



RHODES UNIVERSITY
Where leaders learn

**RHODES UNIVERSITY
DISCIPLINARY PROCEDURE**

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1 PREAMBLE

The University, NTESU and NEHAWU recognise that it is the obligation of employees to abide by acceptable rules of conduct and to discharge their duties faithfully and diligently and the role of management to ensure that they do so in the interests of the University.

To this end, disciplinary action, including dismissal where appropriate, may be instituted against an employee who has been proved guilty of misconduct, and, that, in the application of discipline to all staff, the following Code and Procedure will apply.

The disciplinary code applies equally to all employees.

2 DEFINITIONS

For the purposes of these procedures:

2.1 **CORRECTIVE COUNSELLING**

the process necessary to induce improved performance or behaviour

2.2 **DAY**

any day excluding Saturday, Sunday, Public Holidays and the period from the 15th December to the 15th January (both days inclusive).

2.3 **DISCIPLINARY ACTION**

any corrective action, including dismissal, instituted in response to unacceptable **employee** behaviour / **unsatisfactory work performance**, other than incompetence or incapacity, against an **employee** who has been proved guilty of misconduct in terms of this code and procedure.

2.4 **EMPLOYER / the UNIVERSITY**

the Council of Rhodes University as recognised by the Higher Education Act No 101 of 1997.

2.5 **EVIDENCE**

oral evidence and documents, notices and correspondence referred to therein.

2.6 **HEAD OF DEPARTMENT**

shall include Head of an Academic Department, a Director of a Research Institute, a Head of a Division or their Deputy or Assistant, the University Librarian, or their Deputy, or a Hall Warden.

2.7 **REPRESENTATIVE**

shall include :

A Union Official, a shop steward, a staff member, or any person, with or without legal expertise, provided that such person shall not be a witness to events related to the alleged misconduct in that particular case.

2.8 **STAFF / EMPLOYEE**

shall include all staff of the University as defined in the LRA.

2.9 **SUPERVISOR / HEAD OF SECTION**

shall include any person whose function and responsibility it is to monitor performance or discipline within a defined work zone or sub-section of the University.

2.10 **UNSATISFACTORY WORK PERFORMANCE**

in the context of this Disciplinary Code unsatisfactory work performance of instructions, other than incapacity or incompetence.

2.11 **WARNING / FINAL WARNING LETTER**

any written document issued against the proven misconduct of an **employee** on the prescribed form.

3 DISCIPLINARY CODE

Guidelines to behaviour which might warrant *disciplinary action*

- All members of **staff** are required to maintain a satisfactory standard of behaviour and to perform their duties in a satisfactory manner.
- The following categories of misconduct are not exhaustive. The seriousness of any misconduct must be considered in light of all the circumstances surrounding the misconduct.

Insubordination, insolence or disrespectful behaviour

- Refusal, or failure, to carry out a lawful and reasonable instruction given by a person having the authority to give such instruction
- Abusive or offensive disrespect
- Insubordination
- Insolence

Violence

- All forms of physical assault, threats and intimidation
- Rape or attempted rape
- Unauthorised possession of dangerous weapons (on **University** premises)
- Behaviour which endangers, or could reasonably endanger, life

Liquor or drug offences

(when on **University** premises OR on **University** business)

- Illegal or unauthorised possession of liquor
- Possession of drugs the possession of which is illegal
- Being under the influence of liquor or illegal substances
- Being unable to perform normal duties properly and / or safely as a result of consumption of alcohol and / or non-prescription drugs

Wrongful handling of property

- Deliberate improper, unauthorised use of, negligent damage to, or loss of, **University** property or the property of other **employees** or a student / visitor

Attendance

- Signing on but not proceeding to work
- Failure to, or, unnotified absence from, work
- Consistent lack of punctuality (arrival)
- Unauthorised absence from work while on duty
- Abscondment

Unsatisfactory Work Performance

(other than incapacity or incompetence)

- Negligence
- Sleeping on duty
- Poor maintenance standards (not caused as a result of high workload or **staff** shortage)
- Failure or neglect of duty which could have serious consequences for the **University**, its **employees** or students / visitors, on the premises

Dishonesty

- Theft
- Unauthorised possession of **University** property (misappropriation)
- Unauthorised possession of another **employee's** or a student's / visitor's property
- Accepting or procuring bribes
- Falsifying **University** records
- Misuse / abuse of confidential information
- Fraud, including: falsification of time-cards, employment application form, or any other University documents, sick certificate, order forms, deliberately non-procedural "clocking", etc.

Health and Safety

- Failure to comply with published fire, health, occupational health and / or safety codes
- Smoking in prohibited areas

Offensive Behaviour

- Swearing or using abusive or harassing language towards others
- Victimisation or intimidation as contemplated in the **LRA**
- Incitement to stop work other than during a protected strike or notified protest action

Harassment

- Any action which is against the published **University** Policy Number **H.1** on Harassment

Harassment includes the following actions :

- racist or sexist remarks
- unwelcome physical contact
- unfair discrimination (gender or racial)

Abuse of Position / Authority

- Coercive, abusive or inappropriate use of one's **supervisory** or other position of authority against an **employee** or student
- Abuse of one's position for unfair gain or the unfair gain of others
- Deliberate administrative action beyond the capacity of the position held
- Unreasonable demands for resignation under threat of **disciplinary action**
- Without good reason trying to induce an **employee** to resign

General

- Possession of a firearm/s on **University** premises without the Registrar's authority
- Gambling on **University** premises
- Commission, or, conviction in a court of law, of a serious criminal offence
- Participation in an unprotected strike
- Unjustified refusal to obey a reasonable and lawful request to search of either one's person or property

4 DISCIPLINARY GUIDELINES

In determining the disciplinary action the following guidelines will be applied. The discretion of the Presiding Officer in determining the disciplinary routine is recognised including the reduction of any proposal and the mandating of corrective counselling.

		Disciplinary Routine			
		L1	L2		L3
Nature of Offence		Verbal Warning	Written Warning	Final Written Warning	Suspension / Dismissal
		Corrective Counselling Phase	May be accompanied by inclusion of Corrective Counselling		
L1 Category A – Least Serious Offences					
1	Late-coming	1	2	3	4
2	Early-Leaving	1	2	3	4
3	Overt disrespect, use of abusive language, or, offensive behaviour towards others	1	2	3	4
4	Disruptive behaviour in the workplace	1	2	3	4
5	Negligence	1	2	3	4
6	Smoking (other than in designated areas)	1	2	3	4
7	Unsatisfactory work performance other than incapacity or incompetence	1	2	3	4
L2 Category B – Serious Offences					
8	Absenteeism [for up to 3 days]		1	2	3
9	Dereliction of duty		1	2	3
10	Withholding information about an alleged serious offence committed in the workplace		1	2	3
11	Causing a staff member not to give evidence		1	2	3
12	Blatant untruths and deliberate giving of false information		1	2	3
13	Absence without permission		1	2	3
14	Insubordination, defiance of authority, refusal to follow reasonable instructions or perform normal work tasks		1	2	3
15	Sleeping on duty		1	2	3
16	Unauthorised possession of liquor on University premises or the introduction of liquor thereto		1	2	3

17	Harassment as defined in the published University policy (H.1), courts of law and other tribunals		1	2	3
18	Failure to wear protective clothing/equipment		1	2	3
19	Gross insubordination			1	2
20	Gross negligence			1	2
21	Serious absenteeism [for more than 3 days but less than 6 days]			1	2
22	Under the influence of alcohol or drugs on University premises to the extent of being incapable of performing work properly			1	2
23	Unauthorised use of University vehicles and equipment			1	2
24	Endangering self and others by failure to adhere to published safety procedures and instructions			1	2
25	Deliberate infringement of the Occupational Health and Safety Act			1	2
26	Assault, fighting, threatening violence, intimidation on University premises			1	2
27	Harassment of staff member by a supervisor (ie retaliatory harassment, intimidation towards resignation) or vice versa			1	2
28	Possession of dangerous weapons on University premises [other than firearms]			1	2
29	Possession of a firearm/s on University premises without the Registrar's authority			1	2
30	Discrimination on any grounds listed in law or University policy but not limited to those grounds			1	2

L3 Category C – Most Serious Offences

31	Malicious damage to University property				1
32	Theft				1
33	Misappropriation				1
34	Fraud, including falsification of time cards, employment application forms or any other University document				1
35	Conviction of a serious criminal offence				1
36	Assault with intent to do serious bodily harm				1
37	Rape, or attempted rape				1
38	Sexual offence of any kind				1
39	Sexually orientated request as a reward				1
40	Abscondment [clear intent to abandon post found]				1

5 DISCIPLINARY PROCEDURES

5.1 PRINCIPLES

- 5.1.1. Discipline is any corrective action initiated by **the University** in response to unacceptable **employee** behaviour / **unsatisfactory work performance** other than incompetence or incapacity.
- 5.1.2. The purpose of a disciplinary procedure is to initiate corrective rather than punitive action where behaviour is unacceptable or **work performance** of an **employee** is unsatisfactory.
- 5.1.3. The procedure must ensure *inter alia* that :
- the **employee** has the opportunity to state their case, present an informed defence and to enlist the support required;
 - all circumstances have been considered fully and objectively before a decision is taken.
- 5.1.4. The right of a party to choose a **representative** at a disciplinary proceeding is recognised. The defendant shall have the right to :
- be represented as described in section 5.3 below (Levels 1 and 2);
 - be represented by a union official / member, or any other **employee** or **representative** of their choice at a **Disciplinary Board** hearing (Level 3);
 - prompt, fair and consistent treatment, without regard to rank or status;
 - prior knowledge of their unacceptable behaviour / **unsatisfactory work performance**;
 - prior knowledge of any documentary **evidence** to be presented against them;
 - call any witnesses and cross-examine the complainant and / or any witnesses called by the complainant or **the University**;
 - in addition, the Employee Relations Manager will assist in calling any witnesses, as necessary, to attend.
- 5.1.5. The defendant shall be presumed to be innocent until proved guilty on a balance of probabilities.
- 5.1.6. No disciplinary penalty shall be imposed until the appropriate procedure has been exhausted.
- 5.1.7. The principles of natural justice shall apply.
- 5.1.8. The disciplinary penalties shall be :
- Verbal warnings
 - Written warnings
 - Final written warnings
 - Suspension without pay – (as alternative to dismissal)
 - Dismissal
 - Summary dismissal
- 5.1.9. Warnings shall have the following life-spans :
- Verbal warnings will be valid for a maximum period of six months from date of issue.
 - **Warning / final written warnings** will be valid for a maximum period of one year from date of issue.
- 5.1.10. The **staff** member will be required to sign **warning / final written warnings** issued to them. Should they refuse to sign the **warning / final written warning** letter, two witnesses must verify by signing the letter that the **warning** was issued.
- 5.1.11. *Suspension from duty*. If a **Head of Department** (or an authorised representative) considers that an **employee's** misconduct is sufficiently serious to warrant immediate dismissal, they may, in consultation with the Human Resources Division, suspend the

employee from the performance of their duties pending a final decision on the matter by a **Disciplinary Board**. Under these circumstances, the **employee** shall receive full pay while under suspension.

5.1.12. *Suspension without pay*: an **employee** shall normally only be suspended without pay in mutual agreement with the **Disciplinary Board** as an alternative penalty to dismissal.

5.1.13. *Dismissal*: an **employee** who is dismissed shall be entitled to be paid their salary in lieu of notice and to payment in lieu of any annual vacation leave due to them as at the date of dismissal.

5.1.14. *Summary Dismissal*: An **employee** may be summarily dismissed on the grounds specified in section 4, or any other ground recognised in law.

5.1.14.1. An **employee** who is summarily dismissed shall receive full salary up to and including the day of dismissal and shall not be entitled to any notice, or salary in lieu thereof.

5.2 PROCEDURE

LEVEL ONE (1) - Action by Supervisor

5.2.1. Minor breaches of the Disciplinary Code will normally be dealt with by the immediate **supervisor** who may issue a verbal **warning** after meeting with the **employee** concerned.

The **employee** shall be given fair warning of the alleged breach of discipline, the time of the meeting, and, informed that they may be accompanied by a **representative** (ref 5.3 below).

The **supervisor** shall further counsel the **employee** in order to induce behaviour or work performance that would avoid any further **disciplinary action**. In doing so, they shall:

- ensure that the **employee** is fully conversant with the transgression or behaviour that is unacceptable;
- establish from the **employee** the reason(s) for the transgression or unacceptable behaviour and record it / them accurately;
- agree with the **employee** on action that could solve the problem;
- take steps to implement and monitor the agreed corrective action;
- assist the **employee** to achieve the goal without creating undue pressure or harassment;
- keep a record of **corrective counselling** and verbal **warnings** which will be kept in the office of the **supervisor / head of section** of the relevant section.

Should more severe action be warranted the following procedure will apply

LEVEL TWO (2) – action by Head of Section / Head of Department

5.2.2. In the case of more serious misconduct, or, where previous verbal **warnings** and **corrective counselling** have failed, the **Head of Section** (or, if no **Head of Section** or where the **Head of Section** is personally involved and wishes to refer the matter to higher authority, the **Head of Department**), on receipt of a recommendation from the **supervisor**, shall interview the **employee** alleged to have offended and any witnesses or persons having knowledge or information which may assist in establishing the facts of the matter and record such **evidence** in writing.

5.2.3. Either party shall be entitled to representation (ref 5.3 below), to call and question any witnesses, and, to present argument in their favour.

5.2.4. After all the **evidence** has been heard, the **Head of Section** will consider it and decide whether any **disciplinary action** is required. Where such action is necessary, and according to the gravity of the offence, they will take one of the following two courses :

5.2.4.1. Taking into account the guiding principles in Section 4, issue the offending person with a **warning / final warning letter** on the prescribed form.

If a letter is issued, the nature of the **employee's** misconduct must be clearly recorded and the letter signed by the **Head of Section** / Department concerned.

Unless good cause is shown, the letter must be issued to the **employee** within five (5) **days** of the completion of the disciplinary inquiry, and, shall also indicate what action must be taken by the **employee** to avoid further **disciplinary action**.

The **Head of Section** / Department shall further counsel (see 5.2.1 above) the **employee** in order to induce behaviour or work performance that would avoid any further **disciplinary action**.

The **employee** will be expected to sign the **warning / final written warning** and be given a copy. The original of the **warning** letter must be sent to the Employee Relations Manager. Should the **employee** refuse to sign the **warning / final warning letter**, two witnesses should verify that the **warning** was issued by signing the form.

5.2.4.2. If the **Head of Section** is of the opinion that action other than issuing of a **warning / final warning letter** is warranted, they shall forward the **evidence** to the **Head of Department** together with their recommendation that one of the following penalties be considered:

- Suspension
- Dismissal
- Summary dismissal.

At the same time the **Head of Section** shall inform the **employee** concerned, in writing, that their case has been referred to higher authority.

Action by Head of Department

5.2.5. The **Head of Department**, on receipt of the recommendation from the **Head of Section**, shall consider the **evidence**. If deemed necessary, they may interview the **employee** alleged to have offended, re-interview any person who has given **evidence** in the matter or interview any other person who may be able to shed further light on the matter, recording such **evidence** in writing.

5.2.6. In the light of the **evidence**, the **Head of Department** shall either:

- Dismiss the case
- Concur with the recommendation, or
- Recommend a lesser penalty

5.2.7. Where the **Head of Department** decides that the case should be dismissed, or, recommends a lesser penalty, they shall inform the **Head of Section** and the **employee** accordingly.

5.2.8. Where the **Head of Department** decides that the case should be referred to higher authority, they shall:

- inform the **employee** accordingly, in writing; and,
- forward the documentation to Employee Relations Manager.

5.2.9. Where the **Head of Department** decides to issue a **warning / final warning letter**, they shall sign the letter / form which shall clearly state the nature of the **employee's** misconduct.

Unless good cause is shown, the **warning / final warning letter** must be issued within five (5) **days** of the **Head of Department** considering the matter, and, shall also indicate what actions must be taken by the **employee** to avoid further **disciplinary action**.

The **Head of Department** shall further counsel (see 5.2.1 above) the **employee** in order to induce behaviour or work performance that would avoid any further **disciplinary action**.

The **employee** will be expected to sign the **warning / final warning letter** and be given a copy. The original of the **warning / final warning letter** must be sent to the Employee Relations Manager. Should the **employee** refuse to sign the **warning / final warning letter**, two witnesses shall verify that the warning was issued by signing the form.

5.3 Representation at proceedings in terms of 5.2 above

An **employee** may, should they so wish, be accompanied by the full-time shop steward, or, a union **representative**, of the constituency concerned, or, any other **staff** member at proceedings instituted in terms of 5.2 (Levels 1 and 2).

At the request of either party, a member of Human Resources Division shall attend these proceedings in an advisory capacity and to monitor proceedings.

5.4 LEVEL THREE (3) – Disciplinary Board

Suspension without pay (as alternative to dismissal), Dismissal or Summary Dismissal

Where the **Head of Section** or **Head of Department** decides to recommend a penalty more severe than the issue of a **final warning letter**, they shall forward the recommendation and all supporting documentation to the Human Resources Division who will arrange for a **Disciplinary Board**, of up to five (5) persons, to be convened under a Chairperson appointed by the Vice-Chancellor or Vice-Principal.

The **Disciplinary Board** should be held within twenty (20) **days** of the matter being heard by the **Head of Section** or considered by the **Head of Department** save that this period may be extended by the Chairperson if unavoidable practical reasons exist.

The following may attend:

- the **employee**
- the **employee's representative**
- a person to present **the University's** case
- any other person, at the discretion of the Chairperson (eg. a representative from an earlier proceeding)
- an interpreter if necessary
- a representative from the Human Resources Division.

The University's representative and the **employee** may call such witnesses as are required and be entitled to cross-examine each others' witnesses.

The Board shall decide whether the **employee** is guilty or not and inform them of its decision within fifteen (15) **days**. If the **employee** is found guilty, the Board shall consider all mitigating and aggravating facts before deciding on what **disciplinary action** should be imposed, if any, in terms of **the University's** Disciplinary Code.

Any penalty decided upon by the Board must be conveyed, in writing, to the **employee** by the Human Resources Division. In the case of dismissal or summary dismissal the letter must contain the reasons for the dismissal or summary dismissal.

6. REVIEW AND APPEAL PROCEDURE

6.1 Review procedure : warning and final warning letters

Within two (2) **days** of receipt of a **warning / final warning letter**, the **employee** may request the Human Resources Division, in writing, to have the letter reviewed by an impartial person appointed by the Vice-Chancellor or the Vice-Principal. The grounds for the request must be set out in writing.

The person so appointed shall consider the reasons for the issuing of the letter, the objections thereto, and in the case of a **final warning letter**, may at their own discretion, or, where so requested by either party, interview the **employee** and / or their **representative** and the **Head of Department** and / or Section or **Supervisor** concerned.

The **employee** shall be informed in writing within twenty-five (25) **days** of the decision which shall either be to reject or confirm the **warning / final warning letter**. The decision shall be final.

- 6.2** Should an **employee**, who has been dismissed or summarily dismissed (ref 5.1.12, 5.1.13, 5.1.14), wish to challenge the outcome of the **Disciplinary Board**, they may refer the matter to the Commission for Conciliation, Mediation and Arbitration via the Department of Labour within the time period as laid down in the Labour Relations Act No 66 of 1995 and its regulations as amended.