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www.easpublisher.com**Original Research Article****A Review of the Challenges in the Implementation of Disciplinary Rules and Regulations in Organizations in Kenya****Nicholas Enos Otieno Bodo**

School of Business, Laikipia University, Kenya

*Corresponding Author

Nicholas Enos Otieno Bodo

Article History

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Abstract: Implementation of Discipline in organizations in Kenya has and continues to be a challenge for most institutions. Hardly a week goes by without an article in the newspapers regarding individuals taking organizations to court or the Labour and Employment Court issuing judgments against organizations for wrongful termination. Organizations therefore end up spending much needed time and resources in compensating former employees who make claims against them. Organizations spend resources to recruit, train and develop employees so as to enhance their skills and capacities. To enable these organizations attract and retain qualified personnel any eventual separation should not be acrimonious or in the public domain. Employee discipline may focus on fostering productivity or ensuring compliance with policies or controlling behavior. All Organizations in Kenya undertake some form of Human Resource Management and disciplinary policies and practices are contained in either a Code of Regulations or Human Resource Manual. Whereas many public institutions have developed their rules and regulations, recent media reports show that the implementation of disciplinary processes has led to court cases. The study reviewed two daily newspapers published in Kenya that reported rulings and court cases on labour related matters for a period of 8 months. The study was guided by research questions relating to the number of times the two newspapers reported court cases on Labour matters and what was the nature of the dispute and whether the reported disputes affirm the need for better implementation of disciplinary rules and regulations. The study examined the collected data to make inferences. Subsequently, the refined data was analyzed and presented in tables. The reported cases were analyzed and categorized into Labour relations; Employment relationship; and discipline. The study established that 11 out of the 27 reported cases related to employment relationship; 14 out of the 27 reported cases related to labour relations; and 2 out of the 27 reported cases related to disciplinary issues. The study concludes that the culture within an organization plays a pivotal role in the manner in which organizations practice the disciplinary process. Organizations in Kenya should therefore ensure that in handling disciplinary matters the issues of procedural justice, due process and ethical decisions are adhered to in order to reduce the number of challenges to disciplinary action that has been taken. This will save the Exchequer funds and private resources used to defend court cases and the resultant litigation fees and in some cases Court Awards.

Keywords: Labour, organization, dispute**Introduction**

Implementation of Discipline in organizations in Kenya has and continues to be a challenge for most institutions. Hardly a week goes by without an article in the newspapers regarding individuals taking organizations to court or the Labour and Employment Court issuing judgments against organizations for wrongful termination. Organizations therefore end up spending much needed time and resources in compensating former employees who make claims against them. McDermott and Keating (2011) define Human Resource Management as the management of people at work, both as individuals and collectively, as well as the management of work itself. The concept of discipline is wide, however the Oxford Advanced

Learners Dictionary (2010) defines discipline as the practice of training people to obey rules and orders and punishing them if they do not. Further, Farham (2002) suggests that discipline at work incorporates concepts of self-discipline, peer discipline and managerial discipline.

Organizations spend resources to recruit, train and develop employees so as to enhance their skills and capacities. To enable these organizations attract and retain qualified personnel any eventual separation should not be acrimonious or in the public domain. Supervision of staff and the discipline of employees has been and continues to be a challenge to many supervisors. Authors such as Franklin and Pagan (2006)

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contend that every day first-line supervisors are confronted with employee behaviors that do not comply with the letter or the spirit of what the organization expects its employees to do and how that work is to be done.

Employee discipline may focus on fostering productivity or ensuring compliance with policies or controlling behavior. Belohlav (1985) contends that making and keeping people productive is the function of a disciplinary process. Werther and Davis (1993) argue that discipline is a management action to encourage compliance with organizational standards. On the other hand Robbins (1994) suggests that the term refers to actions taken by a manager to enforce the organization's standards and regulations. Greer and Labig (1987) are of the view that it is an important, but distasteful function in almost every manager's job as he or she attempts to control undesired behavior in the work place.

Concept of Employment Relationship

An employment relationship is created through a contract of employment, according to the Employment Act, 2007 Laws of Kenya. A study by Nyaencha (2014) contends that an employment relationship is created through a contract of employment, which is a common law concept. The nature of the employment contract establishes legal rights and obligations of the employer and employees. He further states that the sources of employment relationship in Kenya include: Statutes; Collective bargaining agreement; Implied terms established by common law; International Labour Organization (ILO) Conventions; Government Policy considerations; Court decisions: The Industrial Court of Kenya or its predecessors particularly precedent setting powers of the High Court and other Superior Courts; and the Constitution of Kenya, which in Article 41(1) establishes that every person has a right to fair labour practices.

Once an employment relationship has been formed, the Employment Act, 2007 Laws of Kenya in Section 12 (1) (a) requires an organization to specify the disciplinary rules applicable to the employee or a document which reasonably specifies the rules, which should be accessible to the employee.

Labour Relations

The Labour Relations Act, 2007 Laws of Kenya relates to trade unions and trade disputes, to amongst others promote sound labour relations through the protection and promotion of freedom of association, the encouragement of effective collective bargaining and promotion of orderly and expeditious dispute settlement, conducive to social justice and economic development and for connected purposes.

The Labour Relations Act, 2007 defines both a contract of service and collective agreement and spells out the requirements for both. Harris et al. (2007) and West et al. (2006) contend that it is acknowledged that human resource management (HRM) plays a central role in supporting service delivery and change implementation. However labour or Industrial Relations (IR) which are the rules and processes that govern the employment relationship and work relations, also have a critical role to play.

Concept of Discipline in Organizations

Though considered to be sensitive in many organizations, the handling of disciplinary matters should be based on the principles of procedural justice, due process and ethical decisions.

Procedural justice refers to the fairness of the procedures used to make Human Resource decisions. Procedures are considered to be fair if they are consistent across employees and other persons over time.

Due process in management refers to the procedures followed in the determination of a disciplinary process in order to enhance fairness. Due process should take into account prior warning, timeliness, stipulation of charges, consistency and right of appeal.

Ethical decisions refer to the conformity to moral standards or to the conduct of a given profession, usually referred to as professional ethics.

Buttel (1974) suggested that discipline is necessary when an employee violates one of the rules. He further stresses that the process must be well-thought out and fair. The rules should be clearly defined and within the knowledge of the transgressor. Further, a study by Dessler (2015) contended that a fair disciplinary process is built on three pillars namely: Rules and Regulations; A system of Progressive Penalties; and an Appeals Process.

Statement of the Problem

All Organizations in Kenya undertake some form of Human Resource Management and disciplinary policies and practices are contained in either a Code of Regulations or Human Resource Manual. Whereas many public institutions have developed their rules and regulations, recent media reports show that the implementation of disciplinary processes has led to court cases. This leads to organizations unnecessarily paying claims for termination or separation with employees.

The fair implementation of the stated rules and regulations will lead to few court cases and save public institutions related costs of cases. This study therefore aims at highlighting challenges of discipline in organizations in Kenya.

Literature Review

Implementation of disciplinary procedures has been of interest to many researchers. The Human Resource concepts of the employment relationship, labour relations and the issues relating to discipline in organizations have been researched on by a number of scholars. The linkage of many of the studies to organizational culture in disciplinary issues is an area that needs further consideration.

Concept of Employment Relationship

Organizations engage employees to perform tasks in order to enable the organization achieve its objectives and goals. The nature of the relationship between employers and employees as alluded to earlier is through a contract of employment. The implied common law duties in an employment relationship as suggested by Upex *et al.* (2006) include;

- Employee obligations; good conduct. Any misconduct would lead to employer sanctions such as dismissal;
- Employee obligation; Obedience to the instructions of their employer, if they are reasonable and lawful; and
- Employee obligations; Exercise of due care and skill.

Klingner and Nalbandian (2003) suggested that the psychological contract governing the relationship between employee and employer helps one to understand expectations and behaviors—tangible as well as intangible—that occur when supervisors face problems relating to discipline. Further, Klingner (1980) contends that “Procedures are developed to . . . ensure equity of disciplinary and grievance actions by both parties”. In addition, authors such as Ban (1995) and Kaufman (1960) suggest that fostering equity in treatment can prevent a demoralized workforce and a resultant loss in productivity. Nalbandian, (1981) also notes that supervisors may resist the assessment of subordinates and utilization of the discipline system, progressive or positive, given the difficulty of adequately expressing the performance contract and the desired results and job-related employee behavior.

According to Argyris, (1964) the use of sanctions and rewards may help to explain variation in disciplinary actions. There can be inadequate incentives or even disincentives that affect motivation to perform the work as expected. Barnard (1938) described

sanctions and rewards as basic factors in inducing individuals to work. Argyris (1964) argued that these will reinforce described activities and increase control over individual behavior.

According to P. B. Clark & Wilson, (1961) the rewards and penalties can be tangible and intangible. Those that relate directly to the work performed will be more robust. Organ (1987) documented the influence of cultural expectations when someone handles subordinates too harshly and is assigned to the penalty box - a meaningless job at the same level but in an undesirable location.

Labour Relations

Labour Unions have a role to play in the disciplinary process of Union members. According to Klingner, (1980) In organizations with a union presence and collective bargaining agreements, uniform disciplinary practices are vital to ensure that supervisors handle cases consistently across time, increasing the likelihood that disciplinary actions will be upheld in grievance and, ultimately, arbitration actions.

The importance of following the procedures prescribed in the organizational Human Resource Manuals cannot be underrated. Author such as Kearney and Carnevale, (2001) suggest that adhering to formal discipline policy is important because it ensures that supervisors are abiding by relevant laws and collective bargaining agreements. Such adherence can also be helpful in justifying disciplinary actions in grievance and arbitration processes. According to a study by Wheeler (1976), the vast majority of cases going through the grievance and appeal processes are related to disciplinary issues and problem employees. As Klingner (1980) pointed out, “Procedures are developed to . . . ensure equity of disciplinary and grievance actions by both parties”.

Further, Franklin and Pagan (2006) state that an empirical study of public and private firms finds that organizations with a union presence do, in fact, have greater consistency. This is explained, in part, because the disciplinary system is made more transparent as supervisors carry a portable copy of the collective bargaining agreement. Furthermore, Pagan (1998) concludes that managers, human resource department personnel, and the union representative place high emphasis on abiding by the collective agreement.

Concept of Discipline in Organizations

Discipline in organizations will enable the easier attainment of the strategic and set objectives. Authors such as Edwards and Scullion (1982) and Gaertner and Gaertner (1984) contend that norms on discipline are shaped in practice by a whole range of informal practices, and supervisors may select informal

approaches because their organization’s culture supports them over formal approaches of dealing with employee discipline. Ban (1995) supported this statement when she pointed out that “managers learn by watching . . . and seeing ‘how things are done’ in their organizations. Their decisions are also based . . . on what is valued in their organizations”.

Greenberg and Baron (1995) opine that disciplinary actions taken in organizations vary greatly, and formal and informal methods, such as written warnings and off-the-record discussions between supervisors and subordinates, are widely employed. However, Bellizzi and Hasty (2000) suggest that at times similar or identical behaviors are met with different disciplinary actions and, in some cases, the cause of the differential action is tied to the personal characteristics of the subordinate. The application of rules and disciplinary actions discriminately creates opportunities for employees to question the fairness of processes and indicates a lack of standards by an organization.

Further, Argyris, (1964) states that the use of sanctions and rewards may help to explain variation in disciplinary actions as there can be inadequate incentives or even disincentives that affect motivation to perform the work as expected. Barnard (1938) described sanctions and rewards as basic factors in inducing individuals to work. Argyris (1964) argued that these will reinforce described activities and increase control over individual behavior. Organ (1987) documented the influence of cultural expectations when someone handles subordinates too harshly and is assigned to the penalty box - a meaningless job at the same level but in an undesirable location. Outsiders

may view this as another job rotation; however, insiders know that the benched supervisor is temporarily “out of the game”.

Research Questions

The study was guided by the following research questions:

- How many times have the two newspapers reported court cases on Labour matters and what was the nature of the dispute?
- To what extent do the reported disputes affirm the need for better implementation of disciplinary rules and regulations?

Research Design

The study reviewed two daily newspapers published in Kenya that reported rulings and court cases on labour related matters for a period of 8 months.

Target Population and Sampling Procedure

The study targeted collecting information that was collected from newspaper reporting of Court cases and rulings in the Daily Nation and the Standard newspapers published in Kenya. The study reviewed the articles to note the nature of the dispute, the reasons given for the rulings.

Data Analysis and presentation

The study examined the collected data to make inferences. Subsequently, the refined data was analyzed and presented.

Finding and Conclusions

Findings

	Reported Dispute	Daily Nation	The Standard	Ruling
1	Termination due to indecent behaviour	1		Reinstatement
2	Strike by UASU lecturers	1	1	Declared Illegal/Unprotected
3	Strike by KNH Workers	1		Temporary stop
4	Strike by UASU Lecturers	1	1	Declared Illegal
5	Wrongful dismissal (ACK)	1	1	Reinstatement
6	Suspension (IEBC CEO)	1	1	Reinstatement
7	Dismissed Magistrate	1		Referred to Labour and Employment Court
8	Nonpayment of deductions UASU	1	1	Case on going
9	Vetting of Finance and Procurement staff	1	1	Suspended
10	Lower income and job groups of the 47 clerks of county assemblies.(SRC)	1	1	Revoked decision
11	Hiring of Cuban doctors by the national government	1		Case dismissed
12	Kenya National Union of Teachers (Knut) Sec Gen Removal	1	1	temporary injunction order
13	Removal KPA MD	1		Up held
14	62 former Kenya Air Force soldiers seeking compensation	1		Petition dismissed
15	Sexual assault and harassment NBK	1	1	Case on going

16	Nonpayment of terminal dues House help	1		Case on going
17	Scrapped the mandatory retirement age of parastatal chiefs	1		Suspended the directive
18	More compensation following their dismissal Town clerk	1		Case dismissed
19	Meru University of Science and Technology (MUST) to court for failing to honour a Collective Bargaining Agreement	1		Case on going
20	VCs, deputy VCs and principals who retire and resume teaching duties will be entitled to the same benefits they enjoyed when they served	1		Case up held
21	Non-Governmental Organizations Coordination Board chief executive	1	1	Case on going
22	Unfair termination House help		1	Damages awarded
23	Unfair termination Kenya Methodist University 60 of its employees whose contracts were terminated.		1	Reinstate and pay
24	Five former employees of the East African Portland Cement Company (EAPCC) failure to reinstate.		1	Ongoing
25	Illegal termination of security guard		1	Damages awarded
26	Dismissal 600 tea estate farm hands		1	Reinstated
27	Wrongful dismissal from Agha Khan University Hospital		1	Damages awarded

The study revealed that in the past 8 months 27 labour related disputes have been reported by the two daily newspapers. 10 out of the 27 reported cases were in the private sector and 17 in the public sector.

5 of the reported cases related to the implementation or negotiation of a Collective Bargaining Agreement. 2 of the reported cases related to accusations of sexual conduct. 6 of the reported cases

related to termination without due process. 2 reported cases related to nonpayment of dues on termination. 6 of the reported cases related to policy decisions. 3 of the reported cases related to strikes. 1 of the reported cases related to an appeal on dismissal, another 1 was on Compensation for dismissal and finally 1 cases was for higher Compensation. These are shown in the Table below.

Nature of Case	Number of Times Reported
Implementation or negotiation of a Collective Bargaining Agreement	5
Sexual misconduct	2
Termination without due process	6
Nonpayment of dues on termination.	2
Policy decisions	6
Strikes	3
Appeal on dismissal	1
Compensation on dismissal	1
Higher Compensation	1
Total	27

Nature of Case	Nature of dispute
Implementation or negotiation of a Collective Bargaining Agreement	Labour relations
Sexual misconduct	Discipline
Termination without due process	Employment relationship
Nonpayment of dues on termination.	Employment relationship
Policy decisions	Labour relations
Labour relations	Labour relations
Appeal on dismissal	Employment relationship
Employment relationship	Employment relationship
Higher Compensation	Employment relationship
Total	27

Concept of Employment Relationship

The reported cases were reviewed to establish how many related to employment relationship. 11 out of

the 27 reported cases related to employment relationship. The research has identified that the employment relationship created when an employer

engages an employee is governed by a contract according to Kenyan law. The nature of a contract is such that it places obligations on both parties to the contract. The contract will normally refer to other documents like the Organization's Human Resource Manual or its rules and regulations, which guide the behavior of employees in an organization.

Studies by authors such as Ban (1995); Ban, Goldenberg, and Marzotto (1982); Ban and Riccucci (1991); and Shafritz, Riccucci, Rosenbloom and Hyde (1992) state that written documents play a very important role in setting expectations regarding contracts and disciplinary practices in an organization. As described previously, each organization will have detailed policies and procedures outlining the steps of the discipline process. It was also noted that there is an increase in number of cases where an individual has employed another to work as a domestic worker but there is no employment contract in place.

Labour Relations

The reported cases were reviewed to establish how many related to labour relations. 14 out of the 27 reported cases related to labour relations. The research found that in organizations with Union presence and a Collective Bargaining Agreement in place, the Management and Union will normally document what constitutes an offence and the disciplinary process. However, in many of the reported instances neither of the two parties ensures that they follow the CBA before undertaking any industrial action. Pagan (1998) in an empirical study of public and private firms found that organizations with a union presence do, in fact, have greater consistency in application of disciplinary processes. This is explained, in part, because the disciplinary system is made more transparent as supervisors carry a portable copy of the collective bargaining agreement. Furthermore, managers, human resource department personnel, and the union representative place high emphasis on abiding by the agreement.

Concept of Discipline in Organizations

The reported cases were reviewed to establish how many related to disciplinary issues. 2 out of the 27 reported cases related to disciplinary issues. The research found that for a disciplinary process to be acceptable in an organization, it should be documented and seen to be applied fairly. What constitutes offences should be clear and the process should be applied fairly with an appeal process in place. Imundo, (1985) contends that it has been recognized that a systematic and formal transmission of organizational disciplinary standards is important for effective operations. Further, Kaufman, (1960) postulated that the structure of the organization may also influence employee discipline practices. When looking at structure, things such as the

lines of authority and span of control must be considered. Authority may be limited during a probationary period as superiors judge the qualifications of the employee.

Conclusions

The research concludes that the culture within an organization plays a pivotal role in the manner in which organizations practice the disciplinary process. Nalbandian (1981) contends that literature on organizational sociology suggests culture is a combination of formal and informal norms that create a psychological contract between employees and employers.

Authors such as Schein (1992) and Smircich, (1983) suggest that one can discern culture in any organization by looking for tangible and intangible cues. Tangible cues can be found in things such as the characteristics of the physical facilities; appearance of the employees and their workspaces; the structure of the organization; the formality and clarity of discipline manuals, rules, and processes; and the emphasis on management-related education and training. The intangible cues are more relationship based, as employees working in a group learn acceptable responses to problems they encounter according to Schein (1985). It is suggested from studies by Louis (1980); Seidman and Gilmour (1986); and Wanous (1980) that new employees learn culture after they enter the organization, and this learning process can continue indefinitely as the employee gains more experience and the organization's culture evolves over time.

Organizations in Kenya should therefore ensure that in handling disciplinary matters the issues of procedural justice, due process and ethical decisions are adhered to in order to reduce the number of challenges to disciplinary action that has been taken. This will save the Exchequer funds and private resources used to defend court cases and the resultant litigation fees and in some cases Court Awards.

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