

**AN ANALYSIS OF TRENDS IN DISCIPLINARY ACTION
IN THE NORTH WEST DEPARTMENT OF EDUCATION**

by

M.M. KEETILE

**A MINI – DESSERTATION SUBMITTED IN PARTIAL FULFILLMENT OF
THE**

REQUIREMENTS FOR THE DEGREE

MASTERS IN BUSINESS ADMINISTRATION (MBA)

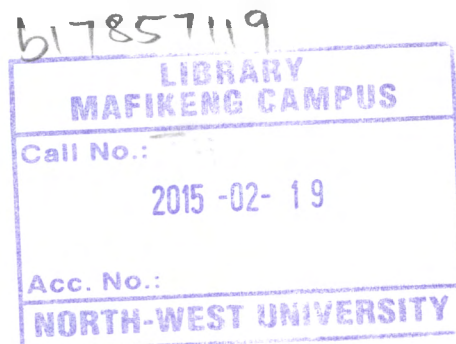
AT

THE NORTH WEST UNIVERSITY, MAFIKENG CAMPUS

SUPERVISOR: DR L. EHLERS

MAFIKENG

2007



1.1. Declaration

I, Mogomotsi Michael Keetile hereby declare that the work covered in this research is my own work. All references are properly acknowledged in terms of the required format and statutes of the North West University.

.....

Signature

.....

Date

1.2. Acknowledgements

The success of this of this study was made possible by the guidances, support and contributions of the following people Dr M.C Teu for her guidance and academic support throughout this study. Dr T Thiba for copy editing of the mini dissertation and academic advice.



My colleague Ms O Bodigelo for encouragement and support as a study partner.

North West Department of Education, Directorate Labour Relations for allowing me to use their records of educators offences as my primary data for this study.

Above all my wife Boikhutso and children, Tsholofelo, Kitso and Oreratile who supported me with warmth, love and understanding throughout my hard and sleepless nights of my studies.

Abstract

The aim of this study was to analyse the type and nature of all offences committed by educators in the North West Department of Education between 2001 and 2006. The focus of this study was on all regions, Further Education and Training Colleges (F.E.T.) and Office Based Educators.

The research approach used in this study was Qualitative. The primary data were all the educator offences reported and finalised at the North West Department of Education, Directorate Labour Relations from 2001 to 2006. The data were collected from the Directorate Labour Relations records of educator transgressions from 2001 to 2006.

The researcher did content analysis of all the reported offences to determine their nature and type. The data were presented in graphs, and a comparison amongst each type of offence and comparison amongst each region was done.

The study revealed that absenteeism, fraud, insubordination, sexual abuse, and abscondment were the top five transgressions committed by educators in the North West Department of Education between 2001 and 2006. The Bophirima region reflected the highest offences compared to all other regions.

The researcher recommends that management in each institution and office should create a corporate culture in which employees are free to raise their problems with management and be assisted and advised. Employees should be motivated, encouraged and be ambitious to succeed in their careers, since motivated and ambitious employees do not commit offences. All employees should be taken through an induction training that will expose them to all labour legislation that affects them, for example the Labour Relations Act, 66 of 1995, the Basic Conditions of Employment Act, 75 of 1997, all Codes of Good Practice, the Constitution of Republic of South Africa, Act 108 of 1996, Departmental Policies

and Legislation, Employment of Educators Act 76 of 1998, South African Schools Act 84 of 1996, South African Council of Educators Act 31 of 2000, National Education Policy Act 27 of 1996 e.t.c. Management must ensure all employees are aware about the rules, regulations and Acts governing their employment. It is also recommended that each educator must be given a file with all these Acts, regulations and policies for easy access at all times.

Table of Contents

CHAPTER 1: Orientation 1

1.1 Introduction 1

1.2 Statement of the problem 3

1.3 Aim and Objectives of the study 3

1.3.1 Aim of the study..... 3

1.3.2 Objectives of the study..... 3

1.4 Significance of the study 3

1.5 Methodology 4

1.6 Scope of the study 4

1.7 Organisation of the study 4

1.8 Conclusion..... 4

CHAPTER 2 : Literature Review 5

2.1 Discipline and Dismissal..... 5

2.2 Approaches to Discipline 6

2.3 The Disciplinary Code 8

2.3.1 Example of a Disciplinary Code 8

2.4 Forms of Disciplinary Sanctions..... 10

2.5 Lawfulness and Fairness in Disciplinary Action..... 12

2.5.1 Lawfullness 12

2.5.2 Substantive Fairness..... 14

2.5.3 Procedural Fairness..... 15

2.6 Steps in Disciplinary hearing 20

2.6.1 Disciplinary Hearing 20

2.7 Dismissible Offences..... 21

2.7.1 Gross Dishonesty 22

2.7.2 Willful Damage of Property of the Employer..... 22

2.7.3 Negligence 23

2.7.4 Assault and Fighting 24

2.7.5 Insubordination 25

2.7.6	Theft.....	26
2.7.7	Breach of Confidentiality.....	27
2.7.8	Abusive Language or Racist Comments.....	27
2.7.9	Sexual Harassment.....	28
2.7.10	Lateness and absenteeism	29
2.7.11	Drug Abuse	30
2.7.12	Drinking on duty	31
2.7.13	Poor Performance.....	32
2.7.14	Incapacity due to ill-health or illness.....	33
CHAPTER 3 RESEARCH METHODOLOGY		34
3.1	Introduction	34
3.2	Research design.....	34
3.3	Identifying and Developing Appropriate Measuring Instruments	35
3.4	Definition of sample group, application of measuring instruments	36
3.5	Data Capturing and Statistical Analysis.....	36
3.6	Detailed analysis of findings.....	37
3.7	Discussion of findings and conclusions	37
CHAPTER 4 : Data Presentation and Analysis		38
4.1	Analyses of information by graphs	38
4.2	Conclusion.....	61
Chapter 5: Findings, conclusions and recommendations.....		62
5.1	Findings.....	62
5.2	Recommendations	63
5.2.1	Managing Absenteeism and Abscondment effectively	63
5.2.2	Dealing with Insubordination	64
5.2.3	Dealing effectively with Sexual Abuse	64
5.2.4	Recommendations	65
5.2.5	Conclusion	66
Bibliography		67

Table of Figures

Figure 4.1.1 Sexual Abuse	38
Figure 4.1.2 Absenteeism	39
Figure 4.1.3 Abscondment	40
Figure 4.1.4 Fraud	41
Figure 4.1. 5 Alcohol Abuse	42
Figure 4.1. 6 Insubordination.....	43
Figure 4.1 7 Poor Work Performance	44
Figure 4.1 8 Theft	45
Figure 4.1. 9 Drug abuse.....	46
Figure 4.1.10 Victimisation and intimidation	47
Figure 4.1.11 General misconduct.....	48
Figure 4.1.12 Dishonesty	49
Figure 4.1.13 Dereliction of duty.....	50
Figure 4.1.14 Assault.....	51
Figure 4.1.15 Bophirima region.....	52
Figure 4.1.16 Bojanala East region.....	53
Figure 4.1.17 Bojanala West.....	54
Figure 4.1.18 Central region	55
Figure 4.1.19 Southern region	56
Figure 4.1.20 Office Based Educators	57
Figure 4.1.21 F.E.T. colleges.....	58
Figure 4.1.22 Total offences	59

CHAPTER 1: Orientation

1.1 Introduction

This study investigated the trends of disciplinary problems and disciplinary actions taken against educators in public ordinary schools in the North West Department of Education. The function of discipline in the employment context is to ensure that the employees contribute efficiently and effectively to the goals of the organization. Production or provision of services will be impeded if employees are free to stay away from work as they please, to work at their own pace, to fight with their fellow employees, to transgress agreed rules and regulations, or to disobey their employers instructions. It is the right and the duty of employers to ensure that their employees adhere to reasonable standards of efficiency and conduct.

Section 17(1) of the Employment of Educators Act 76 of 1998 states an educator must be dismissed if he or she is found guilty of fraud, bribery or an act of corruption, sexual assault on the learner, employee or student, sexual relationship with a learner, seriously assaulting a learner or employee, illegal possession of an intoxicating, illegal or stupefying substance.

Educators are affected by the transgressions such as assault, sexual abuse of learners, fraud of school funds, insubordination and if found guilty they are either suspended or dismissed. Learners, schoolgirls in particular got sexually harassed by educators either through consent or against their will. They are put under fear to do sexual favours in return to their success at school. Learners in general got affected when they lose an educator who is dismissed or suspended due to disciplinary problems. Principals are mostly affected by the mismanagement of school funds and sexual harassment of female staff members.

A study conducted in 2001 by Nchundu and Shumba on the nature and frequency of reported cases of teacher perpetrated child abuse in rural primary schools in Zimbabwe revealed that the perpetrators of child sexual abuse in rural primary schools are generally male teachers, a majority of them are young and inexperienced. The study showed that

penetrative sex was the most prevalent form of abuse (70%), perpetrated on predominantly female victims (98%), and that all perpetrator teachers were males, and may clearly reflect Zimbabwe's highly patriarchal society.

Educators who commit such offences lose their jobs and increase unemployment

Most learners who are abused or are sexually involved with educators can have their future doomed and they become mothers at early age. Schools remain poor because of principals who embezzle school funds. Theft of school properties affect learning and teaching and this results in poor performance by learners. Educators with disciplinary problems have poor morale and poor employee relations. Disciplinary problems at work often results in unexplained absenteeism, late coming, and poor concentration. They create a hostile intimidating and offensive work environment and they can lead to loss of productivity and often to resigning.

Misconduct is one of the grounds recognised by the law that may give reason for the dismissal of an employee. The law promotes the principle of progressive discipline, this means that there should be efforts by the employer to correct employee behaviour by means of disciplinary actions. For example issuing of advice and correction for minor problems on the part of an employee and written warning for consistent misconduct followed by final written warning for persistent misconduct. Dismissal should be considered as a last resort when enforcing workplace discipline.

Employers should also set out clear disciplinary rules that stipulate how employees should behave at work. All employees should be informed about these rules, through induction, notice boards, and meetings.

Some managers have the tendency to shirk their duty to disciplining employees, they act inconsistently in the management of discipline. Less serious misconduct is ignored until they reach a stage where the misconduct has a serious impact on the management of the workplace.

The following are some of the offences committed by educators in public ordinary schools in the North West Department of Education: absence without leave, alcohol

abuse, assault, sexual harassment, theft, insubordination, damage to property, mismanagement of funds, and poor performance. The study aimed to analyse five top offences that occurred in the North West Department of Education from 200 to 2006.

1.2 Statement of the problem

Educators in the North West Department of Education are often found guilty of committing the following offences: absence without leave, alcohol abuse, assault, sexual harassment, theft, insubordination, damage to property, mismanagement of funds, and poor performance. These disciplinary problems negatively affect performance in schools, morale of both learners and educators.

1.3 Aim and Objectives of the study

1.3.1 Aim of the study

The aim of this study is to review and analyse the types of disciplinary transgressions committed in the NW Dept of Education during the period Jan 2001 to December 2006, and to identify the most problematic transgressions in order to make specific proposals for dealing with these problematic disciplinary transgressions within the Department.

1.3.2 Objectives of the study

- To explore investigate the causes of educator transgressions.
- To establish to effects of the transgressions to educators
- To identify the measures to avoid transgressions and make recommendations to senior management.



1.4 Significance of the study

The significance of this study is to establish the causes of educator transgressions in the North West Department of Education and suggest ways in which these transgressions can be avoided. The study is also important because it has the potential of identifying the effects of the transgressions in order to expose them to management to ensure that

measures are put in place to avoid them. The study will make recommendation on the procedures and processes that should be embarked upon to ensure that educators know their rights, responsibilities and sanctions when a particular transgression is committed. The recommendations will improve educator behavior and thus service delivery in schools will be enhanced.

1.5 Methodology

Archival data and records were used to analyse the transgression committed by educators in the North West Department of Education. The researcher also did content analysis of the complex transgressions. The analysis was meant to lead to solutions for curbing transgressions by educators in schools.

1.6 Scope of the study

The records of educator misconduct cases from 2001 to 2006 were gathered from the Labour Relations Directorate of the North West Department of Education.

1.7 Organisation of the study

The study is structured as follows according to chapters:

Chapter 1 reflects the orientation of the study

Chapter 2 reflects the Literature review done on the study

Chapter 3 reflects the research methodology

Chapter 4 presents data and analysis

Chapter 5 presents findings, conclusion and recommendations of the study

1.8 Conclusion

The chapter reflects the orientation, the aim, objectives, significance, methodology and the scope of the study.

CHAPTER 2 : Literature Review

2. In this chapter a thorough literature study on Discipline and Dismissal in general is discussed. The legislations, Codes of Good Practice, nature of offences, causes of disciplinary problems, possible solutions to disciplinary problems, disciplinary procedures and steps for effective discipline, definitions and general knowledge on Discipline and Dismissal are discussed. Numerous textbooks and information from SA Labour Bulletin, SA Journals of Labour Relations were consulted.

2.1 Discipline and Dismissal

A fair and constructive approach to the management of the conduct and performance of employees can contribute towards a harmonious working environment. Discipline management should be based on a clear and known standards and a progressive correction of transgressions. Discipline means employees will work and act in a normal and orderly manner, as would be expected of any reasonable superior of a subordinate.

Robbins, Odendaal and Roodt (2004: 55) states that every manager will at sometime have to deal with an employee who drinks on the job, is insubordinate, steals company property, arrives consistently late for work or engages in similar problem behaviours.

According to Salamo as cited by Swanepoel, Erasmus, van Dyk and Schenk (2001: 703) the aim of discipline is to ensure that all employees conform to the performance and behavioural standards and criteria necessary for the successful operation of the organization. From a positive point of view discipline is therefore a constructive element of management designed to facilitate learning and opportunities for personal growth, as well as the achievements of organizational objectives.

Ehlers (2007: 106) states that discipline occurs when an employer makes a guiding intervention in an employee's work behaviour. The intervention is aimed at encouraging, assisting, prompting or forcing the employee to be committed and diligent supporter of the objectives of the employer. These interventions include training, counseling, verbal

reprimands, written warnings, serious or final written warnings. A degree of trust and acceptance still exists between the two parties.

Glober, Wanirch, Carell, Elbert and Hatfield (2006: 453) argue that the primary objective of disciplinary action is to motivate an employee to comply with the company's performance standards. An employee receives discipline after failing to meet some obligation of the job. The failure to perform as expected could be directly related to tasks performed by the employee or to the rules and regulations that define proper conduct at work. A second objective of discipline is to create or maintain mutual respect and trust between the supervisor and employee. Improperly administered discipline can create such problems as low morale, resentment, and ill-will between the supervisor and the employee.

Ehlers (2007: 106) states indicated that dismissal is considered appropriate when an irreparable breach occurs in the trust relationship between an employer and an employee. The employee's behaviour in the relationship confirms that the employee does not want to become or remain a follower of that specific employer's objectives. Dismissal can occur on three broad grounds: the conduct of the employee, the capacity of the employee and the operational requirements of the organisation.

2.2 Approaches to Discipline

Discipline has a positive side, it can support morale, decrease labour turnover and create a more satisfied and efficient work force in general. Corrective discipline can contribute to the achievement of organizational objectives by ensuring the co-operation of employees. There are two approaches to discipline the negative approach and the positive approach. The negative approach occurs when discipline is mainly regarded as a method to punish employees. Employers using this approach often act on half-truths and take arbitrary decisions regarding discipline and dismissals. This approach is ineffective and leads to management losing the respect and co-operation of employees. It creates tension and most of the time leads to industrial action.

The positive approach requires the creation of a climate in which employees accept the leadership of management and supervisors in a positive manner. Employees are motivated to obey the rules of the undertaking, because they understand the rules and

accept the role of management and supervisors. Ehlers (2007: 107) suggests that supervisors can motivate employees to comply with standards and rules in the following ways:

- Explain to employees exactly what is expected of them.
- Give regular feedback on employee performance.
- Respect and understand employees' needs and requests.
- Cultivate a feeling of mutual respect between management and employees.
- Act with fairness, equity and integrity.
- Act consistently within the constraints of policy, rules and service contracts.

Regular contact, co-operation and discussion between work councils, trade unions and management contributes effectively to positive discipline.

Robbins (2001: 50) suggests the eight behaviours of effective disciplining:

1. Respond immediately. The more quickly a disciplinary action follows an offence, the more likely it is that the employee will associate the discipline with the offence, rather than with you as the dispenser of the discipline.
2. Provide a warning. You have an obligation to give a warning before initiating disciplinary action.
3. State the problem specifically. Give the date, time, place, individuals involved, and any mitigating circumstances surrounding the violation.
4. Allow the employee to explain his or her position. Regardless of what facts you have uncovered, due process demands that you give the employee the opportunity to explain his or her position.
5. Keep discussions impersonal. Penalties should be connected with a given violation, not with the personality of the individual violator.
6. Be consistent. Fair treatment of employees demands that disciplinary action be consistent.
7. Take progressive action. Choose punishment that is appropriate to the crime.
8. Obtain agreement on change. Disciplining should include guidance and direction for correcting the problem.

2.3 The Disciplinary Code

The purpose of a disciplinary code is to regulate standards of conduct and incapacity of employees within an organisation. The aim of discipline is to correct unacceptable behaviour and adopt a progressive approach in the workplace. This also creates certainty and consistency in the application of discipline. The employer needs to ascertain that all employees are aware of the rules and the reasonable standards of behaviour that are expected of them in the workplace. Employees need to comply with the disciplinary code and procedure at the workplace. An employee also needs to ensure that he/she is familiar with the requirements of the disciplinary standards in the workplace (CCMA Information Sheet: Disciplinary Procedures- March 2002). A disciplinary code specifies which forms of employee behaviour the employer regards as misconduct. It further shows the type of disciplinary sanction the employer can apply in case of an employee breaching the disciplinary code. The disciplinary code is often reflected in a matrix format in which each transgression is coupled with an appropriate sanction. Transgressions may also be simply listed under different headings which show the seriousness of the offence and the possible disciplinary sanctions that may follow such a transgression (Ehlers 2007 :109).

2.3.1 Example of a Disciplinary Code

Ehlers (2007: 110) suggests the following tables to illustrate the example of a disciplinary code under two categories, namely category A: Very Serious Misconduct, and category B: Serious Misconduct.

Category A: Very serious misconduct

The following are examples of misconduct that are considered as very serious breaches of the disciplinary code and could lead to summary dismissal.

Transgression	First offence	Second offence
1. Assault, inappropriate gesturing/touching	Serious written warning	Dismissal
2. Theft, Unauthorized possession of company property, dishonesty, fraud, forgery	Dismissal	
3. Gross negligence or gross unprofessional conduct	Serious written warning	Dismissal
4. Absence without leave for more than five (5) days	Dismissal	
5. Instigating or promoting violence, intimidation, victimization or illegal striking	Dismissal	
6. Insubordination, serious disobedience or serious challenging of authority	Serious written warning	Dismissal
7. In possession on the company premises of, or to be under the influence of substances which have a narcotic, intoxicating or abnormally stimulating effect.	Dismissal	
8. Immorality, sexual harassment, racism	Dismissal	
9. Sleeping on duty	Serious written warning	Dismissal
10. Any other offence, which could lead to a permanent severing of the trust relationship between employer and employee.	Serious written warning	Dismissal

Category B: Serious misconduct

The following are examples of serious breaches of the disciplinary code that could lead to dismissal after the issuing of warnings.

Transgression	First offence	Second offence	Third offence	Fourth offence
1. Unauthorized absenteeism, leaving workstation without permission	Counselling	Written warning	Serious written warning	Dismissal
2. Negligence or unprofessional conduct	Written warning	Serious written warning	Dismissal	
3. Poor work performance, ignoring standard operating procedures	Counselling	Written warning	Serious written warning	Dismissal
4. Contempt of company regulations, damage to property	Written warning	Serious written warning	Dismissal	
5. Insolence or refusal to follow lawful instructions	Written warning	Serious written warning	Dismissal	
6. Indecent action, slander or swearing, unprofessional conduct, disloyalty	Written warning	Serious written warning	Dismissal	
7. Horseplay, loitering, absenteeism of work without permission during working hours	Counselling	Written warning	Serious written warning	Dismissal
8. Poor customer relations, disrespect for quality assurance procedures	Written warning	Serious w warning	Dismissal	
9. Inappropriate use of company equipment, failing to secure company equipment	Counselling	Written warning	Serious written warning	Dismissal
10. Any other serious offence which would seriously damage the trust inherent in the service relationship	Counselling	Written warning	Serious written warning	Dismissal



2.4 Forms of Disciplinary Sanctions

Disciplinary action can take a number of forms, depending on the seriousness of the offence and whether the employee has breached the particular rule before. The following forms of acceptable disciplinary sanctions can be used in order of severity (Ehlers, 2007:109) :

1. Verbal or oral warnings are usually given when less serious transgressions of the disciplinary code occur.

2. Formal counselling will take place where an employee has been found guilty of poor work performance or minor misconduct. The counselling is done with a view to point out the incorrect behaviour of the employee, and to explain the correct required behaviour to the employee. Normally a written record of a counselling intervention is placed on the employee's personal file.

3. Written warnings may be given to employees in the case of more serious transgressions of the disciplinary code; and this entails the supervisor directing a warning in writing following a proper investigation and hearing to the employee.

4. Serious written warnings (often named final written warnings) may be given to employees in the event of a recurrence of a more serious transgression of the disciplinary code, or a very serious transgression. This entails the supervisor directing a serious written warning, indicating that an employee's services may be terminated in the case of a future similar transgression. The serious warning may only be issued after conducting a proper investigation and hearing (Employment of Educators Act 76 of 1998, Schedule 2: Disciplinary Code and Procedures for Educators).

The following disciplinary sanctions may be applied after the abovementioned sanctions have been applied:

1. Transfer: Transfer, which is sometimes a satisfactory disciplinary measure, must only be used if management is convinced that it will solve the problem and that it will have a rehabilitative effect.

2. Suspension: Suspension without salary is unlawful. However, the Labour Court has accepted suspension without pay as an alternative to dismissal, in cases where the misconduct was of such a nature that the employee would have been dismissed for the particular transgression, and the employee accepted the suspension as a milder form of punishment.

3. Temporary suspension: It is not a disciplinary sanction as such, but is normally applied when a person commits a serious offence and it is considered necessary to keep the person off the premises while the preliminary investigations are being done.

4. Demotion: Demotion is an alternative to the ultimate punitive measure of dismissal and it is often applied when an employee is disciplined because of incompetence or the inability to meet required work standards.

Dismissal should only be applied in cases where the trust relationship has been irreparably severed and/or after the employer has adopted all reasonable measures to rectify the employee's behaviour. Circumstances of both the employer and the employee should be considered to ensure a balanced relationship exist after the application of a disciplinary sanction. The employee's position regarding his or years of service in the organisation, his or her number of dependants, his or her position and status within the organisation should be carefully considered before taking serious disciplinary action. The employers' circumstances should also be considered to ensure fairness. For example:

- Did the employer suffer losses due the employee's behaviour?
- Can an employer continue in an intolerable relationship?
- Have unreasonable disobedience, theft, pilfering e.t.c. occurred through the years? (Employment of Educators Act 76 of 1998, Schedule 2: Disciplinary Code and Procedures for Educators).

2.5 Lawfulness and Fairness in Disciplinary Action

2.5.1 Lawfulness

The employer has the right to maintain discipline and ensure the proper performance of contractual duties by the employee, however every employee has the right not to be unfairly dismissed. The Labour Relations Act, 66 of 1995 (LRA) recognises only three grounds on which employees can be dismissed and these are:

- Misconduct by employee
- Incapacity (Poor work performance)

- Operational requirements of the employer (Retrenchments)

Dismissal may occur on the above grounds reasons provided that there are fair reasons for dismissal and that before dismissing the employee, the employer follows fair procedure. The LRA defines dismissal as follows in section 186(1):

Dismissal means that:

- An employer has terminated a contract of employment with or without notice
- An employee reasonably expected the employer to renew a fixed-term contract of employment on the same or similar terms but the employer offered to renew it on less favourable terms, or did not renew it
- An employer refused to allow an employee to resume work after she –
 - (i) took maternity leave in terms of any law, collective agreement or her contract of employment , or
 - (ii) was absent from work for up to four weeks before the expected date, and up to eight weeks after the actual date, of the birth of her child
- an employer who dismissed a number of employees for the same or similar reasons has offered to re-employ one or more of them but has refused to re-employ another or
- an employee terminated a contract of employment with or without notice because the employer made continued employment intolerable for the employee.
- An employee terminated a contract of employment with or without notice because the employer, after a transfer in terms of section 197 or section 197A, provided the employee with conditions or circumstances at work that are substantially less favourable to the employee than those provided by the former employer (cited by Basson, Christianson, Garbers, Le Roux, Mischke and Strydom: 2005: 78-79).

In terms of section 187 of the Labour Relations Act, it is automatically unfair for an employer to dismiss an employee for any of the following reasons:

- The employee's participation in, or support of, a protected strike or protest action
- The employee's refusal to do any work, normally done by an employee who at the time was taking part in a protected strike or was locked out

- The employee's refusal to accept a demand in respect of any matter of mutual interest between the employer and the employee
- The employee's action, or intended action against the employer by exercising any right conferred by the LRA or participating in any proceedings in terms of the LRA.
- The employee's pregnancy, intended pregnancy or any reason related to her pregnancy
- It is automatically unfair to dismiss an employee on any arbitrary ground such as race, gender, sex, ethnic group or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, political, opinion, culture, language, marital status or family responsibility

2.5.2 Substantive Fairness

According to Ehlers (2007: 106) substantive fairness means that there has to be acceptable proof that an offence was committed and that the offence was of such a nature that it justifies the sanction that is being applied. Grogan (2005: 268) states that substantive fairness relates to the reason for the dismissal and the appropriateness of the sanction. The LRA provides the following guidelines for the determination of the substantive fairness of a dismissal: (also cited by van Niekerk, 2004: 46-51)

- employee broke a rule of conduct in the workplace;
- the rule was valid or reasonable;
- the employee knew about the rule or should have known about the rule;
- the employer has been consistent in applying the rule; and
- dismissal is the appropriate step to take against the employee for breaking the rule, instead of less severe steps like a final written warning or suspension.

Repeated offences could then constitute enough grounds to justify a dismissal. On the other hand, dismissal for a first offence may be appropriate if an employee has committed a serious offence, which makes his/her employment intolerable and which has broken the trust relationship. The following are some examples of serious misconduct

- Gross dishonesty, for example fraud.
- Physical assault.
- Sexual harassment (persistent and unwanted sexual advances)

These examples should however be judged on their merits and the employer should take into account the nature of the job and the circumstances surrounding the offence itself. In addition, the employer should take the employee's circumstances (e.g. length of service, disciplinary, service record and personal circumstances), the nature of the employee's job and the circumstances of the infringement itself (e.g. provoking) into consideration when considering a suitable sanction.

2.5.3 Procedural Fairness

The employer must follow a fair procedure before dismissing the employee, even if there are valid substantive reasons for a dismissal (Ehlers 2007: 115). According to Grogan (2005: 268) procedural fairness relates to the manner in which the employer arrived at the decision to impose a sanction.



2.5.3.1 MISCONDUCT

Ehlers (2007: 115) proposes the following requirements to be met when the employer needs to make an investigation into the alleged misconduct—

- The employee must be informed about the charges in a manner that she/he can understand. The employee should be given sufficient time to prepare for the hearing.
- The union should be consulted before commencing an inquiry into an employee who is a shop steward or office bearer.
- The employee must be given a chance to state his/her case.
- The employee has the right to be assisted by a shop steward or a fellow employee at the hearing.
- After the inquiry the employer should notify the employee in writing of the decision with clear reasons.
- If the employee is not satisfied after being dismissed, the employer has to inform the employee of his/her right to appeal and thereafter to refer the matter to the relevant council or CCMA within 30 days.

- The employer must keep records of disciplinary actions taken against each employee, stating the nature of misconduct, disciplinary action taken and the reasons for the disciplinary action.

Grogan (2005: 269) states that it is only fair, that an employee should not be subjected to a charge of misconduct unless there are at least *prima facie* grounds for suspecting that the employee actually committed the misconduct alleged.

2.5.3.2 INCAPACITY: POOR WORK PERFORMANCE

A situation of poor work performance arises where an employee does not meet the performance standards or level of competence required by an employer. Poor work performance is as a result of the employee not having the necessary skills or qualities to perform the tasks expected of him/her effectively. According to Ehlers (2007:115) the employer must hold an investigation into reasons for poor performance before dismissing the employee. An employer must grant the employee who is performing below expectation, appropriate evaluation, training, guidance and a reasonable time for improvement, before dismissing such an employee on the grounds of poor work performance. A dismissal for poor work performance will thus only be fair if an employee continues to perform poorly after all reasonable remedial efforts have failed and the problem cannot reasonably be solved without dismissing the employee. In investigations relating to poor work performance and incapacity, the employee should be given an opportunity to state his/her case and be given an opportunity to be assisted by a shop steward or co-worker. These procedures are also applicable to employees on probation.

Grogan (2005: 338) states that it may be that the employee's failure to meet the standard is not attributable to any deficiency on the employee's part – for example it may be due to poor work arrangements or to lack of technical support.

The Code of Good Practice requires the following:

- The employee should have been aware, or could reasonably have been expected to be aware, of the required performance standard,
- The employee was given a reasonable opportunity to meet the required standard,

- Dismissal was an appropriate sanction for not meeting the required standard.

2.5.3.3 INCAPACITY: BAD HEALTH OR INJURY

The employer must investigate to what extent he/she is able to secure alternative employment for the employee, or adapt the duties or work environment of the employee to accommodate his/her disability. The cause of the incapacity is also relevant to establishing the fairness of a dismissal. Different causes of incapacity may require different kinds of remedial action short of dismissal. For example, where incapacity is due to alcoholism or drug abuse, counseling and rehabilitation may be the appropriate alternatives for the employer to consider. Where an employee has been injured at work, or is incapacitated by a work related illness, the employer has a stricter duty to accommodate the employee's illness. If temporary incapacity will cause an employee to be away from work for an unreasonably long time, it will be unfair to dismiss the employee, unless the employer first investigates all possible ways of avoiding this step.

If the incapacity is permanent, the employer should try to find alternative work for the employee or adapt the work - within reason - so that the employee is able to do it. The employer is required and expected to make a greater effort to accommodate an employee if the employee was injured while at work. In investigations relating to ill-health or injury, the employee should be given an opportunity to state his/her case and be given the opportunity to be assisted by a shop steward or co-worker. The aforementioned procedures are also applicable to employees on probation.

2.5.3.4 DISMISSAL OF EMPLOYEES ON AN UNPROTECTED/PROTECTED STRIKE

Participation in a strike that does not comply with the provisions of Chapter IV is misconduct. However, like any other act of misconduct, participation does not always warrant dismissal. The substantive fairness of a dismissal in these circumstances must be determined in the light of the facts of the case, including:

- The seriousness of the contravention of the Act

- Attempts made to comply with this Act, and
- Whether or not the strike was in response to unjustified conduct by employer

The Labour Relations Act, 66 of 1995 prescribes that before dismissing employees who participate in strikes, an employer should contact the union to discuss the employer's intention to dismiss such employees. The employer give the striking employees a clear ultimatum stating what is required of the employees and what will happen if they do not comply with the ultimatum and give the strikers enough time to consider the ultimatum. An employer may ignore these steps if it cannot be reasonably expected of him to follow them. (e.g. violence).

2.5.3.5 DISMISSAL FOR OPERATIONAL REQUIREMENTS (RETRECHMENTS)

Section 189 of the LRA specify specific procedures that should be followed by employers before an employee or group of employees can be dismissed for operational requirements. The following procedure must be followed:

(i) Consultation

Consultation must take place as soon as the employer contemplates retrenchment with a workplace forum.

with a registered trade union whose members are likely to be affected or with the employee/s likely to be affected.

An attempt must be made to reach consensus on avoiding the dismissals (examples could include adjusting working hours, eliminating temporary labour, eliminating overtime, offering early retirement); minimising the number of dismissals; the timing of dismissals; ways to lessen the effects of the retrenchment; the method for selecting the employees to be dismissed; and severance pay.

(ii) DISCLOSING INFORMATION

An employer has to disclose relevant information in writing, including the

reasons for retrenchment;
alternatives considered and why they were rejected;
number of employees likely to be affected and their job categories;
proposed method of selection;
timing;
severance pay proposed;
assistance that the employer will be offering (examples could include offering employees time off to attend interviews, early release should a new job be found, issuing letters of reference, psychological counseling); and
possibility of future re-employment

The employer must give the other consulting party an opportunity to make presentations that must be considered and be responded to. If no agreement is reached on the criteria for selection, criteria must be fair and objective. The last in first out principle is often applied. Staff with key skills may be retained and a poor performance record may be taken into consideration.

(iii) PAYMENTS

The following payments need to be made –

- Severance pay

Employees should be paid at least one week's remuneration for each completed and continued year of service. ('Remuneration' includes basic salary, payment in kind and discretionary payments related to working hours or performance).

Should an employee unreasonably refuse an offer of alternative employment he/she will not be entitled to a severance package.

- Outstanding leave to be paid out.
- Notice pay

If employed for one to four weeks – one week's notice; if employed for four weeks to one year – two weeks' notice and if employed for more than a year – four weeks'

notice. Domestic and farm workers, who have been employed for four weeks or more, must receive four weeks' notice. The employer may require employees to work/not to work during the notice period.

- Other

Depending on the employment contract, the following may be relevant — pro rata payment of bonus, pension and provident fund. If relevant, ensure that blue card is issued.

2.6 Steps in Disciplinary hearing

Dismissal is reserved for the most serious offences and will be preceded by a fair disciplinary enquiry, unless an exceptional circumstance results in a disciplinary enquiry becoming either an impossibility (e.g. the employee absconded and never returned) or undesirable (e.g. holding an enquiry will endanger life or property). The Employment of Educators Act, 76 of 1998: Schedule 2 Disciplinary Code and Procedures for Educators prescribes the following steps in disciplinary hearing.



2.6.1 Disciplinary Hearing

An employee may be suspended on full pay pending a hearing especially in instances when the employee's presence may jeopardise any investigation. The employer must also allow the employee to make representations. The employer should give the employee not less than three days notice of the enquiry and the letter should include:

The date, time and venue of the hearing .

Details of the charges against the employee .The employee's rights to representation at the hearing by either a fellow employee or shop steward. If the employer intends disciplining a shop steward, the employer must consult with the union before serving notice to attend the enquiry on the intention to discipline the shop steward including the reasons, date and time.

The following people must be present at the enquiry

- A chairperson
- A management representative

- The employee
- The employee representative
- Any witnesses for either parties
- An interpreter if required by the employee

A hearing should be conducted in the following manner

The employer should lead evidence. The employee is then given an opportunity to respond. The chairperson may ask any witnesses questions for clarification. At the ending, the chairperson decides whether the employee is guilty or not guilty. If guilty, the chairperson must ask both parties to make submissions on the appropriate disciplinary sanction. The chairperson must then decide what disciplinary sanctions to impose and inform the employee accordingly. The employee should be informed that s/he has right to appeal. If the does not provide for an appeal procedure, the employee must be reminded that he/she could take the case further to the Commission for Conciliation Mediation and Arbitration (CCMA) or bargaining council. The failure to attend the hearing cannot stop the hearing from continuing except if good cause can be shown for not attending. These procedures should therefore merely serve as guidelines for parties). (Adopted from the CCMA Information Sheet March 2002 and Code of Good Practice for Dismissal: Schedule 8 of the Labour Relations Act of 1995, as amended).

2.7 Dismissible Offences

Misconduct is the most common justification for dismissal, and it can take many and varied forms. However the legal basis for dismissal is the same in all cases: the employees concerned are deemed to have committed a breach of a material term of their contracts or destroyed the employment relationship, which justifies the termination of the employment relationship (Grogan, 2005:216). Generally, it is not appropriate to dismiss an employee for a first offence, except if the misconduct is serious and of such gravity that it makes continued employment relationship intolerable. Examples of serious

misconduct, subject to the rule that each case should be judged on its merits, are gross dishonesty or willful damage to the property of the employer, willful endangering of the safety of others, physical assault of an employer, a fellow employee, client or customer, gross insubordination, breach of confidentiality or divulging trade secrets, gross negligence, theft, abusive language or racist comments, lateness, absenteeism, sexual harassment, drug abuse and drinking on duty.

2.7.1 Gross Dishonesty

Definition

According to Ehlers (2003: 61) dishonesty can consist of any act or omission which entails deceit. This may include withholding information from the employer, or making a false statement or misrepresentation with the intention of deceiving the employer. Dishonesty can be used to describe different forms of misconduct, such as bribery, fraud and falsified medical certificates. Grogan (2005: 247) states that a misrepresentation by an employee before the commencement of employment has been held to be sufficient to warrant dismissal, even if the misrepresentation is discovered some time later and the employee has rendered satisfactory performance.

General Test

Dishonesty is often sufficiently serious to justify summary dismissal for a first offence, as it lies at the heart of the trust relationship between management and employee. The guilty person can be dismissed where the relationship is damaged irreparably by the individual's dishonesty. In the case where the dishonesty did not result in irreparable damage to the trust relationship, discharge will not be justified (Ehlers, 2003: 61).

2.7.2 Willful Damage of Property of the Employer

Definition

According to Grogan (2005:245) if an employee willfully damages the property of the employer, dismissal is almost invariably justified. The justification in such cases flows from the employees' malicious intent than from the actual damage caused, where intent is present, dismissal is warranted even if the employer suffered only minor loss. Damage to property arising from the employees' negligence has also been held to warrant disciplinary action.

General Test

The test for negligence in particular cases depends on the degree of skill that can reasonably be expected of the employees concerned, given their status and experience. If the employees knew that their neglect of duty could result in serious damage to the employer's property, negligence can be said to be gross. Repeated lapses by employees that results in loss to the employer may also justify dismissal. Where the employee deliberately flouts safety regulations, dismissal has been held to be justified even when the employer suffered no loss.

2.7.3 Negligence

Definition

Negligence is a failure to comply with the standard of care that would be exercised in the circumstances by a reasonable person. Negligence can manifest itself in acts or omissions (Grogan, 2005: 257).

Ordinary negligence may be defined as an act or omission by an employee who either caused or could have caused the company to suffer material damage. The consequences of such negligence are not so serious that they go to the heart of the employee-employer relationship (Ehlers, 2003: 57). Gross negligence differs from ordinary negligence in the extent of the actual potential consequences of a particular act or omission. The actual or potential consequences of gross negligence are so serious that the negligence goes to the heart of the employee-employer relationship (Ehlers, 2003 : 57).

General Test

The test for negligence is whether a reasonable person in the position of the employees concerned would have foreseen the harm resulting from the acts or omissions, and would have taken steps to guard against that harm.

Grogan (2005: 257) lists the following as requirements for dismissal for negligence:

That the employee failed to exercise the standard of care and skill that can reasonably be expected of an employee with his or her degree of skill and experience;

That the lack of care and skill manifested itself in an act or omission that did or could have caused loss to the employer;

That the loss or potential loss to the employer resulted or could have resulted from the employees' negligent act or omission;

The negligent was gross.

2.7.4 Assault and Fighting

Definition

Grogan (2005: 241) states that the legal requirements for the offence of assault are the intentional and unlawful application of physical force, however slight, to the body of the complainant, or the threat that such force will be applied. The offence of assault has three elements: the commission of the prohibited conduct itself, knowledge of wrongfulness (or assault) and unlawfulness.



General Test

Ehlers (2003: 58) suggests the following factors to be considered when investigating an assault charge:

The nature of the assault must be considered - whether it was provoked and where it occurred - because this affects the seriousness of the assault.

The seriousness of any resultant injury. If the injury was not serious, was there a possibility that a serious injury might have occurred?

Between whom did the fight occur. Assaults or fighting between members on different levels within the organisation would be considered to be more serious, because of the effect of the assault on future relations between the parties.

What will the consequences of the assault be on future workplace relationships?

The company's past record of dealing with violence is important. Consistent treatment of similar offences is all important.

Aggravating circumstances must be considered, such as a lack of remorse or premeditation.

Mitigating factors must be considered. Provocation is a mitigating circumstance which may cause an employee to act in an abnormal manner. The distinction between self-defence and assault in response to provocation is that an employee in the act of self-defence does not in fact commit assault, whereas an employee provoked into committing A person committing assault is however still guilty of the offence. For this reason provocation is only a mitigating factor in assault, not a defence against a charge of assault.

The employee's track record must be considered.

2.7.5 Insubordination

Definition

Insubordination occurs when an employee refuses to accept the authority of his or her employer, or of a person in a position of authority over the employee. It can take many forms and it is a matter of degree. The Code of Good Practice: Dismissal lists gross insubordination as a permissible ground for dismissal. Whether insubordination is considered 'gross' depends on the circumstances, including the manner in which it is expressed, the position of the person whose authority is repudiated, the reason for the employee's defiance and the number of times it occurs (Grogan,2005:253).

General Test

The test for insubordination is whether the employee's conduct demonstrate an intention to defy the employer's authority. Ehlers (2003: 58) suggests that the following questions will ascertain whether insubordination occurred:

Did the superior have authority to give the instruction?

Was the instruction given in good faith?

Was the instruction clearly given?

Did the employee acknowledge receiving the instruction?

Were there reasons, based on the employee's response why he/ she reasonably could not have been expected to carry out the instruction?

Was his/her failure to carry out the instruction a deliberate act of defiance?

Did the refusal actually amount to a refusal to carry out an instruction given by a bona fide superior?

2.7.6 Theft

Definition

Theft by employees of the property of their employers, is regarded as the gravest form of the breach of the duty of fidelity. Theft by employees of property belonging to their colleagues is regarded in the same light, justifying dismissal. Employees are guilty of theft if they appropriate goods belonging to another with the intention of permanently depriving the owner of use and possession of those goods. Theft therefore requires proof of intention to deprive the owner of use and possession and the knowledge that the act was unlawful (Grogan, 2005:263).

General Test

Ehlers (2003: 58) suggests that if all answers to the following questions are yes – the chances are very good that theft occurred:

Did the employee have the intention to steal?

Was there unlawful appropriation?

Was a physical object taken?

Was loss suffered by the employer?

Does the object belong to the employer, or a person/institution other than the employee under investigation?

Was the employee in possession of the article without authorisation?

Was the employee aware that the article was in his possession?

Was the employee aware that permission was needed to take possession of the article?

Did the employee use the stolen object for purposes other than what the employer intended using it for?

Grogan (2005:169) states that theft is regarded by the labour courts as one of the most serious forms of disciplinary offence, normally justifying dismissal at the first instance such dismissal occurs regardless of the value of the property involved, the employee's length of service, the absence of prior warnings, or whether the employee subsequently returned the property.

2.7.7 Breach of Confidentiality

Definition

Grogan (ibid) state that the rule against the disclosure by an employee of information confidential to the employer is related to the common law duty of the employee to further the business interests of the employer. Any information gained during the course of employment may not be disclosed by employees where to do so would entail a breach of trust. Disclosure by employees of confidential information to a competitor of the employer clearly amounts to a breach of trust. Acquiring confidential information by deceptive means may also justify dismissal.

General Test

Ehlers (2003: 57) states that the seriousness of a breach of confidentiality is governed by the intention of the employee who disclosed the information, and by:

Nature of the information divulged.

How sensitive or confidential the information was.

To whom the information was divulged.

Whether money or benefits was received for the information.

How the information was obtained.

Was the information available to the general public.

2.7.8 Abusive Language or Racist Comments

Definition

Swearing and invective language are generally considered misconduct, which may in certain cases justify dismissal, even on the first occasion. Dismissal can be justified when employees use abusive words or phrases that impair the dignity and reasonable sensibilities of those against who they are directed. The use by an employee of abusive language in the workplace impacts on the individual employment relationship and also on the employer's business interests (Grogan,2005:239).

General Test

Ehlers (2003: 59) suggest that to determine if disciplinary action should be taken against an offender, the following should be considered:

Was the abusive language directed at an individual or a group?

What is the nature of the relationship between the parties?

Is there an element of unfair discrimination involved?

What are the circumstances in which the abusive language occurred?

What is the employers prevalent organisational culture in this respect?

Was the employer's image or reputation tarnished?

2.7.9 Sexual Harassment

Definition

Grogan (2005:259) describes sexual harassment as persistent, unsolicited and unwanted sexual advances by one person to another. Persistent and unwanted amorous advances by an employer to a female member of staff have been held to provide a basis for constructive dismissal if the employee abandons her employment as a result. The duty to protect employees from sexual harassment by other employees and by customers rests with the employers.

General Test

The following elements of the offence of sexual harassment can be derived from the code and the case law:

The conduct of the accused employee must have been of a sexual nature

Such conduct must have been continuous, or at least have been calculated to have a lasting effect on the complainant

The conduct must have been unsolicited, and offensive to the complainant

The accused employee must have been aware, his or her conduct was unwanted by and offensive to the complainant

Item 4 of the Code of Good Practice on Sexual Harassment gives examples of conduct that may amount to sexual harassment. This ranges from physical contact, through verbal forms such as innuendos, suggestions, hints, and comments with sexual undertones, sex related jokes, or unwelcome graphic comments made in their presence or directed at them, 'inappropriate' inquiries about a person's sex life, unwelcome gestures, indecent exposure and the unwelcome display of sexually explicit pictures and objects.

2.7.10 Lateness and absenteeism

Definition

Employees have a fundamental duty to render service, and their employers have a commensurate right to expect them to do so. Under common law, an employee is required to be present at work regularly and on time. Willful absence from work constitutes a breach of contract and may justify summary termination of the contract. Even the absence for reasons beyond the employee's control may constitute a ground for termination when the period of absence becomes unreasonable. However, an employer is not entitled to summarily dismiss an employee for trifling absence which causes little or no prejudice to the employer.

In modern law there is a distinction between absenteeism, abscondment, and desertion. Absenteeism can be divided into late coming, absences from an employee's workstation, and absences from the workplace itself for short periods. Abscondment is deemed to have occurred when the employee is absent from work for a time that warrants the inference that the employee does not want to return to work. Desertion is deemed to have taken

place when the employee has actually intimated expressly or by implication that he does not intend to return to work (Grogan,2005:237).

General Test

Ehlers (2003: 60) suggest the following to be considered to determine whether an offence was committed:

Is there a valid reason for the lateness/absenteeism?

Was the lateness/absenteeism due to the employee's actions or failure to act?

Were other employee's who have similar circumstances late/absent?

What is the extent/pattern of lateness/absenteeism ?

What was the actual impact of lateness/absenteeism on the operation?

Were specific employer rules applicable to lateness/absenteeism known to the employee and did he comply?

What attempts did the employee make to deal with the lateness/absenteeism?

2.7.11 Drug Abuse



Definition

The use of narcotic drugs in the workplace is a serious offence which can lead to summary dismissal. Most disciplinary codes prohibit its possession or use on the employer's premises. Being under the influence of drugs during working hours is strictly prohibited by most disciplinary codes.

According to studies conducted by the International Labour Organisation (ILO) on the abuse of alcohol and drugs in the work place, the following was found:

Absenteeism of employees with alcohol and drug problems was three times higher than for other employees

Employees with chemical dependence problems claimed sick-benefits three times more than other employees and also made compensation claims five times more than other employees.

About 20% to 25% of injuries in the workplace involved employees under the influence of alcohol, and

Drugs and alcohol supplied at work amounts to 15% to 30% of all accidents at work.

Employers should be aware that an employee who suffers from alcohol and/or drug problem might also be suffering from a health problem and should consider offering counseling, treatment or rehabilitation as an alternative before deciding to discipline the employee. Disciplinary rules regarding substance abuse should be communicated to employees so that they are clear in terms of what is prohibited and the type of sanctions for the violation of such rules.

General Test

Grogan (2005:248) suggests that if there is a rule against the use of drugs during working hours, and the employee breaks that rule, the gravity of the rule must be assessed according to such factors as the employee's history of drug use, prior counseling, the circumstances in which such an offence was committed, the nature of the employee's work, and other relevant factors. If the employee can prove that the offence stems from addiction, the employer is required to treat the employee with the same degree of sympathy afforded employees with alcohol-addiction problem. Where employees are accused of being under the influence of a narcotic drug, the charge must be proved, particularly with circumstantial evidence, when the influence manifests itself in the obvious signs of mental and physical impairment.

2.7.12 Drinking on duty

Definition

Most disciplinary codes prevent the use or abuse of alcohol during working hours in one or a combination of the following forms:

An absolute prohibition on the possession of alcohol beverages in the workplace

A prohibition of being under the influence of alcohol during working hours

A prohibition of being under the influence of alcohol content to the extent that work performance is impaired

A rule precluding the alcohol content of employee's bloodstreams from exceeding a certain level (Grogan,2005:248).

General Test

Grogan (ibid) states that the employer must always prove that the rule it has adopted has been contravened. Breach of a rule prohibiting possession of alcohol is proved by mere possession, however breach of some rules are most difficult to prove than breaches of other rules. Proof of a breach of the rule prohibiting the level of alcohol in the blood stream above a certain percentage is provided by means of a test proving that there is a higher level of alcohol than the permissible limit. The use and results of the breathalysers can serve as evidence to justify the conclusion that the employee was intoxicated. An employee's refusal to undergo a breathalyzer test has been held to prove, together with other circumstantial evidence on a balance of probabilities that the employee was incapable of performing his duties.

2.7.13 Poor Performance

Definition

Ehlers (2003: 56) concludes that there are two categories of poor performance:

Substandard performance which is due not to an employee's unwillingness to do the work, but rather to an inability to do the work (Can not),

Substandard performance due to an employee's unwillingness to do the work (Will not).

General test

Ehlers (ibid) further suggest that Management should take the following steps prior to dismissing an employee on grounds of poor work performance:

Objective evaluation of performance

where applicable, and within reason, counseling, training and retraining the employee so as to improve his competence

giving the employee a reasonable time and chance to improve

transferring the employee to another position more suited to his abilities

warning the employee that his performance is lacking and has to improve, otherwise dismissal could follow

if there is no improvement, giving the employee one last opportunity to state his case at a formal hearing before being dismissed.

2.7.14 Incapacity due to ill-health or illness

Definition

Ehlers (2003: 56) proposes that these problems need to be handled sensitively since it is basically unfair to take disciplinary action for illness, however it is also unfair to expect the employer to continue paying an employee who is unable to perform the tasks expected of him. Ehlers (ibid) identifies the following types of incapacity:

The employee, as the result of the effects of an illness or accident, is no longer able to perform most/any of his duties satisfactorily.

The employee comes to work, but his performance is below acceptable standards, or

The employee is unable to come to work, or the employee requires more sick leave than is due to him.

General test

The following questions will determine whether dismissal on account of ill-health is procedurally fair:

Did the employer engage in timeous and meaningful consultations with an employee before terminating services on account of ill health?

If the employee presented himself for work but performed poorly, has the employer brought the problem to the attention of the employee and in addition engaged in meaningful consultation in an attempt to improve his performance?

Did the employer really have no alternative but to dismiss the employee as a result of his ill health?

Did the employer actually appraise of the nature of the incapacity and the likelihood and extent of recovery as well as the period of absence and its effect on the employer's organisation are also important considerations.

CHAPTER 3 RESEARCH METHODOLOGY

3.1 Introduction

This reflects the methodology used in the study and explain in detail the population and instrument used to collect data. It further explains how data were organized and analysed.

3.2 Research design

Mouton and Marias (1998:124) defines a research design as an exposition or blue print of a research project. This implies that the research project is structured beforehand to give clear planning regarding how to gather data organise, and analyse it for investigation in such way that validity is maximised.

Qualitative research employs and inductive research strategy. Researchers develop concepts, insights, and understanding from patterns in data, rather than (deductively) collecting data to assess preconceived models, hypothesis, or theories. Often qualitative studies are undertaken because there is lack of theory or existing theory fails to adequately explain a phenomenon. There are thus no hypothesis to be deduced from theory to guide the investigation. In contrast to deductive researchers who hope to find data to match a theory, inductive researchers hope to find a theory that explains their data, (White, 2003:15).

White (2003:15) further states that qualitative methods are humanistic. The methods by which we study people, affect how we view them. When we reduce people's to statistics, we lose sight of the human side. When we study people qualitatively, we got to know them personally and experience what they experience in their daily struggle in society. We learn about concepts such as beauty, pain, faith, suffering, and love whose essence is lost through other research approaches.

Archival data and records are used to analyse the transgression committed by educators in the North Wes. Department of Education. A content analysis of the most problematic

transgressions is done. The analysis will lead to solutions of how best to curb transgressions by educators in schools.

3.3 Identifying and Developing Appropriate Measuring Instruments

Records of misconduct cases from 2001 to 2006 were gathered from the Labour Relations Directorate of the North West Department of Education. A content analysis of the records of educators transgressions will be done from these records.

Content analysis in research is any technique that is used for the purposes of making inferences by objectively and systematically identifying specific characteristics of messages, Holsti (1969:14).

According to Moulton and Marias (1992:76-69) content analysis requires the systematical grouping of the content or information in communicated messages. These messages are then arranged in pre identified categories to enable their quantitative analysis. Chadwick et al (1984:248-259) proposed that the following steps be followed in a content analysis procedure:



- i. A specific proposal of the problem in the form of a systematic statement needs to be made.
 - ii. Sources of communications relevant to the research question need to be identified and located. The perimeter of the population or limits of a sample needs to be clearly defined, before selecting these sources.
 - iii. Selection of a unit, or units of analysis that are to be identified from the sources. A unit is a specified component of a message, that will be coded in the respective categories (eg: any reference to unions).
 - iv. Selection of the specific categories into which the units of analysis need to be coded (eg. input, output, transformation).
- Categories may take on the form of single words, sentences, paragraphs, scenes, ideas, concepts, themes or entire messages.
 - Preliminary examinations will suggest appropriate units.
- Categories must be described in sufficient detail to ensure consistency.

- To avoid ambiguity categories must not have the same meaning.
- Categories must be exhaustive so that all units can be clustered into a category.
- A miscellaneous category may be added for units that occur rarely, or fall outside the defined categories.

v. Train coders.

vi. Evaluate reliability, where needed.

vii. Analysis of data and writing of report.

3.4 Definition of sample group, application of measuring instruments

The detailed records of all educator transgressions from 2001 to 2006 will be analysed in terms of their nature of offence, cause of the offence, sanction of the offence, and the top most five offences will be critically scrutinized. The analysis will be done per region that is Bojanala East region, Bojanala West region, Bophirima region, Central region and Southern region. The regional data will then be collated to provide the provincial analysis.

3.5 Data Capturing and Statistical Analysis

Data will be captured on a personal computer during the process of analysis. Content analysis will be applied as it requires the systematical grouping of the content or information. This information will then be arranged in identified categories, to enable their quantitative analysis. Descriptive quantitative research involves either identifying the characteristics of an observed phenomenon or exploring possible correlations among two or more phenomenon. According to Leedy et al (2001:191) the descriptive research examines the situation as it is and it does not involve changing or modifying the situation under investigation, nor is it intended to detect cause-and-effect relationship.

3.6 Detailed analysis of findings

According to White (2003: 82) qualitative data analysis is primarily an inductive process of organising the data into categories and identifying patterns (relationships) among the categories. Qualitative analysis is a systematic process of selecting , categorizing, comparing, synthesizing, and interpreting to provide explanations of the single phenomenon of interest.

Data analysis entails several cyclical phases:

Continuous discovery , especially in the field but also throughout the entire study, to identify tentative patterns;

Categorising and ordering of data of data typically after data collection;

Qualitatively assessing the trustworthiness of data, to define patterns;

Writing synthesis of themes and/or concepts (McMillan & Schumacher,1997:500-503 as cited by White, 2003:83)

The top most common problematic transgression were identified and critically analysed through content analysis method. The analysis was compared to the available literature to develop recommendation to curb these transgressions.

3.7 Discussion of findings and conclusions

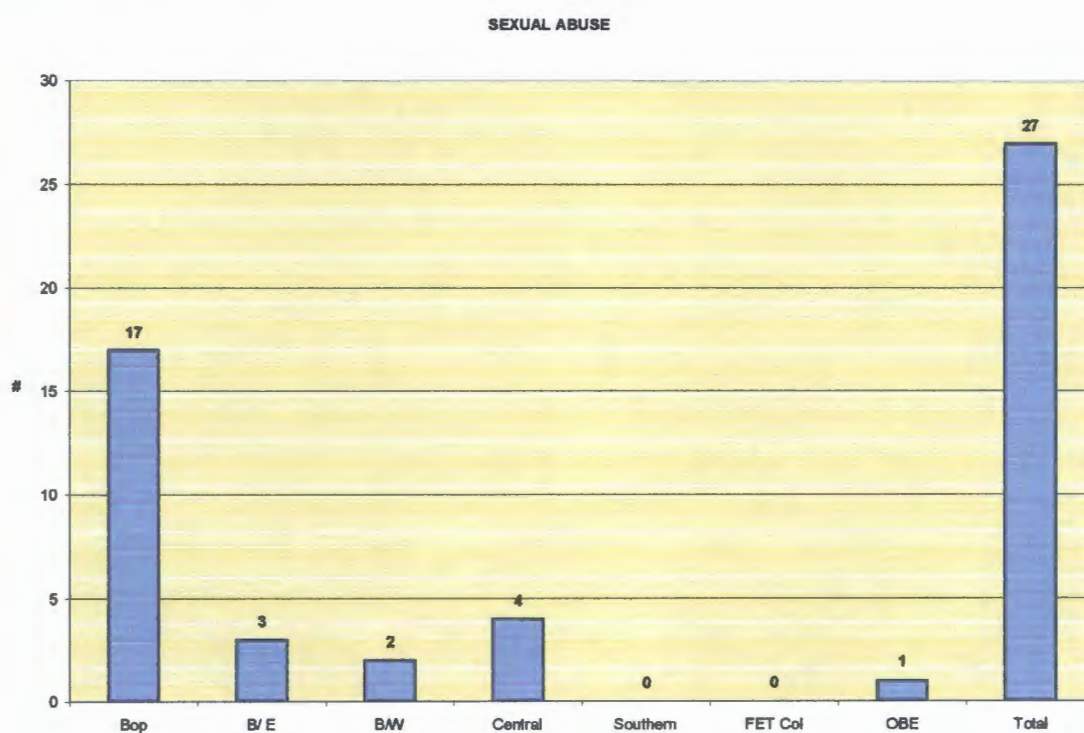
Clear recommendations will be proposed based on the analysis of research findings and available literature.

CHAPTER 4 : Data Presentation and Analysis

4.1 Analyses of information by graphs

This chapter reflects the analysis of the total offences in the North West Education Department by graphs. Each type of offence was analysed per region including Office based educators and Further Education and Training (FET) Colleges. A summary of findings from the graphs are also presented.

Figure 4.1.1 Sexual Abuse



Figures: 4.1.1 illustrates sexual abuse offences per region including FET Colleges and Office based educators. The Bophirima region had the highest cases of sexual abuse compared to other regions, and could be attributed the rural nature of the region. There are entertainment activities for educators in rural areas around Bophirima. Educators find themselves with school children which leads to sexual abuse. A total of 27 educators were charged with sexual harassment between 2001 and 2006 in the North West Education Department.

Figure 4.1.2 Absenteeism

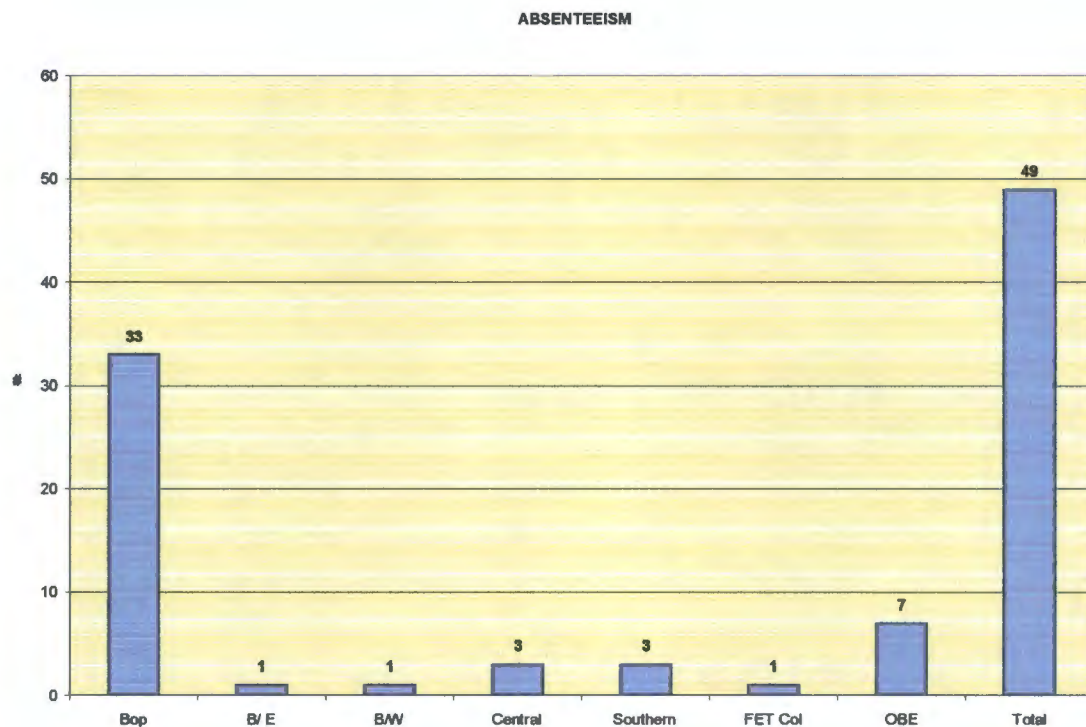


Figure : 4.1.2 illustrates absenteeism offences per region including FET Colleges and Office based educators. Absenteeism seems not to be a problem in terms of the above graph except in Bophirima region which has the highest absenteeism cases reported. Most educators who work in Bophirima region do not originate from in that region. They travel every weekend to their respective families and sometimes they do not come back on time. Absenteeism here refers to cases where educators are absent for a longer period without applying for leave. A total of 49 educators were charged with absenteeism in the North West Education Department from 2001 to 2006.

Figure 4.1.3 Abscondedment

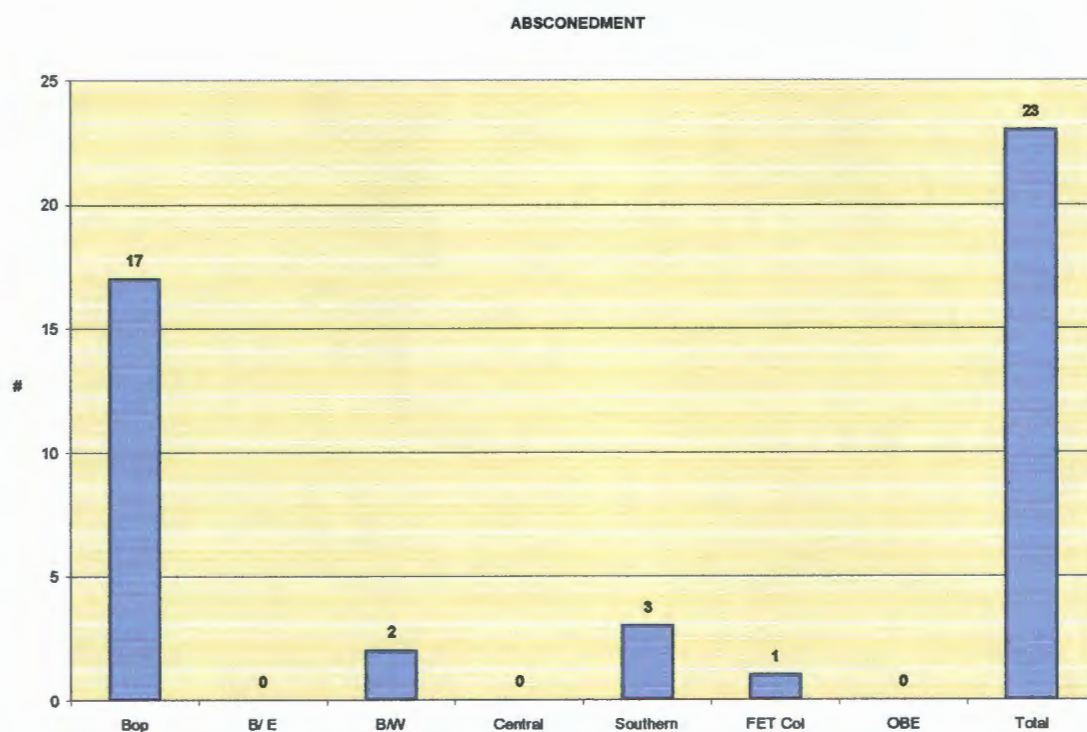


Figure 4.1.3 illustrates abscondedment in regions FET colleges and Office based educators. There are very few cases of abscondedment in other regions compared to Bophirima region with 17 cases. Abscondedment seems not to be a problem in the North West Department of Education except in the Bophirima region. Abscondedment refers to educators who are charged for abandoning work without leave or reason with the intention of not coming back to work. A total of 23 educators were charged with abscondedment in the North West Department of Education between 2001 and 2006.

Figure 4.1.4 Fraud

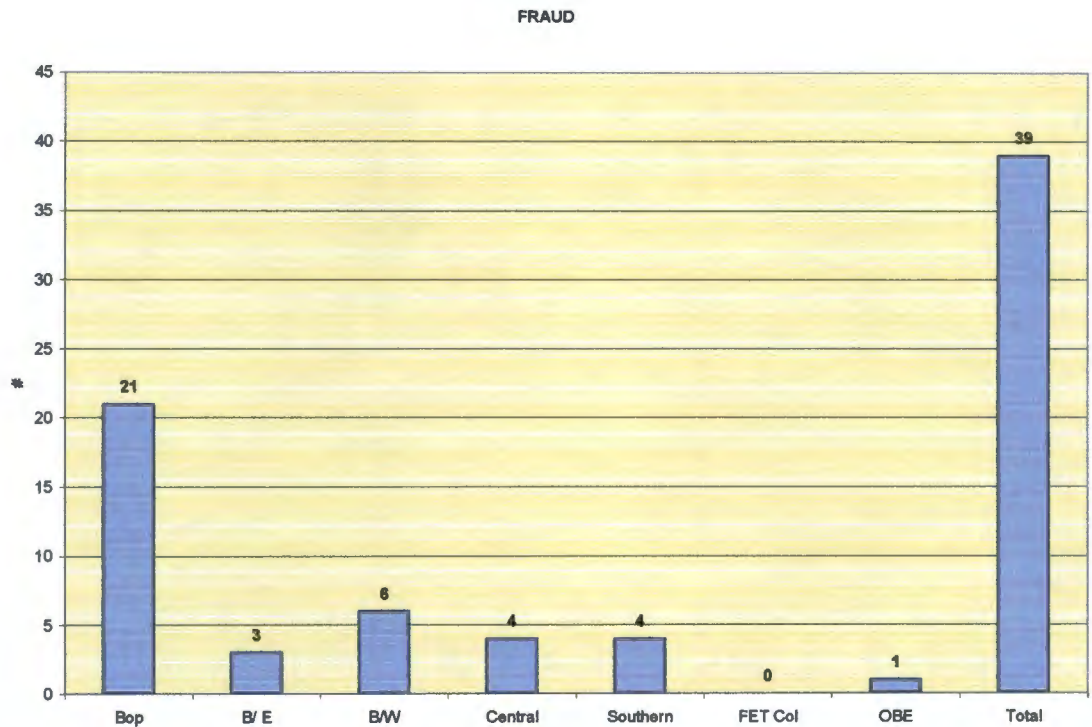
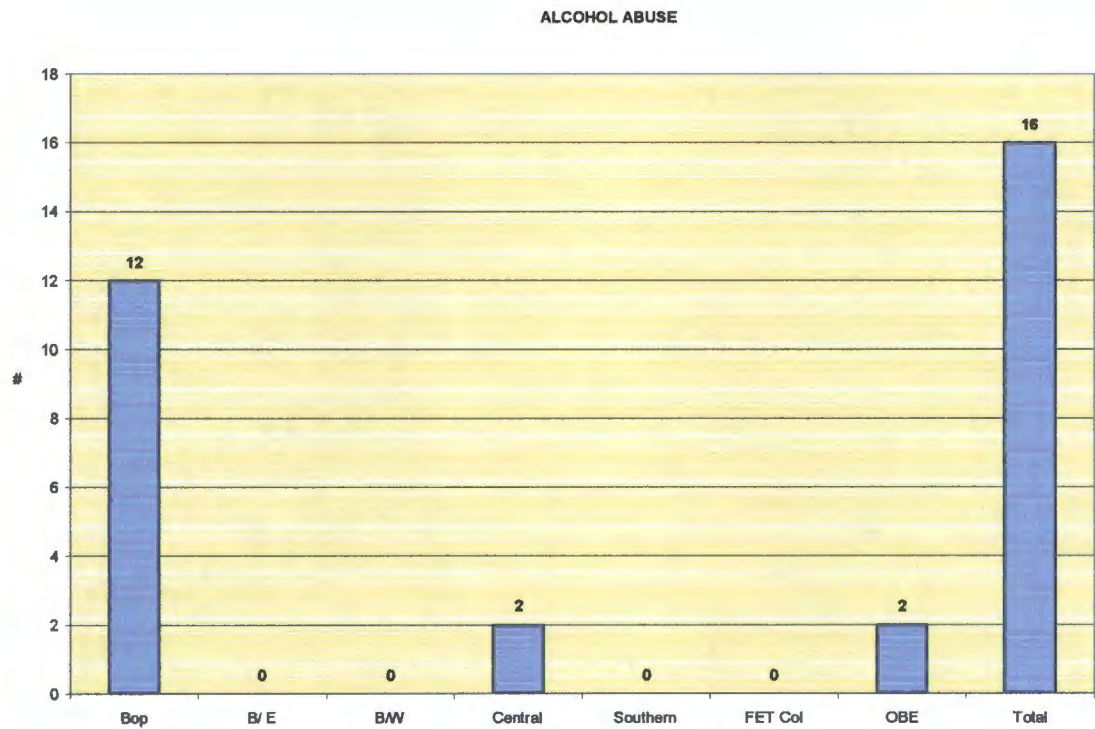


Figure 4.1.4.illustrates fraud cases in the regions, F.E.T. colleges and Office based educators. Fraud cases appears to be more than the previous cases with Bophirima region being the highest. These transgressions are mostly committed by principals who take advantage of illiteracy rate of School Governing Body members or non-involvement of parents in the affairs of the schools. A total of 39 educators were charged with fraud in the North West Department of Education between 2001 and 2006.

**NWU
LIBRARY**

Figure 4.1. 5 Alcohol Abuse



Alcohol abuse is not prevalent in the other four regions in the North West Department of Education except in the Bophirima region where 12 cases were reported. Alcohol abuse could be attributed to the rural nature of the region as there are no entertainment activities except alcohol. Educators are the only people with the buying power in these areas. A total of 16 educators were charged for alcohol abuse in the North West Department of Education between 2001 and 2006.

Figure 4.1. 6 Insubordination

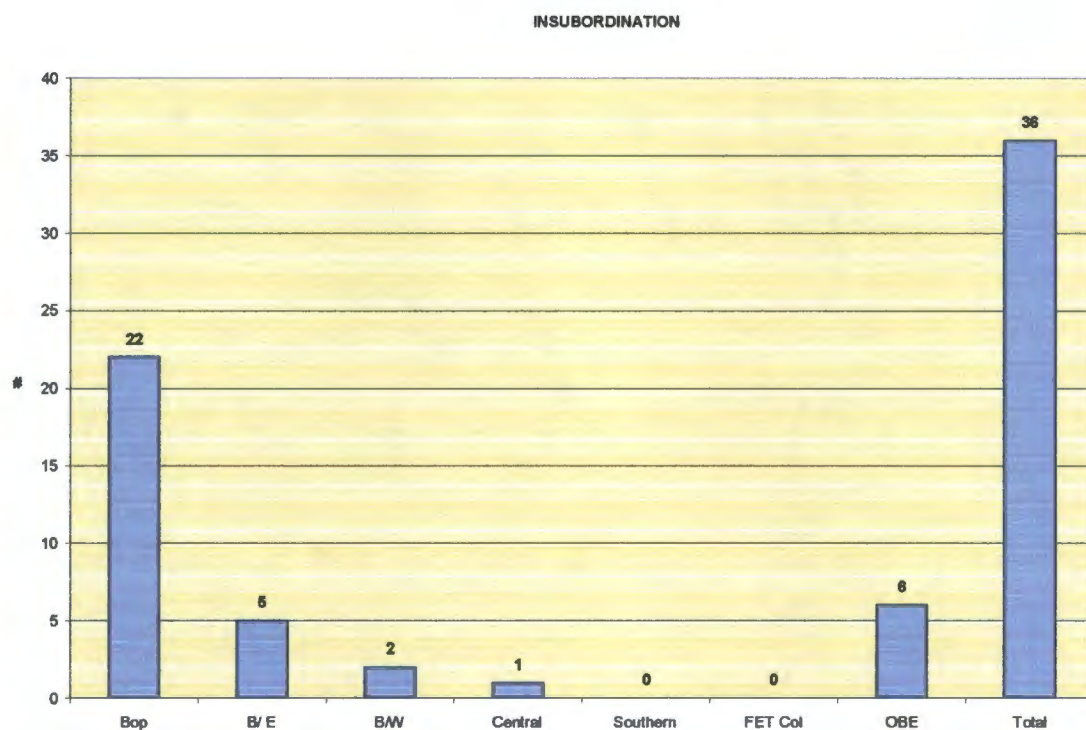


Figure 4.1.6 illustrates insubordination cases in regions, F.E.T. colleges and Office based educators. The Bophirima region had the highest cases of insubordination with 22 cases, followed by Office Based educators with six cases, and Bojanala East region with five cases. The other regions range between one and zero. A total of 36 educators were charged with insubordination in the North West Department of Education between 2001 and 2006

Figure 4.1 7 Poor Work Performance

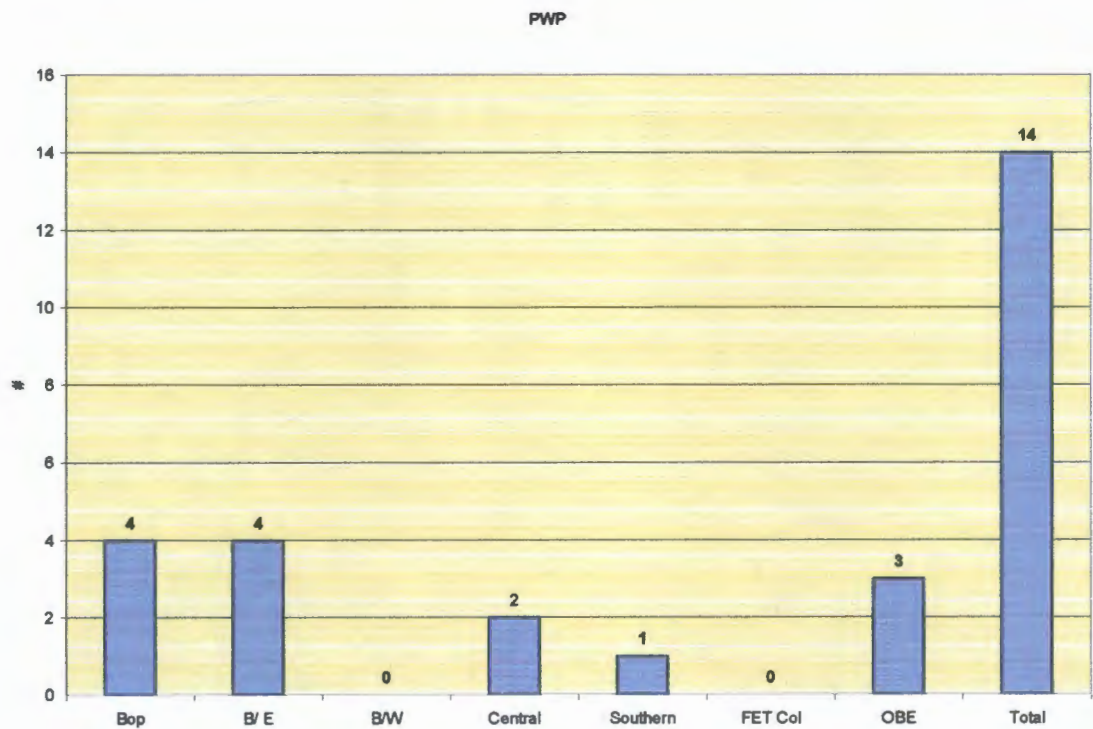


Figure 4.1.7 illustrates poor work performance cases in regions, F.E.T .colleges and Office Based Educators. Bophirima region and Bojanala region had the highest cases of poor work performance with four cases each. The provincial analysis indicates that very few educators were charged with poor work performance which is a good picture. A total of 14 educators were charged for poor work performance in the North West Department of Education between 2001 and 2006

Figure 4.1 8 Theft

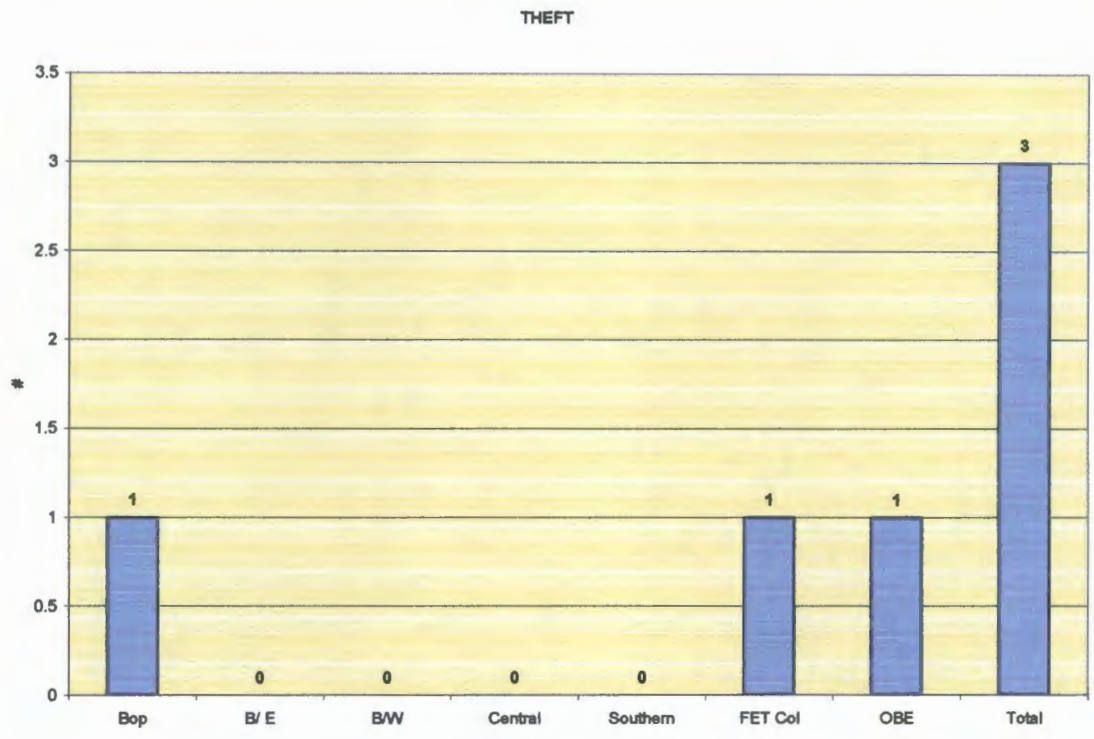


Figure 4.1.8 illustrates theft cases in regions, F.E.T. colleges and Office Based Educators. The above graph indicates that only three educators were charged with theft in the North West Department of Education between 2001 and 2006. This data shows that educators are disciplined with regard to taking other people and school properties without permission or with the intention of stealing.

Figure 4.1.9 Drug abuse

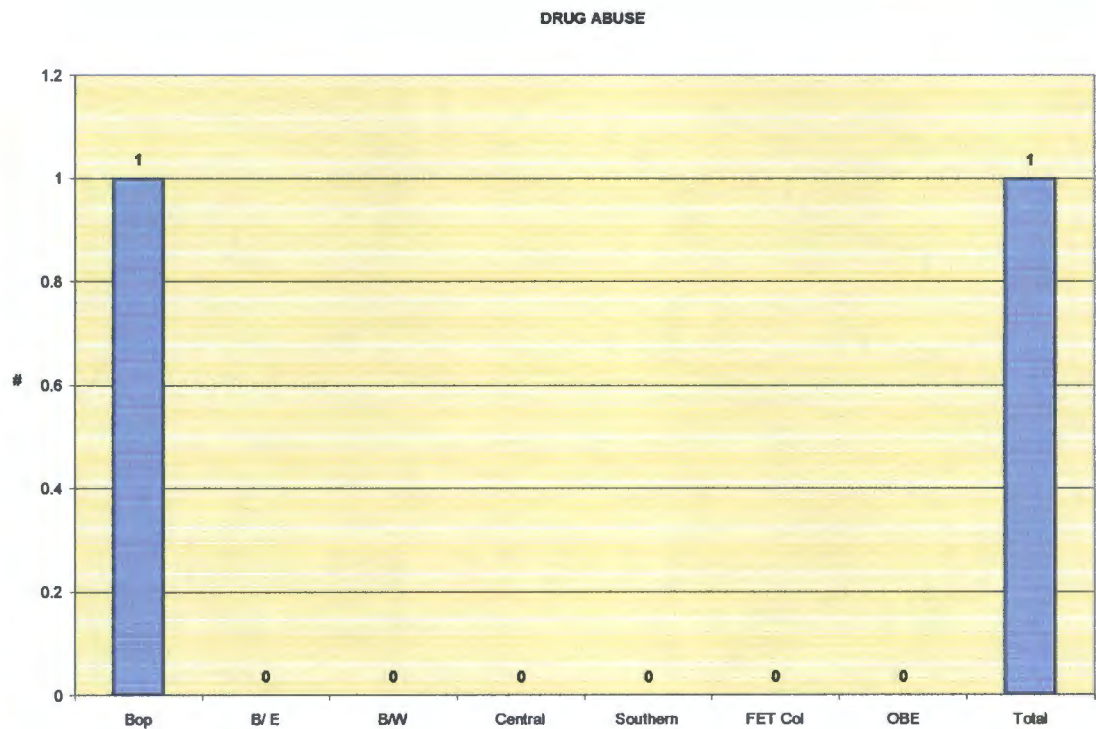


Figure 4.1.9 illustrates drug abuse cases in regions, F.ET. colleges and Office Based Educators. Only one educator was charged for drug abuse in the North West Department of Education between 2001 and 2006. The analysis indicates that educators do not abuse drugs.

Figure 4.1.10 Victimization and intimidation

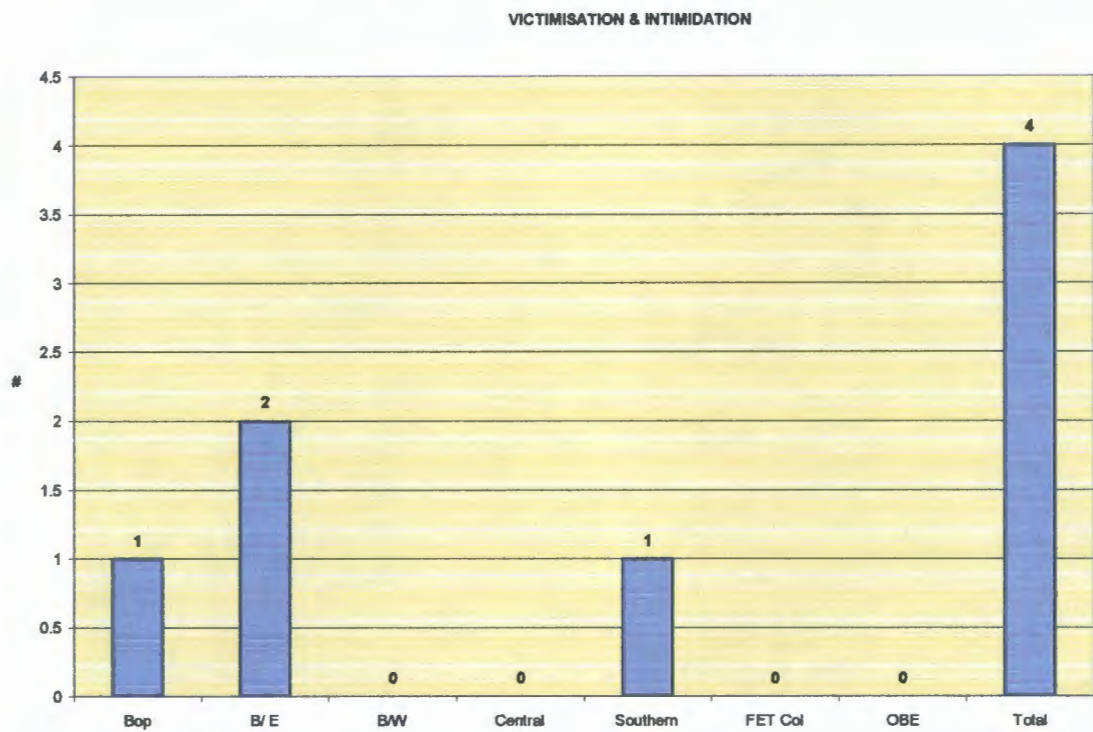


Figure 4.1.10 illustrates victimisation and intimidation cases in region, F.E.T. colleges and Office Based Educators. Victimization and intimidation is not prevalent in the North West Department of Education. Only four educators were charged with victimization and intimidation between 2001 and 2006. Therefore the study shows that educators are not likely to victimize or intimidate learners and colleagues.

Figure 4.1.11 General misconduct

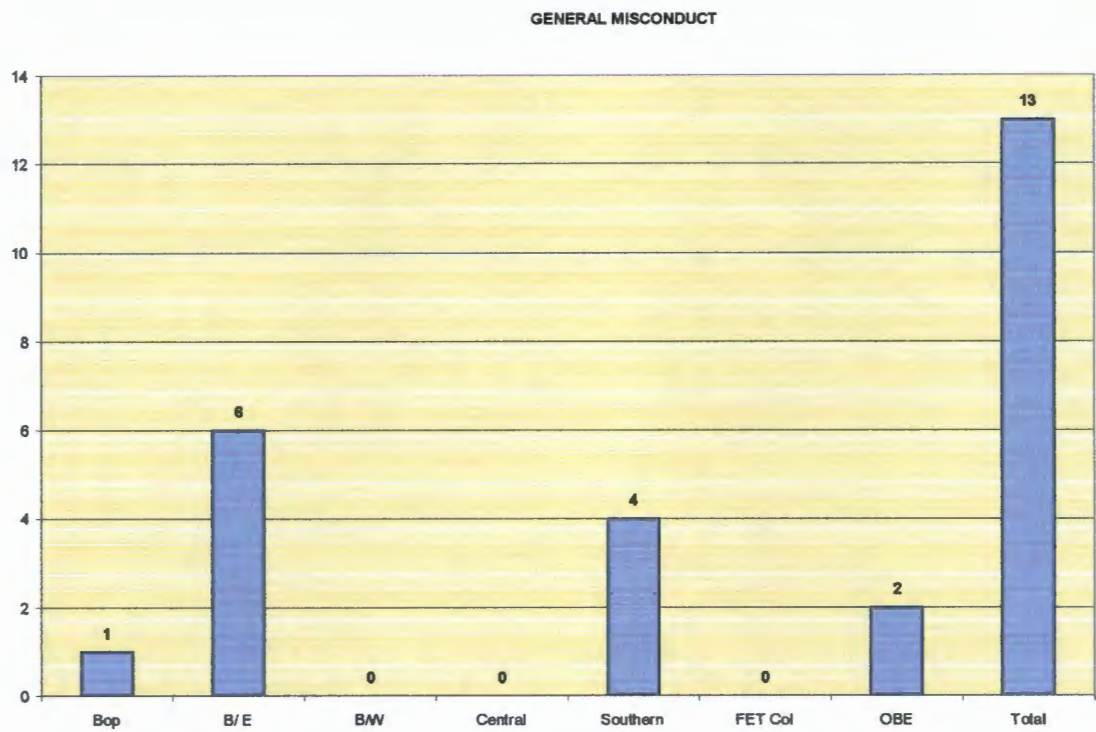


Figure 4.1.11 illustrates general misconduct cases in regions, F.E.T. colleges and Office Based Educators. Bojanala East region has the highest cases of general misconduct with six cases, followed by Southern region with four cases. General misconduct refers to cases such as using departmental vehicle for private matters without permission or doing other work for extra income without permission. A total of 13 educators were charged with general misconduct in the North West Department of Education

**NWU
LIBRARY**

Figure 4.1.12 Dishonesty

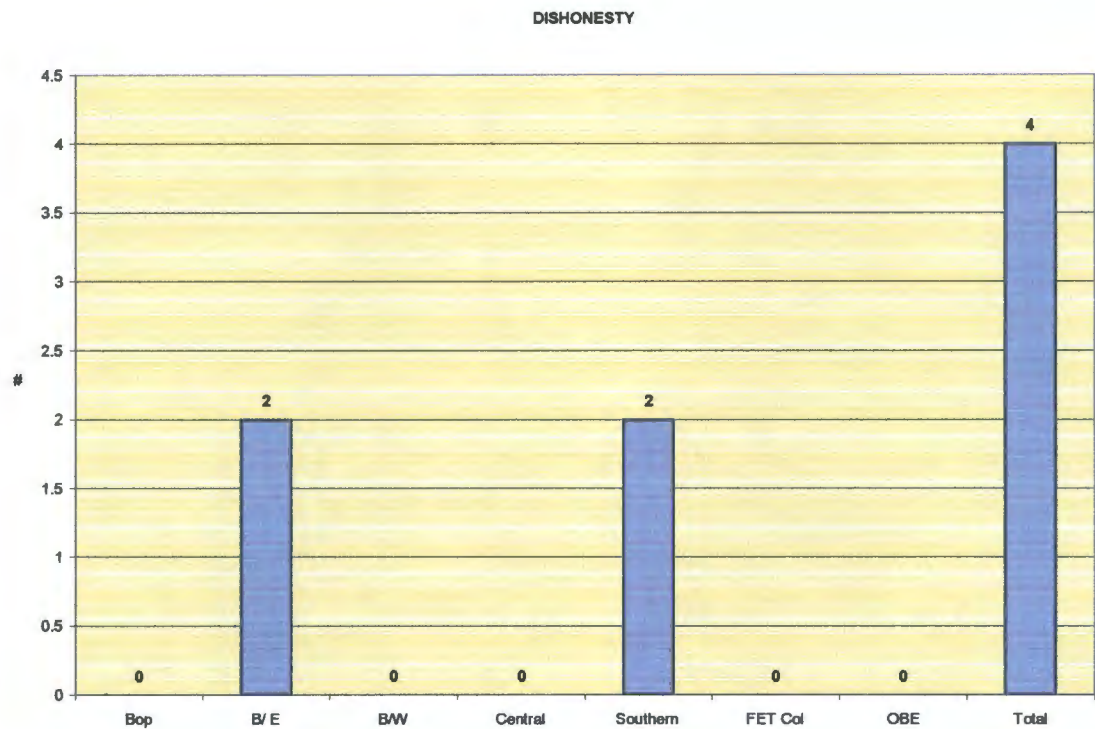


Figure 4.1.12 illustrates cases of dishonesty in regions, F.E.T. colleges and Office Based Educators. Only four educators were charged with dishonesty between 2001 and 2006 in the North West Department of Education in Bojanala East region and Southern region, other regions did not have cases of dishonesty. Dishonesty refers to cases such misrepresentation of oneself in his/her curriculum vitae for appointment purposes or deliberately misrepresenting the Department to the advantage of oneself.

Figure 4.1.13 Dereliction of duty

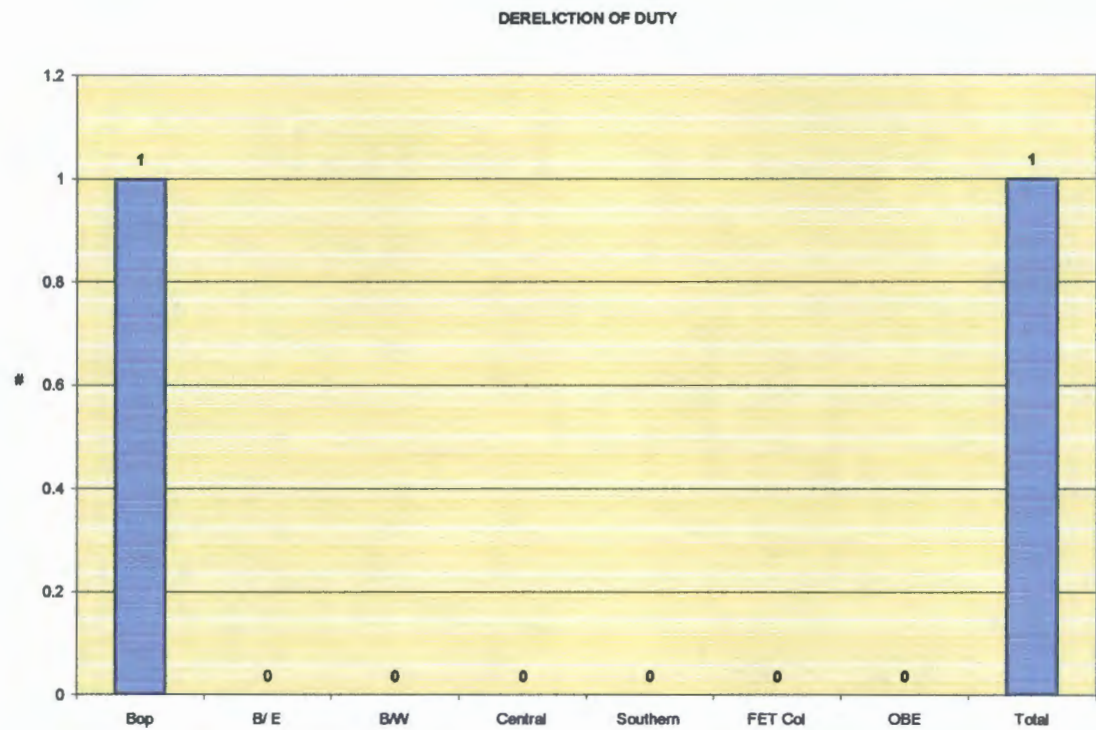


Figure 4.1.13 illustrates cases of dereliction of duty in regions, F.E.T.colleges and Office Based Educators. Only one educator was charged with dereliction of duty in the North West Department of Education between 2001 and 2006. This implies that educators in the province are honest and very careful not to neglect their duties.

Figure 4.1.14 Assault

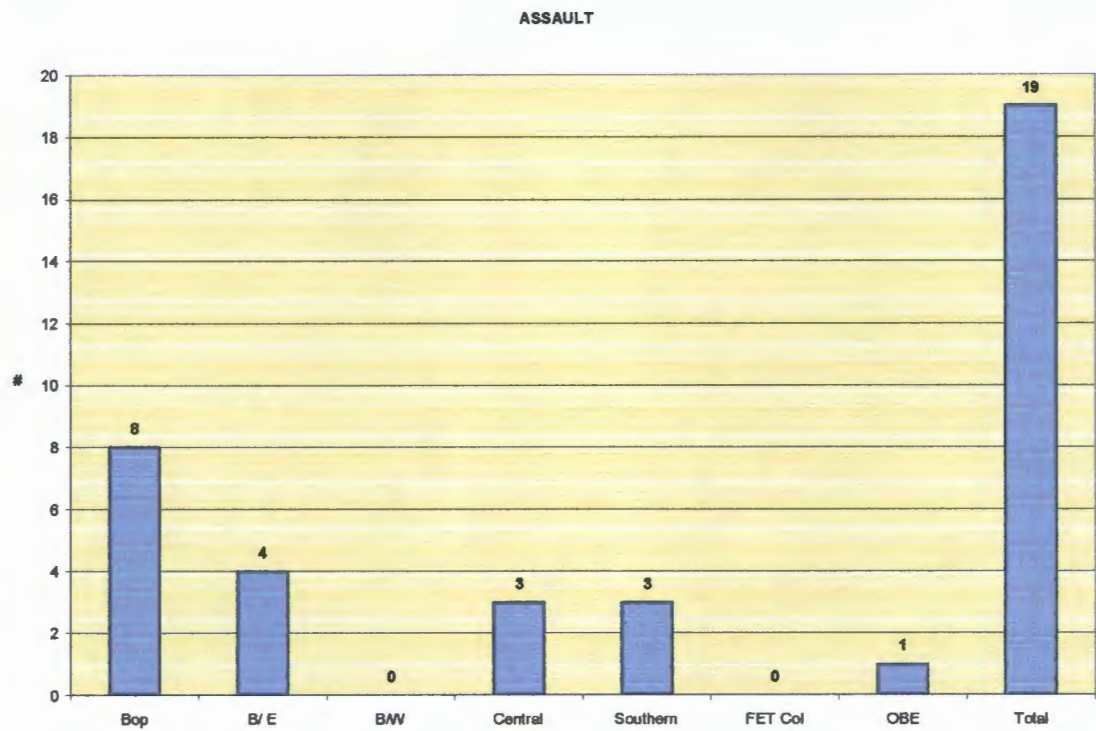


Figure 4.1.14 illustrates cases of assault in regions, F.E.T. colleges, and Office Based Educators. A total of 19 educators were charged with assault in the North West Department of Education between 2001 and 2006. Most of these cases its when educators assault learners in the process of disciplining them. Educators must be trained on alternative measures of disciplining learners without assaulting them. There are rare cases when an educator assault-educator.

Figure 4.1.15 Bophirima region

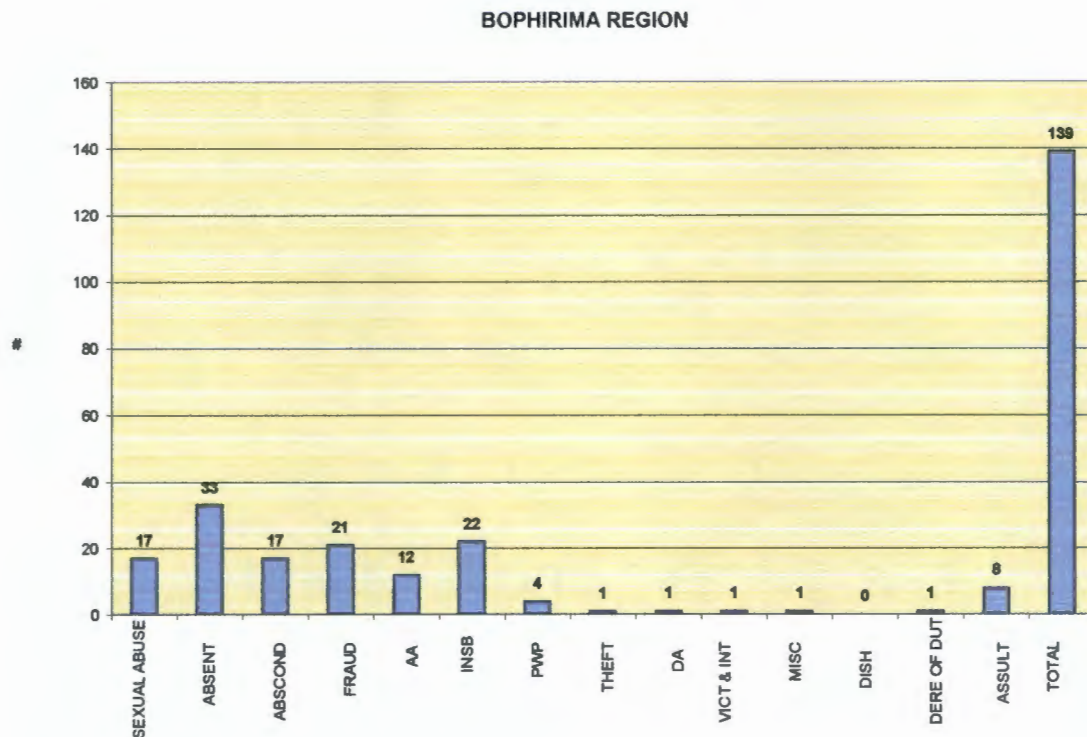


Figure 4.1.15 illustrates all types of transgressions committed in Bophirima region. The above graph indicates that Bophirima region has serious disciplinary problems. A total of 139 transgressions were committed by educators in the Bophirima region, mainly absenteeism, insubordination, fraud, sexual abuse, abscondment and alcohol abuse. Unethical behavior is very common in the region, and might be as a result of the region being predominantly rural. Labour relations, Employees Assistance programmes are needed to address these problems.

Figure 4.1.16 Bojanala East region

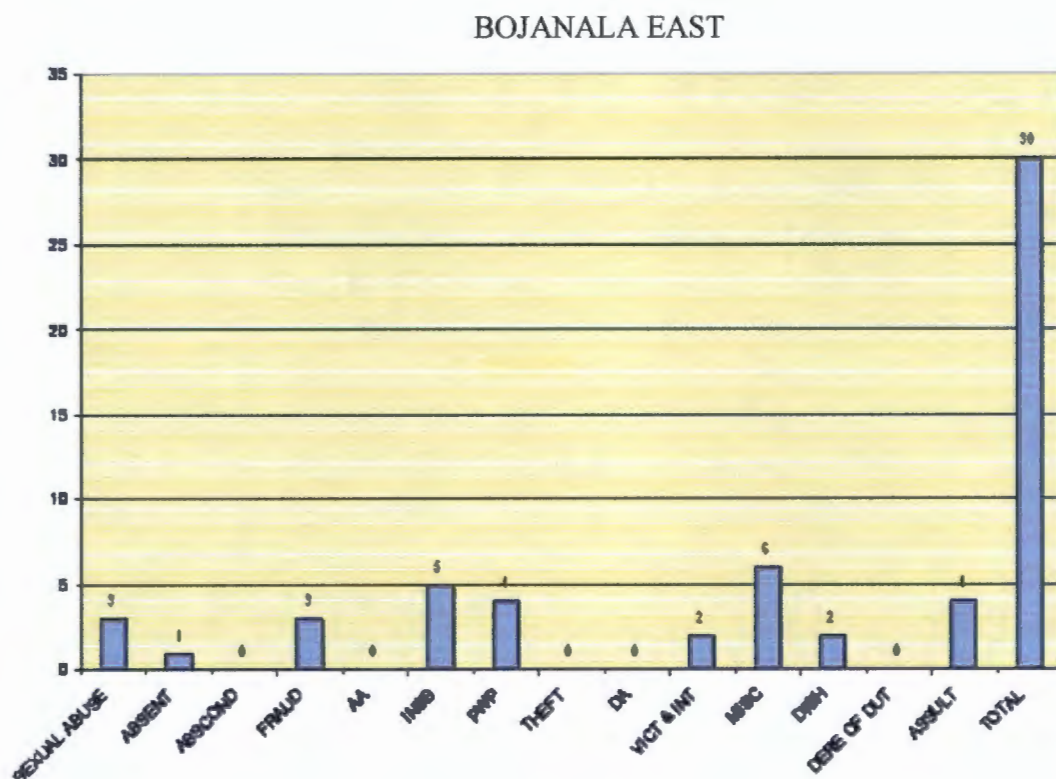


Figure 4.1.16 illustrates all types of transgressions committed in Bojanala East region. There are 30 transgression committed in Bojanala East region between 2001 and 2006, mainly general misconduct, insubordination and assault. General misconduct refers to cases where employees are ill-disciplined for example misuse of school properties like vehicles, furniture and buildings without authorisation. These cases occur when there are no rules on the use of vehicles, furniture and buildings at school.

Figure 4.1.17 Bojanala West

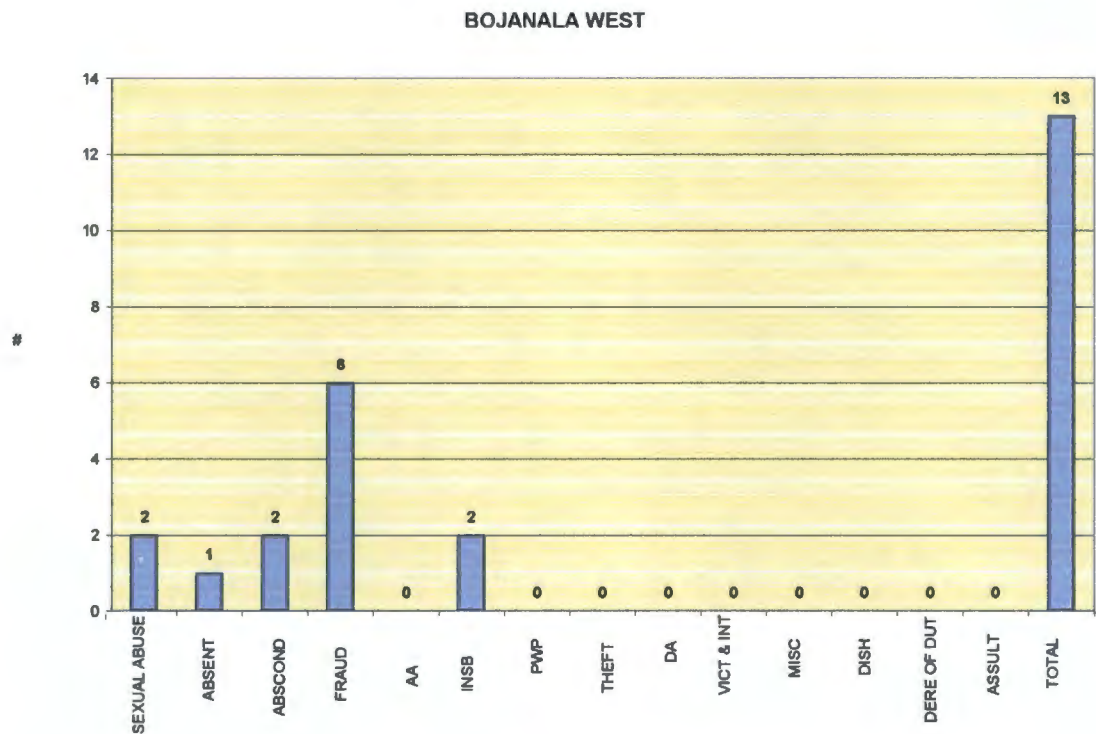


Figure 4.1.17 illustrates all types of transgressions committed in Bojanala West region. The most common five transgressions are fraud, sexual abuse, abscondment and insubordination. Financial management skills are needed to combat fraud and avoid mismanagement of funds by school managers and school governing bodies.

Figure 4.1.18 Central region

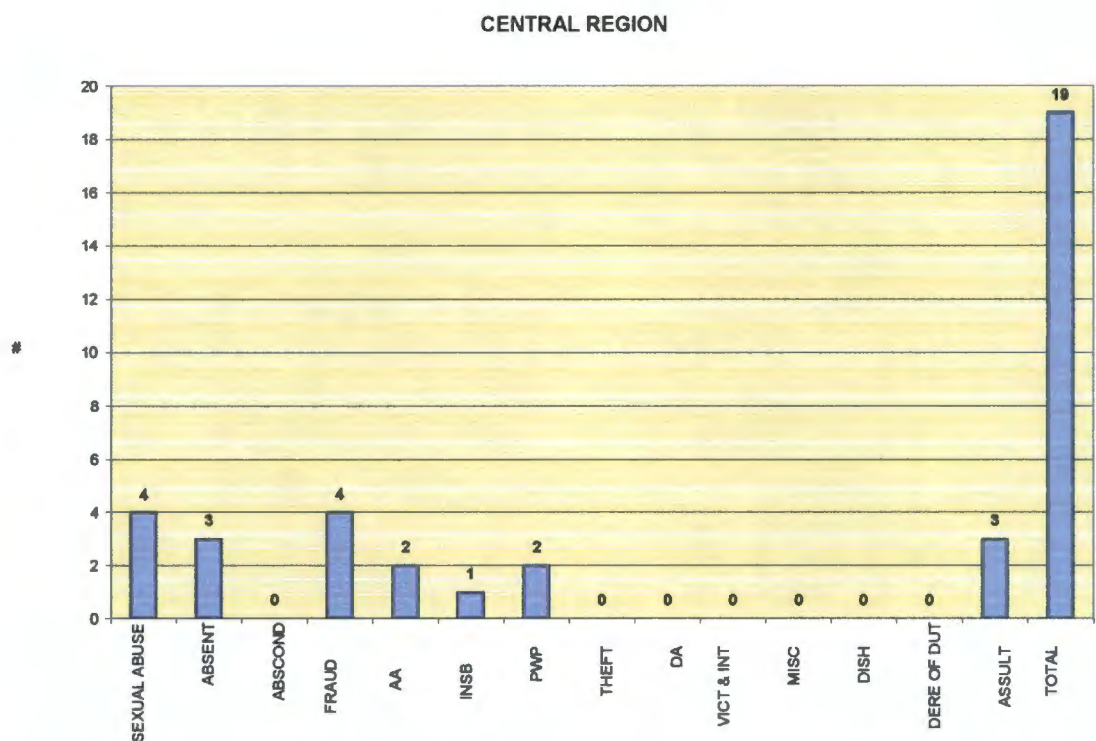


Figure 4.1.18 illustrates all types of transgressions committed in the Central region. The Central region has mainly sexual abuse, fraud, absenteeism, and assault reported offences. About 80% of the Central region schools are also in rural areas, which might also be the cause of such transgressions. Labour Relations and Employee Assistance Programmes must also focus in this region.

Figure 4.1.19 Southern region

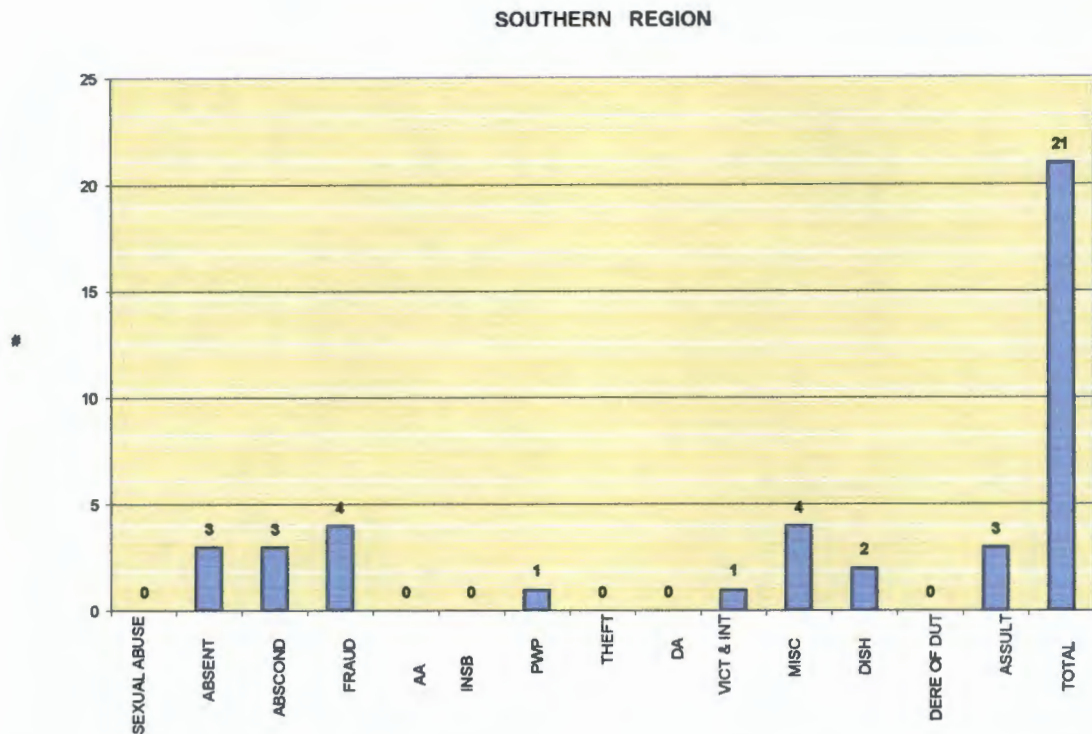


Figure 4.1.19 illustrates all types of transgressions committed in Southern region. General misconduct, fraud, absenteeism, abscondment and assault are the main offences in the Southern region. Although there are different types of offences, they are very minimal with the highest type of misconduct being four (4) between 2001 and 2006. This indicates that in the whole there are very few ill-disciplined educators in the Southern region.

NWU
LIBRARY

Figure 4.1.20 Office Based Educators

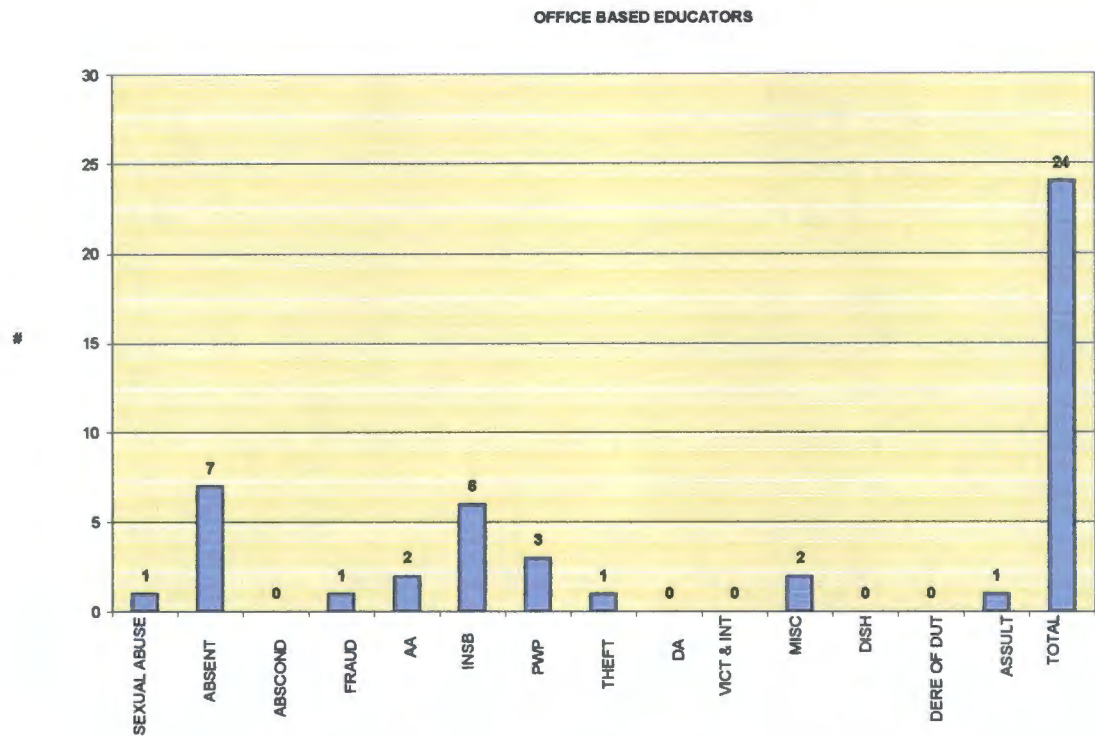


Figure 4.1.20 illustrates all types of transgressions committed by Office Based Educators. Absenteeism and insubordination are the main offences in Office Based Educators. This may result from the fact that most Office Based Educators do not reside with their families at their work stations. They are therefore tempted to be absent most of the time when they visited their families during weekends. They sometimes extend their leaves or long weekends.

Figure 4.1.21 F.E.T. colleges

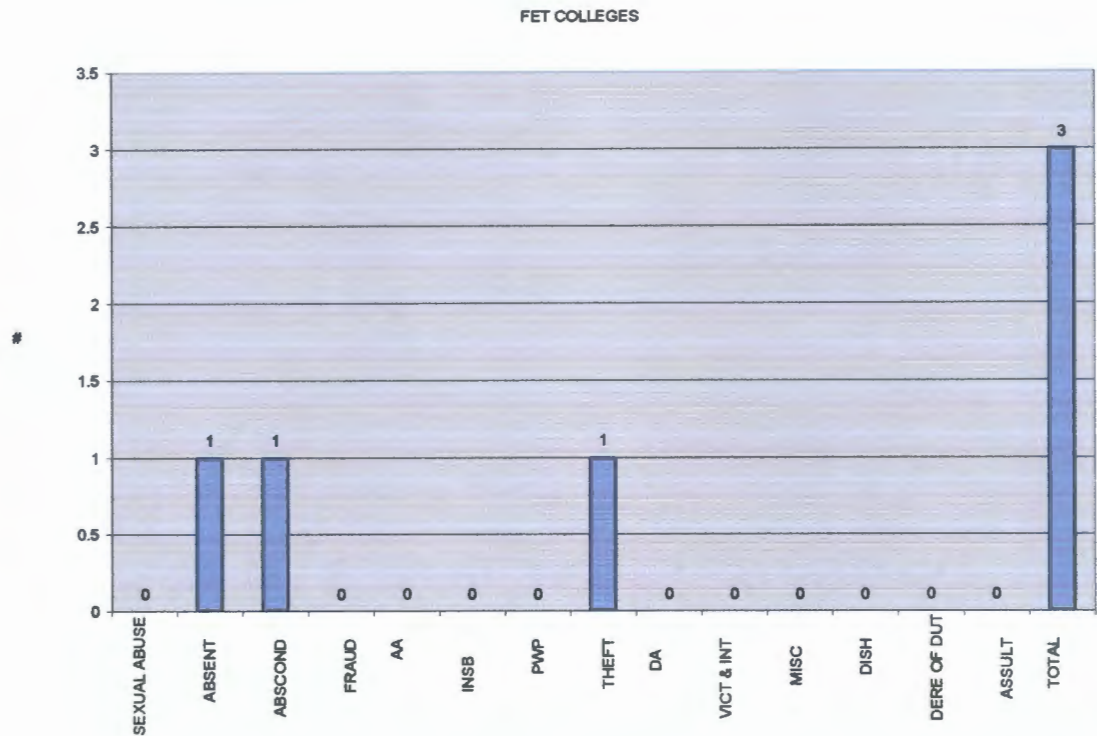


Figure 4.1.21 illustrate all types of transgression committed by F.E.T. college educators. The figure indicates that educators at FET Colleges are disciplined with only three (3) transgressions between 2001 and 2006. This might be attributed to the fact that educators at these institutions are most at the middle ages between 30 years and 40 years, therefore they are matured and responsible.

Figure 4.1.22 Total offences

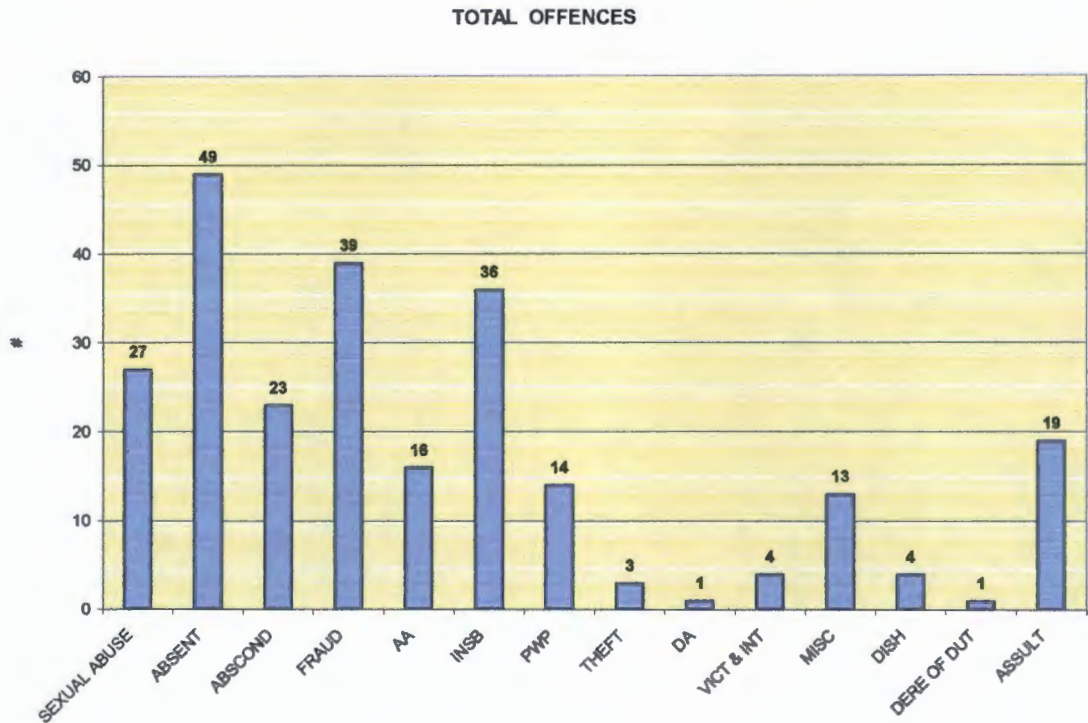


Figure 4.1.22 illustrates total number of transgressions and type of transgressions committed by educators. The graph above indicates that absenteeism, fraud, insubordination and sexual abuse are the most high transgressions committed in North West Department of Education between 2001 and 2006.

Table 4.1.1 Total offences per region

REGION	SEXUAL ABUSE	ABSENT	ABSCOND	FRAUD	AA	INSB	PWP	THEFT	DA	VICT & INT	MISC	DISH	DERE OF DUT	ASSULT	TOTAL
Bop	17	33	17	21	12	22	4	1	1	1	1	0	1	8	139
B/ E	3	1	0	3	0	5	4	0	0	2	6	2	0	4	30
B/W	2	1	2	6	0	2	0	0	0	0	0	0	0	0	13
Central	4	3	0	4	2	1	2	0	0	0	0	0	0	3	19
Southern	0	3	3	4	0	0	1	0	0	1	4	2	0	3	21
FET Col	0	1	1	0	0	0	0	1	0	0	0	0	0	0	3
OBE	1	7	0	1	2	6	3	1	0	0	2	0	0	1	24
Total	27	49	23	39	16	36	14	3	1	4	13	4	1	19	

Key

- Bop – Bophirima Region
- B/E – Bojanala East Region
- B/W – Bojanala West Region
- FET Col – Further Education and Training Colleges
- OBE – Office Based Educators

Table 4.1.1 illustrates the total number of transgressions committed by educators in the North West province between 2001 and 2006.

4.2 Conclusion

This chapter analysed each transgression per region and transgressions in each region. The findings are that Bophirima region had the most offences in each type of transgression compared to other regions. It also come out that that absenteeism, fraud, insubordination and sexual abuse are the most high transgressions committed in North West Department of Education between 2001 and 2006

Chapter 5: Findings, conclusions and recommendations

This chapter reflects on the findings and conclusions of the study. It also makes recommendations of what processes and procedures that must be put in place in order to curb and avoid ill-discipline of educators in schools. Recommendations of how to deal with the most common transgressions are provided.



5.1 Findings

The study revealed that most educators who commit transgressions are young and unmarried, they get tempted to fall in love with school girls irrespective of their age. Section 17 (1) (c) of the Employment of Educator Act, 76 of 1998 forbids educators to be sexual involved with learners. In most rural communities alcohol and schoolgirls are the only social activities for these educators. Educators end up being alcoholics and impregnant school girls.

Poor socio-economic conditions in some communities leads to school girls allowing themselves to be abused by educators in return to socially uplifting themselves.

Some principals take advantage of the low level of education of the School Governing Bodies and misuse school funds thinking that they would not be caught.

Poor and stressful working conditions in schools lead to educators abusing alcohol. Most educators especially in rural areas are not aware of their disciplinary regulations and procedures. Employee Assistance Programmes are not provided for educators who are in need of such programmes, counseling, advise on social problems, and motivation during stressful times. Lack of sports and educational facilities also leads to learner sexual abuse and alcohol abuse by educators because they are bored after school and find the aforementioned as the only activities to keep them busy. Educators who do not further their studies are most likely to have disciplinary problems due to the lack of knowledge and failure to foresee what might be the outcome of their actions such as losing a job or being arrested. Management particularly Directorate Labour Relations and Employee Assistance Programmes do not ensure that all the relevant information such disciplinary regulations and procedures, available EAP programmes are cascaded and disseminated to all schools to ensure that educators have the knowledge of what to do when confronted with such problems. Absenteeism and abconedment is caused by daily indulgence in alcohol. The latter problem also leads to serous financial problems because educators salaries ends up in alcohol debts. Financial problems causes to stress and leads to problems such as insubordination, assault of learners or colleagues, theft and other related problems.

5.2 Recommendations

5.2.1 Managing Absenteeism and Abscondment effectively

The Labour Relations Handbook Revision Service 15, 2006 suggest the following Strategic Approach to Absenteeism Management

5.2.1.1 Consult management and employee representatives. Every endeavour should be made to ensure the parties agree on the broad approach to be followed

5.2.1.2 Audit the current situation: Management should consider the following:

- Asses the absenteeism rate and the forms of absenteeism contributing to the rate
- What illness occur most frequently in particular areas of the organization?
- Assess what is causing absenteeism in each Department
- Consider ergonomics assessment to cover lighting, acoustics, proper air circulation, nutrition, sufficient desk and storage space and colour schemes
- Assess the process of recording absenteeism/attendance information. How is information captured? Is the information accurate?
- What is the cost of absenteeism? (Both direct and indirect costs)
- What reports are generated? How are these reports used?
- How do managers understand their responsibility for absenteeism management and how do they apply themselves to the task?
- What training is provided to new and existing managers?
- How do employees perceive their responsibility in respect of absenteeism? The assessment should also cover levels of job satisfaction perceived on employment and the current stage. Factors impacting on job satisfaction should be reviewed.
- What training /literature/induction do staff receive?

This audit will require interviews/assessments with personnel or administration Department, line managers and employee representatives. All employees could be asked to complete a questionnaire on key areas. It might be advisable that this audit is conducted by an independent consultant to ensure that information is objectively assessed and no internal bias is placed on the process. After the audit provide feedback to management and employee representatives

Prepare a strategy for the Management of absenteeism to include:

- The implementation of an accurate “Absenteeism Monitoring System”
- The development of a clear Absenteeism and leave policies and procedures

- A clear process of ongoing training of managers to ensure the effective implementation of the absenteeism and leave policies/procedures in line with the organisation's expectations

5.2.2 Dealing with Insubordination

Landis and Grossett, 2005:183 suggest the following process in dealing with insubordination:

- Fair procedure must be followed. (Disciplinary code, Code of Good Practice: Dismissal)
- Liaise with Human Resource Department/accountable manager
- Investigate the facts
- Suspend the employee with pay, if necessary, pending the outcome of the Disciplinary Enquiry
- Establish the appropriate charge
- Undertake relevant internal administrative arrangements
- Give notification of the Disciplinary Enquiry to the employee
- Compile evidence(documentation, affidavits, statements, witnesses)
- Hold the enquiry

5.2.3 Dealing effectively with Sexual Abuse

The Code of Good Practice on Sexual Abuse entails the following guiding principles:

Employers should create and maintain a working environment in which the dignity of employees is respected. A climate in the workplace should also be created and maintained in which victims of sexual harassment will not feel that their grievances are ignored or trivialised, or fear reprisals. Implementing the following guidelines can assist in achieving these ends:

- (a) Employers/management and employees are required to refrain from committing acts of sexual harassment.
- (b) All employers/management and employees have a role to play in contributing towards creating and maintaining a working environment in which sexual harassment is unacceptable. They should ensure that their standards of conduct do not cause offence and they should discourage unacceptable behaviour on the part of others.
- (c) Employers/management should attempt to ensure that persons such as customers, suppliers, job applicants and others who have dealings with the business, are not subjected to sexual harassment by the employer or its employees.
- (d) Employers/management are required to take appropriate action in accordance with this code, when instances of sexual harassment which occur within the workplace are brought to their attention.

This code recognises the primacy of collective agreements regulating the handling of sexual harassment cases, and is not intended as a substitute for disciplinary codes and procedures containing such measures, where these are the subject of collective agreements, or the outcome of joint decision making by an employer and a workplace forum. However, collective agreements and policy statements should take cognisance of and be guided by the provisions of this code.

5.2.4 Recommendations

Create a conducive working environment for employees and employers, if working conditions are not conducive employees are tempted to do things that would lead to misconduct, for example if they are overloaded they can be depressed and resort to alcohol, absenteeism, insubordination, dishonesty.

All employees must be taken through an induction training that will expose them to all labour legislation that affects them, for example Labour Relations Act, 66 of 1995, Basic Conditions of Employment Act, 75 of 1997 all Codes of Good Practice, Constitution of Republic of South Africa, 108 of 1996. Departmental Policies and legislation, Employment of Educators Act, 76 of 1998. South African Schools Act, 84 of 1996 South African Council for Educators Act, 31 of 2000, and National Education Policy Act, 27 of 1996. Employers must ensure that new appointees are inducted and introduced to the main body of performance and behavioural standards as well as to what constitutes misconduct as soon as possible after having assumed duty. The importance of this lies in the fact that the employees, on accepting the appointment and thus also the service contract, undertake to subject themselves to, inter alia, the organisation's disciplinary code. Such a disciplinary code is, however, only given substance to once the standards have been laid down and disciplining can only take place once the employee has been made aware of these standards.

Management must ensure all employees are aware about the rules, regulations and acts governing their employment. It is also recommended that each educator must be given a file with all these Acts, regulations and policies for easy access at all times.

There should be a code of conduct for educators in every school, and educators must participate fully in developing the code of conduct. The code must be developed from the South African Council for Educators (SACE) which also stipulates the conduct for learners, parents and the community. Audit misconduct cases in schools on regular basis.

Publicise sanctions meted against offenders to show that the Department is serious about disciplining offenders. There should be active Employee Assistance Programmes in every cluster of schools to ensure that employees with social problems are assisted before they get destroyed and commit offences.

There should be creative ways of keeping educators in rural areas busy after work, activities such as games, schools competing against each other, educators teams also involved, athletics activities at the beginning of the year, winter games, and summer games, afternoon classes towards the end of the year to ensure educators complete the syllabus, educational programmes organized by the Department to improve the knowledge and skills of educators .Employers should promote safety and health in the workplace through information, education, and training programmes on the physical and psychological effects of alcohol and drug use. These programmes should be directed at all employees. The information, education and training programmes should include the following information:

- General and specific workplace laws and regulations on alcohol and drugs
- Suggested steps to prevent such problems from occurring, and
- Services available to assist the employees both within and outside the workplace. This will include information on assessment and referral services, counseling, treatment and rehabilitation.

Capacity building workshops for parents, learners, school governing bodies and educators on financial management, role of each stakeholder in the school and community, the rights of learners, rights and responsibilities of educators and parents.

Advocacy and campaigns against drug abuse, child abuse, alcohol abuse, sexual relations between educators and learners should be held every year in each community and school.

The labour relations officials of the Department should also be visible to ensure that they guard against and prevent any misconduct case by ensuring that employees know the do's and don'ts of their employment relations. Labour relations officials should not only be seen when there is misconduct committed.

5.2.5 Conclusion

Management in each institution and office should create a corporate culture in which employees are free to raise their problems with management and be assisted and advised. Employees should be motivated, encouraged and be ambitious to succeed in their careers, motivated and ambitious employees do not commit offences.

Bibliography

Basson, A.C, Christianson, M.A. Garbers,C. Le Roux, P.A.K. Mischike C, Strydom, EML. 2005.Essential Labour Law. 4TH edition.Creda Communications. Cape Town

Chipidza,C.2006.Public Service Law Handbook Revision Service 5:Juta & Co

Commission for Conciliation Mediation and Arbitration: Information Sheet-March 2002

Ehlers, L.2006.Labour Relations Study Guide. North West University

Ehlers, L. 2007. Labour Relations, Systems, Procedures and Practices. First Edition. EAMS Publishing. Pretoria

Ehlers, L.2006.Human Resources Management. CD-ROM. North West University

Ehlers, L. 2003. Law of Evidence. Unpublished course notes

Erasmus ,B.J. and Van Dyk, P.S.2001.Training and Development in South Africa.2nd Edition. Oxford University Press. Cape Town

Grogan J, 2005. Workplace Law.8th edition. Juta & Co. Cape Town

Grogan, J, 2005. Dismissal, Discrimination and Unfair Labour Practices. Juta & Co. Cape Town

Glober,P. Warnich,S. Carrell, M.R.Elbert N.F. Hatfield, R.D.2006.Human Resources Management in South Africa.3rd edition.Thomson Learning. London

Israelstam,I.2004.Labour for Managers: Practical Handbook. Fleet Street Publications

Landis, H. and Gosset L.2005. Employment and the Law: A Guide for the Workplace.2nd edition. Juta & Co. Lansdowne

Mouton, J. Marias, H.1998. Basic Concepts in Methodology of the Social Research. Pretoria. HSRC

Nchundu, J. and Shumba, A. 2001. The Nature and frequency of reported cases of teacher perpetrated child abuse rural primary schools in Zimbabwe. 2001. University of Botswana. Gaborone.

Pons,A and Deale, P . Revision Service 15 of 2006.Labour Relations Handbook. Juta & Company. Cape Town

Republic of South Africa. Education Law and Policy Handbook. Kenwyn: Juta & Co

Republic of South Africa. Transverse Manual: Disciplining Educators and Non-Educators (Department of Education): Pretoria. Government Printers

Republic of South Africa. 1995 Labour Relations Act 66, Guiding Principles s37,s187,s188 Procedure for Dealing with Poor Performance. Pretoria.Gvernment Printers

Republic of South Africa. 1997 Basic Conditions of Employment Act 75, Termination of Employment. Pretoria. Government Printers

Republic of South Africa. 1998. Employment of Educators Act 76. Pretoria. Government Printers

Republic of South Africa. 2000. South African Council for Educators Act 31.Code of Professional Ethics. Pretoria. Government Printers

Rossow, J. and Conradie, B. 1999.A Pratical Guide to Unfair Dismissal In South Africa. Butterworth. Cape Town

Robbins, S.P. 2001. Organisational Behaviour.9th edition. New Jersey. Prentice Hall
Robbins, SP. Odendaal, H. and Roodt, G. 2004. Organisational Behaviour: Global

and South African Perspective. 4th edition. Pearson Education. South Africa

Swanepoel, B. Erasmus, B. Van Wyk, M. Schenk H.2001. South African Human

Resources Management: Theory and Practice.2nd edition. Cape Town .Juta & Co

White, C.J. 2003. Research Methods and Techniques. Pretoria Technikon. Pretoria