

By A.B. Gomez

THE Domestic Inquiry (DI) is an investigation exercise conducted by the management to establish full facts of an indisciplinary act committed by an employee; the facts also include the circumstances leading to the commission of the said act of indiscipline and recommended punishment.

The purpose of the DI is to assist management to determine whether or not

i) an act of indiscipline has been committed;

ii) if so, the inquiry has to

Guidelines for holding a domestic inquiry

HUMAN RESOURCE

assess and evaluate the gravity of the offence; and

iii) recommend to the management the appropriate punishment as spelt out in the: a) office/factory rules and regulations; or b) collective agreement; or c) contract of service; or d) by law - in force at the time of the commission of the act of in-

discipline. In any case the punishment recommended should be just and fair and should not be biased and/or capricious.

For the first time the National Union of Commercial workers in January 1964, through negotiations with employers in the private sector introduced a disciplinary procedure which included a provision allowing an employer a party to the agreement to suspend an employee on the grounds of misconduct, inefficiency, indiscipline, or for contravention of any other conditions of service or rules and practices of the employer and the employee shall be informed by written notice of such suspension. On Oct 10, 1969, the Government introduced certain amendments to the Employment Act 1955, which included a provision for disciplinary action.

Section 14 stated clearly that an employer may, after due inquiry:

(a) dismiss without notice a labourer employed by him on the grounds of misconduct inconsistent with the fulfillment of the express or implied conditions of his service; or (b) down-grade the labourer; or (c) suspend him from work without payment of wages for a period not exceeding one week.

The above provision (c) has been amended on Aug 1 1998 and now reads; "impose any other lesser punishment

as he deems just and fit, and where the punishment of suspension without wages is imposed, it shall not exceed a period of two weeks".

Suspension And Wages
There are two types of suspension, namely:

An employer may suspend an employee;

i) for a period not exceeding two weeks for the purpose of investigation into the allegation of the indiscipline committed by the employee during which time the employee concerned shall be paid not less than half his wages; and if the inquiry does not disclose any misconduct on the part of the employee to the employer shall forthwith restore to the employee the full amount of wages so withheld and reinstate him to his former position without any loss in service and benefits.

ii) as a disciplinary measure not exceeding two weeks without wages.

What Is Meant By Due Inquiry

There are many versions - it is simply where an employee having been specifically charged with the committing of a certain act or acts of misconduct is given an opportunity to answer the charges preferred against him.

Even though there are no set rules to show a uniform procedure for holding a DI the following guidelines may be useful to observe:

a) the Inquiry is to be instituted as early as possible after the suspension of the employee;

b) the employee concerned is to be given particulars of the allegations/misconduct in writing and such particulars shall be precise and unambiguous;

c) a reasonable time be given before the inquiry to enable the employee to consult and prepare his case;

d) at the Inquiry, the employee be allowed to be assisted by his union representative if a union does exist in the establishment;

e) the Inquiry at all levels should be conducted impartially and therefore it shall be conducted by a person or persons not directly connected with the investigation;

f) the complainant whose action prompted or resulted in the Inquiry should start the case to answer and therefore he should also be the employer's witness giving evidence;

g) witness giving evidence at the Inquiry shall do so in the presence of the accused employee and the employer;

h) those who gave statements during management investigation which helped management to frame charges should repeat their statements at the Inquiry and in presence of the accused employee;

i) all witnesses who gave evidence shall be "offered" for cross examination;

k) the Inquiry Officer/s should record notes of the proceedings in the form of questions and answers and ensure the recordings are factual statements that were made - it would be in the in-

terest of all concerned if the statements are read as recorded so that all parties are given the opportunity to have identical recordings; this will prevent accusation of unfairness and/or being biased.

l) the Inquiry Officer/s' decisions and recommendations shall be based on recorded notes and that is the conclusion of the Inquiry conducted by him, personal opinions must be avoided;

It must be noted that the employer can only justify the disciplinary action he takes against the employee:

a) on the grounds mentioned in the charge sheet and

b) the conclusions of the DI

It must be further noted that past offences which were not part of the Inquiry should not be considered when handing out the punishment as they have been either condoned or forgiven unless such forgiveness has been conditional.

Who Should Conduct The DI

Here again, there is no hard and fast rule on the quorum to hold a DI; it could be held by a person or persons - the saying "more brains are better than one" is risky and would adversely affect the interests of both parties. The important point to note is that the inquiry should be conducted by a person or persons who:

a) were not directly connected with the investigations into the allegations;

b) had no prior knowledge

of the allegations, c) had not discussed the actual issue with anyone, d) should not be made to feel that he is under obligation to give a decision in favour of his employer

e) above all the employee should not feel or be given room to feel that he is being adjudged upon by someone who has already formed a bias view against him, including a personal grudge,

f) depending upon the status of the employee, it would be advisable to engage an experienced outsider who had no prior relationship with the employer and will have none after the Inquiry; he is appointed to hold the Inquiry in a fair and just manner without fear or favour.

Natural Justice

A DI will not be in conformity with the rules of natural justice if:

a) the charges are vague;

b) the employee was not told what wrong he had committed;

c) he was not made to understand the nature and cir-

cumstances of the wrong committed by him;

d) the full particulars of the charges are not disclosed to him; and

e) he was not given a reasonable opportunity to reply to the charges.

Not Holding A DI Is An Offence

An employee who is covered by the scope of the Employment Act 1955, the provisions of the Act apply to him and therefore his employer is bound by the provisions of the said Act.

In respect of employee within the scope of the Act, it is mandatory that an inquiry be held before an employer can take disciplinary action on grounds of misconduct as provided for under Section 14 of the Employment Act.

Failure to hold a DI means an offence is being committed by the employer.

ManagementTimes

to contact us:



IT Publications Sdn Bhd

(CO. No: 239580-P)
A member of The New Straits Times Press Group

Level 2, Balai Berita, 31, Jalan Riong
59100, Kuala Lumpur, Malaysia

Tel: 603-282 2022,

Fax: 603-282 0097/8214

E mail: itp@pop.jaring.my

General Manager: Lim Chong ext.104
Editorial: Prasanna Ramani, Jai Shankar ext.111/109
Editorial Production: Chandra Devi, Nur Akda Mustafa ext.137/166

Sales: ext. 145/151/153 • Ad Booking: ext. 141/142
Marketing Services: ext. 114/153 • Graphic Services: ext. 137/165

□ A.B. Gomez is the author of "Malaysian Industrial Court Precedents". He can be contacted at Tel:03-7763108.