair because:

- The employee was not given a proper opportunity to respond; and
- no hearing was held before Dismissal.

#### Outcome:

The employer is ordered to pay compensation.

#### Key lesson:

Clear misconduct does not cure procedural defects.

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## ⚠ Why This Guide Matters

At the CCMA, the **burden of proof rests on the employer**. If procedural fairness cannot be demonstrated with evidence, dismissal outcomes are vulnerable, even where misconduct is proven.

Most disciplinary losses are not about guilt or innocence. They are about **process**.

This guide helps employers identify Risk early, protect decision-making, and avoid preventable disputes.

## How RKCC Supports You

RK Corporate Consulting supports employers with:

- pre-hearing compliance and risk reviews;
- disciplinary hearing preparation and guidance;
- dismissal defensibility assessments;
- CCMA dispute management and strategy; and
- broader labour compliance audits.

Early intervention significantly reduces legal and operational Risk

 [rozanne@rkcc.co.za](mailto:rozanne@rkcc.co.za) |  [will@rkcc.co.za](mailto:will@rkcc.co.za)

 +27 72 597 5690 | +27 74 690 6874

 [rkcc.co.za](http://rkcc.co.za)

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