

# LABOUR & EMPLOYMENT LAW

*A Practitioner's Guide*

## FAIR HEARING IN DISCIPLINARY PROCESS AT THE WORKPLACE



# FAIR HEARING IN DISCIPLINARY PROCESS AT THE WORKPLACE

By **Bimbo Atilola\***



**Bimbo Atilola**  
Lagos, Nigeria.

## 1.0 INTRODUCTION

Fair hearing, otherwise called the common law rules of natural justice is at the root of any disciplinary process at the workplace. The disciplinary powers of employers over their employees is long recognized in labour and employment law. These powers also include the right of an employer to impose sanctions on erring employees. These sanctions take different forms and may include written warnings and cautions, disciplinary suspensions, termination of employment and summary dismissal. The disciplinary powers of an employer must, however, be exercised in accordance with due process and within the confines of the law. Fair hearing is the cornerstone of every disciplinary process and a breach of it, however slight, renders the process and its outcome wrongful. This work examines the importance and dynamics of fair hearing in disciplinary process and offers some practice guides.

## 2.0 COMPONENTS OF THE RULES OF NATURAL JUSTICE

Fair hearing encapsulates the twin rules of natural justice namely;

- ***Audi alteram partem***: This is a latin phrase meaning “hear the other side”. According to this principle, no person should be judged without an opportunity to be heard.

- ***Nemo judex in causa sua***: This is a latin phrase meaning that no one shall be a judge in his own cause or a matter in which he has an interest. It is often referred to as the rule against bias.

## 3.0 FAIR HEARING IN DISCIPLINARY PROCESS

### 3.1 QUERY

A query is a written statement containing allegations of misconduct(s) against an employee and requesting him/her to provide explanations to exonerate him or herself of the allegations. The issuance of a query often kickstarts a disciplinary process at the workplace. It is the earliest opportunity an employee has to exonerate him or herself of allegations of misconduct. Often issued by the employee's line manager, supervisor or a designated authority, a query represents a minimum requirement of fair hearing in a disciplinary process. In practice, the same line manager or authority that issues the query determines whether or not the response is satisfactory. This common practice is a grave breach of fair hearing and ought to be avoided. The practice violates the principle of ***nemo judex in causa sua*** which is one of the twin pillars of the rules of natural justice. Where the person or authority that issues the query to an employee is the same person or authority that determines whether or not the response to the query is satisfactory, the person or the authority has become the 'complainant' and the 'judge' at the same time. The fact that this practice is widespread and age-long does not make it right. It is a practice that is tainted with bias and prejudicial to the employee issued the query. The ideal practice should be that where a manager issues a query to an employee, the merit or otherwise of the response to the query should be considered by another manager. A query also needs not take any form, what is important is that the memorandum or the written statement must disclose the allegations against the employee including a request for a response<sup>1</sup>

As noted earlier, issuance of a query represents the minimum requirement of fair hearing in disciplinary process at the workplace. The employer needs not proceed further to oral hearing in the form of appearance before a

---

<sup>1</sup> See ***Koomlong Miaphen v University of Jos Consultancy Ltd (2013) LPELR -21 904 (CA)***, ***Imonihke v Unity Bank Plc (2011) 12 NWLR (pt. 1262) 624 SC***.

Disciplinary Committee (DC) except where the company's disciplinary policy specifically provides for oral hearing before a DC or a disciplinary panel. A query affords an employee the opportunity to be heard, thus an employee may be validly sanctioned where the response to the query is found to be unsatisfactory.

The law is settled that fair hearing in a disciplinary process does not necessarily mean an oral representation before a DC or a disciplinary panel, a written representation by way of response to a query is sufficient<sup>2</sup>. Conversely, fair hearing does not necessarily mean a written representation, an oral representation before a DC is equally sufficient. However, where the Disciplinary Policy of the company or organisation specifically provides that the disciplinary process shall include an oral hearing before a DC, the procedure must be strictly followed otherwise the disciplinary process and the outcome will be wrongful. Every disciplinary process must also have an outcome which must be communicated to the employee involved. This outcome may be an exoneration from the allegation(s) or a verdict of guilty. It is prejudicial to an employee and also constitutes a breach of fair hearing to deny him/her the knowledge of the outcome of a disciplinary process commenced against him/her. Thus, where an employee is issued a query and he/she replies, there must be a determination on the allegation one way or the other by the appropriate authority. Similarly, where the alleged misconduct(s) is a subject of a formal investigation by the employer, the employee must be notified of the outcome of the investigation. A common practice where an employee receives no further information on the outcome of the disciplinary process commenced against him simply because his response to the query is found satisfactory or because the investigation report exonerates him is not only prejudicial to the employee but a breach of fair hearing. Similarly, where an employee is issued a query on allegation of misconduct(s), and he responds to same, he may only be indicted and sanctioned for the alleged misconducts he was confronted with in the said query. A disciplinary sanction meted to such employee based partly on other alleged misconducts not contained in the query he responded to breaches the employee's right to fair hearing and same is wrongful.

---

<sup>2</sup> See *Simon Ansambe v Bank of the North Ltd* (2005) 8 NWLR (pt. 928) 650, *Isong Udofia v Industrial Training Governing Council* (2001) 4 NWLR (pt. 703) 281, *Imonikhe v Unity Bank Plc* (supra)

In the same vein, where an employee appears before a Disciplinary Committee based on the allegation of misconduct(s), the Committee's findings must be limited strictly to those allegations only. A finding of the committee on any other allegation of misconduct outside those which the employee was afforded fair hearing will be wrongful.

### 3.2 INVITATION TO DISCIPLINARY COMMITTEE/PANEL

Most Disciplinary Policies provide for oral hearings especially in cases of allegation of serious or gross misconducts. Oral hearings in disciplinary matters take the form of invitation to a Disciplinary Committee (DC) or a disciplinary panel or authority set up by the organisation. Invitation to disciplinary hearings also affords an employee fair hearing in a disciplinary process. Every notice of invitation to a disciplinary hearing must disclose in clear terms the allegations against the employee for which he is being invited to attend a disciplinary hearing, the date, time and venue of the disciplinary hearing. It is also a good practice for a notice of invitation to a disciplinary hearing to disclose the relevant rights of the invitee in the disciplinary process such as the right to be accompanied by a colleague or an officer of the trade union he/she belongs (if applicable) including the right to call witnesses and tender documents in his/her defence. An employee invited to a disciplinary hearing must be given a reasonable time to prepare for his/her defence. What qualifies as a reasonable time will depend on the circumstances of the case such as the nature and gravity of the allegations and the distance between the location of the employee and the venue of the disciplinary hearing. In practice, most disciplinary policies provide for between 3 - 5 working days notice. A disciplinary committee must be constituted strictly in accordance with the organisation's disciplinary policy. Many organisations have a permanent Disciplinary Committee while some disciplinary policies provide for the inauguration a disciplinary committee on a case by case basis. Whichever is the case, it is important that every disciplinary committee must be constituted in such a manner as to guarantee its impartiality.

It will be a breach of fair hearing, for instance, to have as a member of the Disciplinary Committee, the officer who had earlier issued a query to the employee on the same alleged misconduct or an officer who had been part of the investigation team. This is because their membership of the DC portends likelihood of bias. A manager who issued a query or who was part of the investigation team that recommended that the 'accused employee' had a case to answer already have a mindset which may be prejudicial to the employee. Depending on the size of the organisation and its disciplinary policy, a disciplinary hearing may be conducted physically or on virtual basis. The proceedings must be reduced into writing and duly signed. It is a good practice to have a video coverage of a disciplinary hearing. The signed report of a disciplinary proceeding and the video recordings are valuable documentary evidence in the event that the employee challenges the disciplinary process and its outcome in Court.

### **3.3 APPEAL AGAINST THE OUTCOME OF A DISCIPLINARY PROCESS**

Disciplinary policies often provide for a right of appeal against a disciplinary outcome. The right of appeal may lie to an appellate committee or authority. Where an employee exercises his/her right of appeal against a disciplinary outcome, the appeal must be determined within the time prescribed by the disciplinary policy and the outcome duly communicated to the appellant. The appellate body or authority must not include the person who had issued a query on the subject matter allegation nor anyone who had been a member of the investigation committee or the Disciplinary Committee that sat on the matter. All these do have implications for fair hearing.

## **4 CONCLUSION**

Every employer has disciplinary powers over its employees. This power must, however, be exercised within the confines of the law. Fair hearing is at the root of every disciplinary process and a breach of it is fatal to the disciplinary process and its outcomes.

---