

## **POOR PERFORMANCE VERSUS MISCONDUCT**

### **1. INTRODUCTION**

Employers in workplaces have to deal with poor performance, and misconduct. It is therefore imperative that they clearly understand the distinction between the two issues otherwise their actions/decisions could have far reaching implications. There is a distinction between poor work performance and misconduct and that distinction must be clearly understood by all the parties involved. Hence the approaches for dealing with these two issues are totally different from each other.

Poor performance can result from role overload or unclear objectives or unrealistic targets (Institute for Employment Studies). Poor performance must not be confused with negligence, incapacity or misconduct. There are three basic types of poor performance, according to Work Info:

- a. Unsatisfactory work content – in terms of quality, quantity, etc.;
- b. Breach of work practices and rules – such as breaching occupational health and safety requirements, excessive absenteeism, theft, harassment of other employees, etc.; and
- c. Employees' personal problems. In fact, every job has a performance standard which is laid down by the employer and that constitutes an employer's prerogative.

Therefore, the employer sets performance standards and established work targets (which nowadays is done in conjunction with the employee). Employees are expected to meet the set performance standards and targets. Therefore, the employer must ensure that the employee is fully aware of the job standard; and that the employee is fully trained to do the job. It is of utmost importance therefore to note that if poor performance is detected, the employer must thoroughly investigate the incident (of poor performance); meet with the employee to discuss the issue (of poor performance), provide counselling for the employee, and give the employee reasonable period to improve his/her performance.

### **2. DILEMMA : MISCONDUCT OR POOR PERFORMANCE**

We are often confronted with "Where employees don't do what is expected of them, the employer is often faced with a practical dilemma: Do I treat this as misconduct OR incapacity?". This dilemma may arise because the end result of an employee performing poorly or behaving badly is often the same - he or she may lose the job. These challenges include: -

- i. It often happens that an employer needs to determine work performance based on available information, whether it comprises of misconduct or poor work performance.
- ii. In many incidents that occur in the workplace seem to inhabit a grey area between misconduct and poor performance, causing confusion for employers on what the appropriate action would be under the circumstances.

Many employers do not know what the charge should be. The employer only knows that what is happening is unacceptable, and the employee must be dismissed as quickly as possible. The result of this uninformed and hasty action is, the employee is charged with negligence, poor performance, incapacity, misconduct, and, as if that is not enough, the charge sheet states that the trust relationship has irretrievably broken down and the continued employment relationship has become intolerable. The final outcome is the employee is dismissed. However, although the result may be the same in each case, the two categories are different, and require different handling. Although an employer may have strong grounds to take disciplinary action against an employee, mistakes are often made by not following the correct procedures or following the procedure only to make mistakes by overlooking important aspects which are critical to the fairness of the procedure.

### **3. CONCLUSION**

In conclusion, poor performance occurs when an employee fails to do his job or part of his job to the standard that the employer requires. The focus is on the quality or quantity of the employee's work as compared to what the employer expects in respect of his behaviour. The focus may also be on the speed of the work or whether the employee is keeping to set deadlines.

Misconduct, on the other hand, occurs when an employee's behaviour is unacceptable or in breach of workplace rules. If an employer has reasonable workplace rules about time keeping, attendance, honesty, safety or other conduct, the employee must adhere to them. If the employee fails to do so, he is committing misconduct.

Because poor performance and misconduct differ, the procedures for dealing with them are also different. If an employee's misconduct is serious and if dismissal is possible, the employer needs to hold a disciplinary enquiry. When it comes to poor performance, the employer must follow a poor performance management procedure. If poor performance persists after a reasonable period of time, a disciplinary enquiry for poor work performance must be instituted. Knowing the difference between poor performance and misconduct will ensure that employers deal with them correctly and avoid legal comebacks.

## REFERENCE

Dr. Dunston Ayadurai. (2004). Industrial Relations In Malaysia: *Malayan Law Journal Sdn. Bhd*, 325-326.

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