

# SOUTH AFRICAN FOOTBALL ASSOCIATION

## DISCIPLINARY CODE AND GRIEVANCE PROCEDURE

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## **DISCIPLINARY CODE AND PROCEDURE**

### **1. PREAMBLE**

The purpose of this Code is to promote the objectives of the Labour Relations Act, Act 66 of 1995 as amended (“the Act”) and thus to provide for fair and equitable labour relations within the association. In accordance with the recommended Code of Good Practice contained in the Act, a premium is placed on both employment justice and on the efficient operation of business. While employees will be protected from arbitrary action, the Code entrenches the right of the Association to satisfactory conduct and work performance from its employees.

The association endorses the principle of corrective or progressive discipline, where appropriate. Disciplinary action therefore is any action initiated by management in response to unsatisfactory conduct by the employee. The main objective of this action is, in appropriate circumstances, to bring the employee back to acceptable standards of behaviour.

The Principles established in the Disciplinary Code and Procedure is merely guidelines and should not be interpreted as inflexible rules. They may, in appropriate circumstances, be deviated from and, in this regard, much will depend on the position occupied by the employee, his or her seniority, and the nature of the transgression.

### **2. UNDERLYING PRINCIPLES**

In order to establish this Disciplinary Code fairly and effectively, the following must be established within the Association:

- 2.1 Employees are expected to be familiar with the conduct and standards of performance which is expected of them and what the consequence will be should their behaviour not meet these required rules and standards. In this regard, the Disciplinary Code and Procedure must be communicated to employees on their commencement of employment with the Association.
- 2.2 In terms of consistency, the association should apply discipline in the way in which it has been applied to employees in the past and discipline should be applied equally to two or more employees who have committed the same offence or breached the required standards.
- 2.3 Flexibility requires that each case must be considered on its merits and that different forms of disciplinary action may be appropriate given the particular circumstances of the case.
- 2.4 The Disciplinary Code and Procedure is not a substitute for the good management of employees, and should not replace informal corrective measures applied in the day to day running of the Association.

### **3. DEFINITIONS**

In this Code:

- 3.1 “Chief Executive” – means – the Chief Executive Officer of the Association;
- 3.2 “Director” – means – any person engaged in a managerial capacity of a business unit by the association;
- 3.3 “the Association” – means – **THE SOUTH AFRICAN FOOTBALL ASSOCIATION**

## **A. DISCIPLINARY ACTION - MISCONDUCT**

### **4. DISCIPLINARY STAGES**

Any member of management may give an employee under his control a warning.

#### **4.1 Disciplinary Procedure**

It is not necessary to conduct a formal hearing in order to give an employee a recorded verbal warning, or in certain cases of minor offences (refer Category A of Disciplinary Code), a written warning. The Chief Executive of the Association also has discretion as to when a formal hearing should be conducted.

All incidents giving rise to disciplinary action must be investigated prior to formal disciplinary action being taken.

No employee shall be dismissed without a disciplinary enquiry being held and the reasons provided to him/her in writing by the chairperson.

#### **4.2 Verbal Warnings**

In the event of minor misconduct on the part of an employee, the disciplinary action taken will be a verbal warning coupled with an instruction from the employee’s immediate superior to correct his/her behaviour or performance. Such warnings should be reflected on the employee’s personnel record, for evidentiary purposes only.

#### **4.3 Written Warnings**

A written warning is issued where conduct of an employee has not improved following a verbal warning, or where the nature of the misconduct requires that more severe disciplinary action than a verbal warning be taken. The employee should be given the opportunity of being heard, albeit informally, prior to a written warning being issued.

#### **4.4 Demotions / Disciplinary Transfers / Dismissals**

In the event of serious misconduct or repeated misconduct following a written warning or warnings, as a result of which any of the above penalties may occur, it is necessary that these offences be investigated in terms of a disciplinary enquiry.

#### **4.5 Procedure for issuing Verbal and Written Warnings**

- 4.5.1 The Director must inform the employee beforehand that he is allegedly guilty of misconduct and that he should respond thereto. If need be, a co-employee who is willing and able to assist the employee in the discussion should be present.
- 4.5.2 Before a warning is issued, the Director should consider the nature and seriousness of the breach of discipline as well as any appropriate or relevant issues.
- 4.5.3 Should the Director decide that a warning is an appropriate sanction, he shall issue this warning at the conclusion of the meeting. The form shall be signed by the Director issuing the warning, and he shall also request the employee and his/her representative to sign the form as an indication of having received the warning. If they decline to do so, the Director should call upon an independent witness to confirm that the warning has been issued. The Director should indicate on this warning form that the employee refused to sign for the warning.
- 4.5.4 The warning form shall be placed on the employee's personnel file and a copy shall be given to the employee.

#### **4.6 Validity of Warnings**

Warnings do not remain effective indefinitely, but have certain expiry dates:

- A recorded verbal warning is valid for six (6) months;
- A written warning is valid for six (6) months;
- A final written warning is valid for twelve (12) months.

While warnings will be invalid once the period of validity has expired, these warnings will be retained on file and may at a later stage be used to illustrate the general conduct, demeanour and attitude of the employee at the workplace.

## **5. DISMISSALS**

In terms of the Act there are three (3) types of dismissals:

- Dismissal for misconduct;
- Dismissal for incapacity – poor performance / ill-health;
- Dismissal for operational requirements (retrenchment).

This policy deals with dismissal for misconduct and poor performance.

## **6. CONDUCTING DISCIPLINARY ENQUIRIES AND DISMISSALS**

For a dismissal to be fair it must comply with the requirements in both procedural fairness and substantive fairness. This means that not only must the decision to dismiss be fair, but that it must also be carried out in accordance with fair procedure. A disciplinary enquiry must be convened in every case which may result in the employee concerned being dismissed or demoted.

## **7. PROCEDURAL FAIRNESS**

### **7.1 BEFORE THE ENQUIRY**

- (a) Management must ensure that the Association's Disciplinary Procedure and Code is complied with at all times;
- (b) The enquiry must be held within a reasonable period of the Association having discovered the alleged breach of the Association rules;
- (c) The employee must be advised of the allegations against him/her, giving reasonable particulars of the time, place and nature of the offence. He/she must also be given notice of the time date and place of the proposed enquiry;
- (d) The employee must be given sufficient notice of the charge in order to prepare for his/her case. This notification should allow for at least forty eight (48) hours to prepare;
- (e) The employee must be advised of his/her right to be represented by any other employee of his/her choice who is willing and able to represent the employee being disciplined, and his/her right to call witnesses. Persons who are not employed by the Association may not act as representatives;
- (f) Management must collect all the evidence necessary, to enable the matter to be dealt with fully at the enquiry;
- (g) The chairperson hearing the enquiry need not be an employee or member of the Association.

## **8. During the enquiry**

- 8.1 The person conducting the enquiry must ensure that all persons required to attend the enquiry are present, and he/she should arrange an interpreter to be used where necessary. The employee must be present throughout the enquiry, unless the employee elects not to attend or remain in attendance thereat, in which event the enquiry shall proceed in the employee's absence.
- 8.2 On convening the enquiry, the chairperson should confirm that the employee is aware of his/her basic rights at the hearing (e.g. the right to be represented, to question and call witnesses, etc).

- 8.3 The chairperson of the enquiry must explain to the employee and his/her representative the breach of the Association's rules which are alleged to have been committed by the employee. (i.e. the allegations which have been brought against the employee)
- 8.4 The person laying the charge will then be responsible for presenting the Association's case. All facts relating to the allegations against the employee.
- 8.5 Management may call witnesses to substantiate their statement of the case. Witnesses should be called in one at a time.
- 8.6 The chairperson may ask management or any witness questions, as he/she deems necessary.
- 8.7 The employee and his/her representative should be allowed to ask relevant questions of witnesses called by management.
- 8.8 The employee must then be allowed to state his/her case and call witnesses in support of his/her contentions. The chairperson in charge of the enquiry may question the employee or any of his/her witnesses. The same right is available to the person prosecuting the matter on behalf of management.
- 8.9 At the end of the hearing, the chairperson should come to a decision as to whether or not the employee is guilty of the alleged misconduct. The onus on a balance of probabilities of establishing guilt is on the Association.
- 8.10 The chairperson, having considered all representations and evidence tendered should explain the grounds for his/her decision.
- 8.11 Should it be determined that the employee is guilty of the charges laid against him/her, it is necessary to determine an appropriate penalty. The employee should be given the opportunity of presentation of any relevant information in mitigation and the Association should be given the opportunity of presentation of any relevant information in aggravation.

## **9. AFTER THE ENQUIRY**

9.1 The following factors should be taken into account:

- Any legal requirements;
- The employee's length of service;
- His/her past behaviour;
- The seriousness of the offence;
- The level of responsibility and authority of the employee;
- How similar offences have been treated in the past;
- The extent to which the problem had been caused by mismanagement or a lack of training;
- Any aggravating circumstances;

- All other relevant factors.

9.2 After hearing all factors in mitigation the chairperson should decide on an appropriate sanction and make the appropriate recommendation to the Chief Executive Officer who shall have the power to accept, reject or vary the recommendation. The disciplinary action to be imposed and the reasons thereof should be explained to the employee and his/her representative.

9.3 All stages of the enquiry must be correctly documented and an adequate record of proceedings must be kept.

9.4 The employee should sign an acknowledgement that he/she fully understands the nature of the disciplinary action taken against him/her. In the event of an employee refusing to sign, this must be recorded and witnessed by a third party.

## **10. RE-HEARING**

In the event of the chairperson ignoring the provisions of the Association's Disciplinary Code or should any form of additional evidence come to light which was unknown to the Association at the time the enquiry was concluded, the Chief Executive may direct that matter be re-heard by the same or another chairperson. In such event, the previous hearing shall be deemed to be null and void and any conviction determined in consequence thereof set aside.

## **11. SUBSTANTIVE FAIRNESS**

11.1 For a dismissal to be fair, the employee should normally have received previous warnings for misconduct, unless the misconduct in itself is so severe as to justify dismissal on the grounds that a continued employment relationship would be intolerable. It is impossible to list all the instances in which termination would be an appropriate sanction of the first offence, and each must be dealt with on its own merits, but generally all **Category C** offences would constitute sufficient grounds for termination.

11.2 The following is a guideline of types of disciplinary action to be issued in the event of misconduct.

11.3 This list of offences is not intended to be all-embracing and the Association reserves the right to discipline any employee for good cause though the specific offence may not be specified herein.

<b>NATURE OF OFFENCE</b>	<b>FIRST OFFENCE</b>	<b>SECOND OFFENCE</b>	<b>THIRD OFFENCE</b>	<b>FOURTH OFFENCE</b>
<b><u>CATAGORY A</u></b>				
Arriving late or leaving early	Recorded verbal Warning	Written warning	Final written Warning	Dismissal
Not working to Standard	Recorded verbal Warning	Written warning	Final written Warning	Dismissal
<b><u>CATAGORY B</u></b>				
Malicious and Unfounded Gossiping	Recorded verbal warning	Written warning	Final written Warning	Dismissal
Spreading of Malicious Rumours	Recorded verbal warning	Written warning	Final written Warning	Dismissal
Use of abusive Language	Written warning	Final written Warning	Dismissal	--
Abuse of sick leave	Written warning	Final written Warning	Dismissal	--
Sleeping on duty	Written warning	Final written Warning	Dismissal	--
Absent from Work without permission/ Good reason	Written warning	Final written Warning	Dismissal	--



Failure to notify Management of Whereabouts During absence From work due To illness or Other reasons	Written warning	Final written Warning	Dismissal	--
Being rude to customers/clients	Final written Warning	Dismissal	--	--
Refusal/ failure To obey a Reasonable and lawful instruction	Final written Warning	Dismissal	--	--
Smoking in areas Not designated for Smoking	Final written Warning	Dismissal	--	--
Serious violation Of traffic Regulations While using the Association's vehicle	Final written Warning	Dismissal	--	--

Notwithstanding the above, management reserves the right in any instance to take more serious action if the severity of the offence is such that in the opinion of management such action is justified.

<b>NATURE OF OFFENCE</b>	<b>FIRST OFFENCE</b>
Gross Mismanagement	Dismissal
Dishonesty	Dismissal
Fraud / Deliberate falsification of Association records or information	Dismissal

Misappropriation of funds, permitting irregular/wasteful/fruitless Expenditure	Dismissal
Wilful damage to Association property of property of fellow employees or Clients	Dismissal
Wilful endangering of the safety of others	Dismissal
Physical assault on an employer, fellow employees, client or customer	Dismissal
Gross insubordination	Dismissal
Being under the influence of intoxicating substances whilst on duty, Drunkenness or drinking on duty	Dismissal
Brandishing dangerous weapons on Association premises or threatening Other employees with their life	Dismissal
Deliberate incitement of employees against management or each other	Dismissal
Intimidation	Dismissal
Desertion	Dismissal
Being in possession of illegal substances on Association premises	Dismissal
Gross negligence	Dismissal
Insolence	Dismissal
Unauthorized possession of the Association's, client's or any other person's Property	Dismissal
Bribery including attempt to bribe and acceptance of bribes	Dismissal

Unauthorized absence for more than four (4) days	Dismissal
Unauthorized disclosure of information	Dismissal
False evidence/declaration	Dismissal
Sexual harassment	Dismissal
Corruption	Dismissal
Engaging in an unprotected strike	Dismissal
Damaging property during a protected strike	Dismissal
Intimidation or assaulting employees during a protected strike	Dismissal

## **B. INCAPACITY**

### **12. POOR WORK PERFORMANCE**

In cases of poor work performance, for substantive fairness it is essential that prior to termination management establish the following:

- 12.1 Whether or not the employee failed to meet the standard of performance required.
- 12.2 In the event of the employee not meeting a required performance standard that:
  - 12.2.1 The employee was aware of, or could reasonably be expected to have been aware of the required performance standard;
  - 12.2.2 The employee was given a fair opportunity to meet the required performance standard; and
  - 12.2.3 Dismissal was an appropriate sanction for not meeting the required standard.

- 12.3 Having regard to the nature, seniority and responsibility of the position of the employee, these particular guidelines will be relaxed. Naturally, a higher performance standard is required of more senior employees who would be required to meet their objectives within a far shorter time period.

## **13. PROCEDURAL FAIRNESS RELATING TO POOR PERFORMANCE**

### **Termination**

Incapacity that is evidenced in the form of poor work performance should be differentiated from normal misconduct that is a breach of some rule or unacceptable behaviour. Poor performance relates to an employee's ability to perform in a position which could, for example, be determined by inadequate skills levels, lack of experience etc. The purpose of the procedure is therefore to establish the reasons why the employee is not performing to the required standard and then, secondly, to endeavour to find solutions to enable the employee to improve his performance within a reasonable time period and therefore meet the required standard.

The following procedure needs to be followed for a termination for poor performance to be considered fair:

- 13.1 The employee must be informed that he/she is not performing to the required standard. This will involve a process of clearly explaining to the employee what is expected of him/her and in what way his performance falls short of these requirements. This process is one of counselling and consultation. The employee should be entitled to representation and assistance by a fellow employee. The employee should further be given an opportunity to explain why he/she has not been able to reach the required standard of performance. Various factors to consider may be, for example, that training was deficient, that deadlines were unachievable, that fellow employees were withholding their co-operation, etc.
- 13.2 The employee should then be given the appropriate instruction, training, guidance and counselling in order to equip him/her to perform according to the required standards.
- 13.3 The employee should then be given a reasonable period of time during which to improve his/her work performance to meet the acceptable standards.
- 13.4 Following this reasonable period, the employee's performance should then be evaluated to objectively determine whether or not the standards have been met.
- 13.5 Should the employee continue to perform below these standards, the employee should be formally notified of the possibility or the likelihood of having his employment terminated should his performance not improve.

## **14. DISMISSAL PROCEDURE**

Once three (3) formal notifications of inadequate performance have been issued and, notwithstanding the Association's efforts to assist the employee in improving in the execution of his/her duties as set out above, there is no improvement on the part of the employee, a hearing should be convened at which the employee should:

- (1) Be advised of all aspects of his/her shortcomings in writing;
- (2) Be given an opportunity of replying to such allegations;
- (3) Be entitled to be represented by a co-employee who is willing and able to assist the employee.

Inasmuch as this hearing is viewed entirely separately and distinctly from a disciplinary enquiry, the requirements of a disciplinary hearing need not be reported to and the immediate superior of the employee may act as the chairperson.

I, \_\_\_\_\_, understand and accept the above disciplinary code.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness

Signed at Johannesburg on this \_\_\_\_\_ day of \_\_\_\_\_ 2015