

The Internal Workplace Mechanism: A Tool to Resolve Unfair Labour Practices within the Workplace

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Abstract: The Labour Relations Act 66 of 1995 (LRA) provides for the legal framework for dispute resolution. The Act encourages employers to resolve labour issues as soon as possible within the workplace, but the internal workplace mechanism does not ensure the elimination of the negative consequences of disputes which may arise. Employers should use the internal grievance procedure to resolve unfair labour practices in a timely manner within the workplace. However, problems relating to the application of the internal workplace mechanism continue to exist. The purpose of this paper is to indicate the importance of the internal workplace mechanism of an organisation, the grievance procedure, as a tool to use to resolve labour matters relating to unfair labour practices within the workplace. Ultimately, the article offers suggestions for the design and implementation of internal workplace mechanisms that could be effective in the context of unfair labour practices. The paper concludes that the manner in which an organisation applies its internal workplace mechanism can either aggravate or moderate the seriousness of the dispute – and in the case of the former, this may have a negative impact on the level of efficiency in the workplace. Consequently, unfair labour practices result in an aggrieved and unhappy workforce, with employees possibly feeling that an act or omission on the part of their employer may have deprived them of a workplace benefit.

Keywords: Grievances, Grievance procedure, Internal workplace mechanism, Unfair labour practices

1. Introduction

As the business world becomes digitalised, so the field of work is changing. The evolution of work may trigger more unfair labour practices in the workplace. Section 186(2) of the LRA states that, an unfair labour practice involves "any unfair act or omission that arises between an employer and an employee", arising from the categories mentioned in section 186(2). Unfair labour practices arise from inequities encountered in the common law and the employment contract, and asymmetries in the employment relationship (Cohen, 2004; Bosch, 2008; Le Roux, 2012). This is perpetuated by the master-servant employment relationship, which is based on the common law contract of employment. Observations show that the imbalance of power in the common law contract of employment disempowers employees (Du Plessis & Fouchè, 2012:3). Having employees alleging unfair labour practices in the workplace results in employees who are aggrieved and unhappy. These employees may feel that their employers have done or omitted something which could have benefited them in the

workplace (Grogan, 2010:94). It therefore becomes necessary for employers to have effective internal workplace mechanisms in place in order to resolve allegations of unfair labour practices whenever they surface in the workplace. However, some organisations fail to effectively implement grievance procedures because of poor design and not being adequately trained on dispute resolution.

The aim of this paper is to present a theoretical basis for the resolution of labour matters relating to unfair labour practices. Features in the employment relationship that are seen to influence the manifestation of unfair labour practices are discussed. This leads to a consideration of the impact of unresolved unfair labour practices on organisations, and a discussion of the grievance procedure as the framework that should be promoted to resolve unfair labour practices within the workplace. Lastly, recommendations are given for the application of the internal workplace mechanism to resolve matters relating to unfair labour practices within the workplace. In the workplace, employees and employers are dependent on one another. Employers need employees to

work to achieve objectives of the organisation, and employees need to work to earn an income (Du Toit, Erasmus & Strydom, 2010; Bendix, 2015). However, the employment relationship is characterised by opposite interests and objectives, such as a need for training or a salary or wage increase versus a need to attain higher profit margins (Finnemore & Joubert, 2013:1), and this conflict often gives rise to disputes in the workplace (Finnemore & Joubert, 2013). Therefore, for as long as the employment relationship exists, there is potential for conflict in the workplace, which may escalate into labour disputes. This makes it vital to successfully resolve differences as quickly as possible in order to maintain a good employment relationship. This notion is consonant with the LRA.

The LRA acknowledges the importance of an effective internal workplace mechanism that contributes to the proper management of labour disputes (Bosch, Molahlehi & Everett, 2004:1). Hence, it is essential for the LRA to encourage organisations to create an environment in which labour matters can be dealt with in a way that promotes a positive employment relationship. Such an environment can be created through the implementation of an effective internal workplace mechanism. Organisations that have correctly applied effective internal workplace mechanisms are less prone to having labour disputes referred to external dispute resolution institutions (Venter & Levy, 2014:370). The establishment of an effective internal workplace mechanism in the workplace can eliminate an accumulation of labour disputes (Bendeman, 2003; Venter & Levy, 2014). The grievance procedure should be used effectively as an internal workplace mechanism to resolve labour issues (Bendeman, 2003:82), and if this is done, fewer labour disputes will be referred for resolution outside the boundary and control of an organisation. If fewer labour matters are referred to external dispute resolutions institutions, organisations will be more likely to save both time and money. This makes it vital to have competent labour relations and human resources practitioners and managers who are capable of designing internal workplace mechanisms and applying dispute resolution skills in the workplace (Bendix, 2015). These practitioners and managers need to understand concepts that influence labour disputes (Nel, Kirsten, Swanepoel, Erasmus & Poisat, 2012). Both the underlying conflict and the nature of the employment relationship are elements that have a role to play here.

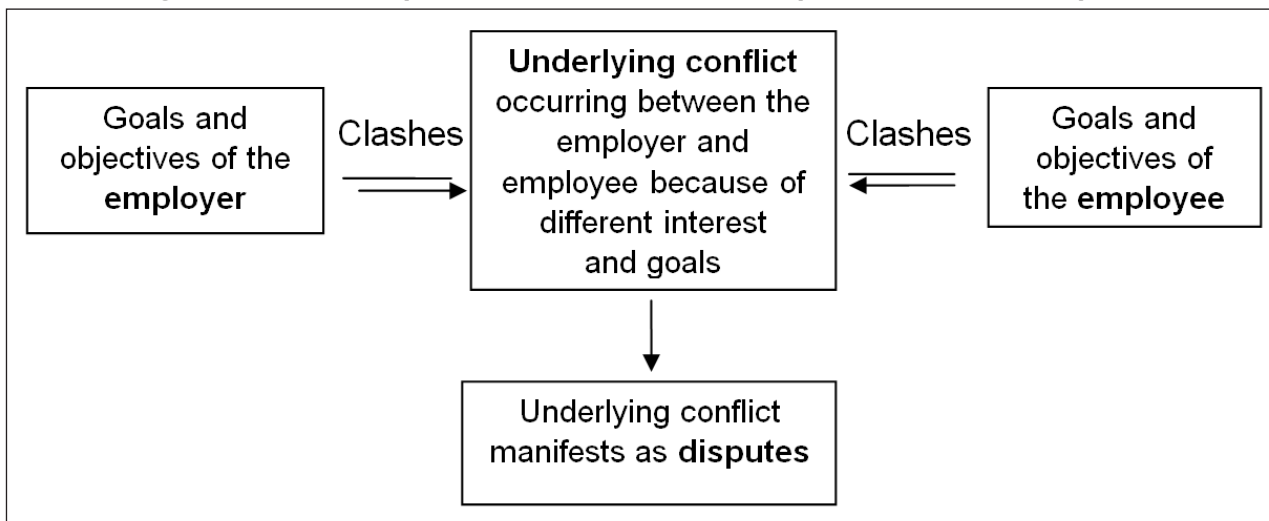
2. The Nature of the Employment Relationship

In general, wherever there are people working together and interacting with one another in the workplace, there is the potential for conflict. Nel *et al.* (2012) and Bendix (2015) are in agreement about this, and state that conflict is in fact natural in all sorts of relationships, including the employment relationship. Bosch *et al.* (2004:2) indicate that conflict exists in the workplace where parties to the employment relationship have perceived or real differences with regard to values or goals and have engaged with each other, usually on the subject of scarce resources or control of resources. This kind of engagement is likely to cause a power struggle in the employment relationship (Bosch *et al.*, 2004). What one can deduce here is that if conflict is expected in the employment relationship, avoiding dealing with it may be detrimental to the employment relationship and organisational efficiency. The employment relationship, in other words, the relationship between employer and employee, entails an imbalance of power (Nel *et al.*, 2012; Bendix, 2015). An individual employee has little power in relation to that of the employer, and is therefore in a much weaker position in comparison to the employer (Du Plessis & Fouché, 2012:3). For instance, employers have the economic power to select employees they wish to employ in the workplace under certain terms and conditions. This imbalance of power may trigger disputes relating to unfair labour practices in the workplace.

2.1 Understanding Conflict in Labour Dispute Resolution

Nel *et al.* (2012) emphasise that successful resolution of labour disputes, which includes disputes relating to unfair labour practices, requires an understanding of conflict. According to Anstey (2006:6), "conflict exists in a relationship where parties believe that their aspirations cannot be achieved simultaneously or perceive a divergence in their values, needs, objectives or interests; and purposefully employ their power to eliminate, defeat, neutralise or change each other to protect or further their interests in their interaction". This shows that a party may believe, on the basis of either a valid or a perceived reason, that the other party does not share the same interests or expectations. As a result, conflict in the workplace may lead to employees being unhappy or dissatisfied in the

Figure 1: The Development of Conflict in the Workplace into Labour Disputes



Source: Bendeman (2003:87)

employment relationship (Nel *et al.*, 2012). It should be noted that not all conflict in the workplace leads to labour disputes (Bendix, 2015). However, conflict in the workplace cannot be simply ignored in the hope that it will not culminate in a labour dispute (Bosch *et al.*, 2004; Nel *et al.*, 2012; Venter & Levy, 2014; Bendix, 2015). This shows that where there is conflict and poor work relations in the workplace, there is potential for disputes.

Bosch *et al.* (2004:6) highlight that a dispute exists when one party has communicated a claim or demand in writing to another party. If the employer fails or refuses to comply with the claim or demand made by the employee, a dispute will then be declared formally in writing because the issue at hand, which has arisen from the underlying conflict, has not been resolved within a reasonable time period (Bosch *et al.*, 2004). What can be deduced from the above is the sequence according to which a matter qualifies to be declared a labour dispute. This implies that failure by the employer to satisfactorily meet the needs of an aggrieved employee could influence the time it takes to resolve differences between these two parties (Brand, Lotter, Mischke & Steadman, 2002:10). Here, the element of a "reasonable time" relates to the speed at which labour matters are resolved. The point is that if the conflict in the workplace is not resolved or is not dealt with early on, a labour dispute may ensue (Bendeman, 2003; Bendix, 2015).

A further important point is that the claim or demand must be work related; and employees may not

institute labour disputes based on personal matters. Brand *et al.* (2002:10) describe a dispute as a formalised manifestation of conflict that is work-related. This description safeguards against employees formulating disputes based on personal situations that fall outside the ambit of the organisation. This notion is supported by Bendeman (2003:82), who emphasises that the source of labour disputes is brought by the conflict arising in the workplace between the parties to the employment relationship. Figure 1 above illustrates the development of underlying conflict in the workplace into a labour dispute. This figure suggests that had there been no conflict in the employment relationship, the workplace may have been more harmonious, with no labour disputes taking place. Therefore, if conflict is a necessary condition for a dispute, if there is no conflict, there will be no dispute.

3. The Need for the Internal Workplace Mechanism

Steenkamp and Bosch (2012:120) state that the objective of the internal workplace mechanism is to resolve internal labour matters through following certain procedures. These procedures should allow for rapid resolution within the workplace, and need to be easy to carry out in terms of cost and location (Steenkamp & Bosch, 2012). Deduced from the literature review conducted, the current dispute resolution procedure stipulates the LRA as the overarching legislative framework in promoting effective dispute resolution. Section 1 of the LRA states that, "the purpose of the LRA is to advance

labour peace by providing a framework within which employees and their trade unions, and employers and employers' organisations can resolve labour disputes". The LRA therefore recognises that conflict is inherent in employment relationships. The effective resolution of labour matters is fundamental to ensuring that organisations are not bogged down by unresolved disputes. It is for this reason that the LRA encourages organisations to implement and use the internal workplace mechanism, or grievance procedure, to resolve labour matters within the organisation before referring them to external dispute resolution structures. Venter and Levy (2014) caution that if an organisation lacks a sound grievance procedure, it may be unaware of grievances until these escalate into labour disputes, which may end up being referred for external dispute resolution. Furthermore, the absence of a grievance procedure may lead to an accumulation of unfair labour practices in the workplace (Venter & Levy, 2014:370).

Chapter VIII of the LRA deals with dismissal and unfair labour. The Act set out provisions for dismissal; however, there are no specific procedures for dealing with unfair labour practices. This may result in individual employers bypassing certain procedures, which may lead to unsuccessful resolution of unfair labour practices using internal workplace processes. A grievance procedure is an internal workplace mechanism that employers should use to resolve labour matters or any grievances within the workplace (Bendix, 2015). Grievances arise when employees perceive themselves to have been subjected to an injustice, and believe that they have grounds to lodge a complaint formally in writing. A grievance is defined as any dissatisfaction or feeling of injustice that an employee is, or a group of employees are, experiencing by formally lodging a complaint against the behaviour or conduct of the employer. Grievances may include dissatisfaction with remuneration; dissatisfaction with terms and conditions of employment; dissatisfaction regarding promotion and training; complaints about a lack of facilities and/or adequate equipment, and complaints about perceived unfair treatment, unreasonable instructions, unrealistic expectations and direct discrimination (Finnemore & Joubert, 2013). By lodging a grievance, an employee is expressing his or her unhappiness or dissatisfaction about an injustice, which could be real or perceived, relating to aspects of his or her job or violation of employee's rights

(Finnemore & Joubert, 2013:242). It is through the grievance procedure that matters affecting or making employees unhappy in the workplace can be escalated to the employer, with the purpose of resolving them within the organisation.

In order to deal with labour matters relating to unfair labour practices appropriately, it is vital to know what type of grievance one is dealing with. Swanepoel and Slabbert (2012:536) support Bendix (2015) in emphasising that when handling grievances, one should keep in mind that if grievances remain unresolved, they may become disputes. Individuals need to check whether a grievance is about a matter that relates to an existing right, or something that cannot be claimed to be a right. This is the basis for the distinction between right-related grievances and interest-related grievances. Swanepoel and Slabbert (2012:536-537) offer the following explanation of the difference between these two types of grievances. Grievances related to rights occur when parties assert rights which they have acquired through statutory law, common law or collective agreements. These grievances violate rights set out in the employment contract, legislation or collective agreement. They relate to the interpretation, application or enforcement of a claim based on the law, and the outcome is determined by references to the law. Grievances related to interests arise when a party requires something that he/she has no legal right to, but which he/she would like to have or feels entitled to (Swanepoel & Slabbert, 2012). Finnemore and Joubert (2013:242) point out that labour matters relating to unfair labour practices that are not resolved in the workplace may, in terms of the LRA, be referred to a bargaining council or the CCMA. However, employers should first do their utmost to resolve these grievances within the workplace. Therefore, if it is to promote speedy internal workplace mechanism, an effective grievance procedure needs to be designed and applied correctly (Brand *et al.*, 2002). An assessment of the effectiveness of the internal workplace mechanism to avoid protracted labour disputes is therefore vital. Organisations that are involved in unresolved labour disputes should investigate why this is the case (Bosch *et al.*, 2004). By assessing its own internal workplace procedures, an organisation is more likely to identify areas of effectiveness and ineffectiveness in the dispute resolution process. Consequently, the organisation could avoid having labour disputes drag on for a long time before being resolved.

4. Conclusion and Recommendations

Organisations should exhaust all measures to resolve unfair labour practices internally, inside the organisation, using the internal grievance procedure. This will enable employers to avoid referring unfair labour practices to external dispute resolution institutions which can be time consuming and expensive. The researchers have sought to make a contribution in showing that unresolved unfair labour practices can have an impact on an organisation. Since dissatisfactions in the workplace cannot be wished away, the grievance procedure should always be turned to as the internal workplace mechanism to resolve labour issues within the organisation. If there is no grievance procedure, employers will be unaware of issues that cause unhappiness amongst employees at work, and this may lead to employees accusing their employers of unfair labour practices. Therefore, effective grievance procedures can have definite advantages for organisations; they are indicators of a commitment on the part of the employer to resolve labour matters in a transparent manner, and they provide employees with the opportunity to inform management about what is causing them dissatisfaction in the workplace.

Having an internal workplace mechanism in place does not automatically guarantee that disputes will not occur in the workplace. However, the manner which the internal workplace mechanism is applied will determine its effectiveness. Applying the internal workplace mechanism effectively can reduce the number of disputes, including those relating to unfair labour practices, to be referred to external dispute resolutions institutions which may be costly in terms of time and money (Bendix, 2015). It is important to realise that there is no single set grievance procedure for all organisations; Venter and Levy (2014) and Bendix (2015) indicate that grievance procedures nevertheless tend to follow a similar process. For the grievance procedure to be effective, grievances should be formally lodged in writing as early as possible and be resolved as quickly as possible. The manner in which grievances are dealt with, through the use of grievance procedures, will affect the success rate of the internal workplace mechanism in resolving labour matters (Bendix, 2015). Therefore, a chairperson who is not directly involved in the grievance should be appointed to listen to both the complainant and the respondent. The chairperson

must be trained in dispute resolution so that he/she is able to establish the facts in order to make an informed decision.

Equally important, Bosch *et al.* (2004) concurs with Bendix (2015) that the grievance procedure can also include a consensus-based dispute resolution process. This process can assist parties in reaching an agreement by which differences can be resolved. The parties can do so among themselves through negotiation to achieve a suitable resolution to their differences. Parties can engage with each other directly, either formally or informally, and with or without facilitation to resolve the issue at hand. This consensus-based dispute resolution method may occur well before a clear dispute arises and is formally lodged in writing (Bosch *et al.*, 2004).

Adebayo and Olokooba (2018) reveal that surprisingly, some organisations do not have internal workplace mechanisms to deal with and resolve unfair labour practices. The researcher recommends that where an internal workplace mechanism does not exist, the organisation should design and implement one. Where an internal workplace mechanism does exist, it should be examined to determine how effective it is (Hamberger, 2018:34). The researcher further suggests that where there are shortcomings, these should be rectified as quickly as possible so that labour matters can be resolved without delay. Timelines should be set when resolving labour matters. More specifically, where investigations need to be conducted, a deadline for completion should be specified. This will help the organisation to resolve unfair labour practices within the workplace as quickly as possible. In short, therefore, organisations should have effective internal workplace mechanisms to deal with grievances so that they do not degenerate into unmanageable disputes (Finnemore & Joubert, 2013; Venter & Levy, 2014; Bendix, 2015).

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