



NAPTOSA GUIDELINES ON GRIEVANCES

GENERAL AND PROMOTION GRIEVANCES

1. Definition of a grievance

- 1.1 A grievance is a real or imagined cause for complaint, especially unfair treatment.
- 1.2 It is also defined as an official statement of a complaint over something believed to be wrong or unfair.

2. What is a grievance in the workplace

- 2.1 It is a formal complaint that is raised by an employee towards and employer within the workplace.
- 2.2 In terms of the legislation a grievance is a "written complaint by an employee about action which his employer has taken or is contemplating taking in relation to him."

3. Types of Grievances

3.1 General Grievances

These complaints will include but is not limited to issues pertaining to transfer, working conditions, payment of wages / salaries, allowances, overtime pay, victimization, medical benefits, housing facilities, increments, granting loans, conditions of work, leave, seniority, safety measures, fines and inter-personal relationships.

4. Process to be followed in the lodging of a grievance

- 4.1 The grievance must be lodged by the aggrieved party (preferably) or by the members union representative on the prescribed form attached and submitted to the line manager in charge.
- 4.2 Time frames are important and must be strictly adhered to. The aggrieved employee should lodge the grievance as soon as he/she becomes aware that there is a grievance and should not exceed 90 days from the date and time on which the alleged grievance or grievances occurred.
- 4.3 The aggrieved employee should lodge the grievance with his or her line manager or the principal if the grievance involves the line manager.
- 4.4 In terms of Chapter H of PAM The employer should confer with the employee within 3 days of receipt of the grievance with the object of resolving the grievance and issue an outcome of to the Provincial Department of Education within 5 days of the resolution or non- resolution of the grievance.
- 4.5 Under normal circumstances and per procedures of the Gauteng Department of Education the employer has seven days in which to acknowledge receipt and to deal with grievance and 30 days to conclude with it as required by the Public Service Commission (PSC).
- 4.6 Should the employer fail to deal with the grievance to the employee's satisfaction the aggrieved employee may escalate the grievance to the next level. The levels are also specified on the form.

- 4.7 This would include the taking the grievance to the principal, cluster leader or the Discipline and Dispute Management (DDM) unit at the district level.
- 4.8 The referral form has been retyped for members and is attached on the website on Portable Document Format (PDF) for members to fill in and submit their grievance. This form will be filled in at each level that this grievance is taken to until it is resolved.
- 4.9 Should the grievance not be resolved it may be taken on dispute to the bargaining council. This has to be done within 90 days of the employee becoming aware of the grievance.

5. What Role does the Union Play in these Proceedings

- 5.1 The Union can be consulted on every aspect of the grievance you wish to lodge.
- 5.2 The representatives will provide you with advice, determine the prospects of success of your grievance and assist you with the filling out of the relevant documentation.
- 5.3 The Union may represent you in these grievance meetings if necessary. Representation could mean advising the member, speaking on behalf of you and even chairing meetings. You, as the aggrieved, are an active participant in these proceedings.

6. Promotion Grievances

6.1 Definition of a Promotion

A promotion is the elevation of an employee to a higher position within the organisation, accompanied by an increase in remuneration or benefits, stature and responsibility.

6.2 What is a Promotion Grievance

A promotion grievance is a grievance lodged by an applicant when an employer without any good reason does not promote a deserving employee when a promotion shortlisting and interview process takes place and a fair procedure has not been followed. A promotion grievance may not be lodged on the outcome of the shortlisting and interview process but rather on the substantive or procedural flaws that may have occurred during the process.

6.3 When should the Grievance be Lodged

- 6.3.1 A promotion grievance should be lodged within 5 working days or 7 calendar days of the date of the grievance or from the date the aggrieved became aware he/she has a grievance.
- 6.3.2 If the aggrieved does not lodge the grievance within the stipulated timeframe the employer has the right to dismiss the grievance for that particular reason.

6.4 How are Promotion Grievances dealt with

- 6.4.1 Promotion grievances are dealt with in terms of Collective Agreement 2 of 2005.
- 6.4.2 In terms of the collective agreement a District Grievance Committee (DGC) must be called to deal with grievances pertaining to promotions.
- 6.4.3 This DGC is made up of a member of the Discipline and Dispute Management Office who will chair the DGC, a member of SADTU and a member of the CTU ATU which in our case is NAPTOSA (in most cases).

- 6.4.4 If the Union has submitted a grievance on your behalf you will be represented by the union representative who submitted the grievance.
- 6.4.5 Alternatively, you will also be represented by the DGC member who sits on the DGC Committee representing NAPTOSA. Their duty is to ensure that the process is fair throughout.
- 6.4.6 Their mere presence in the DGC process ensures that your interests are protected, although their participation in the process is without prejudice.

7. What are the Duties of the District Grievance Committee

- 7.1 The DGC listens to the various stakeholders and asks relevant questions to get to the gist of the claims made by the aggrieved party.
- 7.2 The aim is to either verify or reject the claims made by the aggrieved.
- 7.3 The DGC then takes a decision to either uphold or dismiss the grievance. This is done by consensus.
- 7.4 The DGC must make its decision within 3 working days, except where evidence is required, then the Committee shall state the number of additional days required.
- 7.5 The Department claims that the District Director has the final say in whether the grievance is upheld or dismissed.
- 7.6 The Union has the view that the decision of the DGC is final and binding. The collective agreement states that the intervention and mediation of the Senior Manager (District Director) or GDE Directorate: Labour Relations (Now DDM) may be sought **only if consensus is not reached at the DGC.**
- 7.7 It further states that where it is clear that a grievance is procedurally out of line, the Senior Manager will not set up a DGC and will inform the person or structure (unions) lodging the grievance to this effect.
- 7.8 The person or structure will have the right in terms of the Grievance Procedure to appeal to the Labour Relations Directorate (DDM):HO.
- 7.9 It is important to note the Collective Agreement states explicitly, **“Under no circumstances should the DGC be bypassed to Head Office: Labour Relations (DDM).**

8. Appeal

If a person or structure is not happy with the outcome of the DGC they may appeal to the Labour Relations Directorate (DDM): HO

9. Referring a Dispute

- 9.1 If the grievant is not satisfied with the outcome of the DGC or appeal, they may refer an unfair labour practice dispute to the Education Labour Relations Council (ELRC) or Commission for Conciliation Mediation and Arbitration (CCMA).
- 9.2 This must be done within 90 days of the act or omission or within 90 days of the date on which the employee became aware of it.
- 9.3 If a member wishes to lodge a dispute, it must be done in consultation with the Union if the member wishes for the Union to represent them.
- 9.4 The Union will not be under any obligation to represent a member if the member lodges a dispute on their own.

10. What Role does the Union Play to Assist Members in this Process

- 10.1 The Union can advise members on the drafting and lodging of the grievance.
- 10.2 The Union sits as a member of the DGC and adjudicates on the matter.
- 10.3 A Union representative can represent a member to attend the DGC.
- 10.4 A Union official can assist with the drafting and lodging of a dispute. Representation on a dispute will only be sanctioned if the referral is done in consultation with the Union.

11. Managing the Grievance Process

- 11.1 The grievance must as far as possible be resolved by the employer as close to the point of origin as possible.
- 11.2 The employer must ensure that the grievance is dealt with in a fair, impartial and unbiased manner and that the principals of natural justice are adhered to.
- 11.3 It is important that no member may be victimised or prejudiced, directly or indirectly as a result of lodging a grievance.
- 11.4 Please note that if disciplinary action is being taken against a member, the utilisation of the grievance process to address any matter pertaining to the disciplinary action will not halt the disciplinary procedure.

12. What is the aim of the Grievance Process

- 12.1 The aim of any grievance process is to come to a concrete solution.
- 12.2 At the very outset when you go into the grievance process you need to know what outcome you want from the process.
- 12.3 The person chairing the process, at all stages of the grievance process will ask you the question, "What do you want as the outcome from this grievance process".
- 12.4 It is important to note that you may not get exactly what you want from the grievance process. It is very seldom that you would get a win-win outcome from the process. In most cases one party will feel as if they have lost.

13. Promotion Grievances: Case Law

- 13.1 *Ndlovu v Commission for Conciliation, Mediation and Arbitration and Others* (2000) 21 ILJ 1653 (LC) at 1655-6, the court stated:

"It can never suffice in relation to any such question for the complainant to say that he or she is qualified by experience, ability and technical qualifications such as university degrees and the like, for the post. That is merely the first hurdle. Obviously a person who is not so qualified cannot complain if they are not appointed.

The next hurdle is of equal if not greater importance. It is to show that the decision to appoint someone else to the post in preference to the complainant was unfair. That will almost invariably involve comparing the qualities of the two candidates. Provided the decision by the employer to appoint one in preference to the other is rational it seems to me that no question of unfairness can arise".

- 13.2 The court provided in *National Commissioner of the SA Police Service v Safety and Security Sectoral Bargaining Council and Others* (2005) 26 ILJ 903 (LC), there must be a causal connection between the unfairness complained of and the prejudice suffered.

13.3 It is important to note that it is not enough for an employee to merely show that he /she qualified for the post but that he /she merited the promotion and that the decision to appoint someone else over them was unfair.

13.4 In summary this judgment is important as it highlights that when an employee raises an unfair labour practice dispute relating to promotion, in order to be successful, the applicant must not only show that he or she met the inherent requirements of the post in question but **that he or she was the best candidate for the post**. That includes all other applicants for the post. Over and above that, the applicant must show that the decision of appointing another individual in preference over him/her was unfair.

13.5 In closing, The Union has to stress that that is not a very easy thing to do.

14. If after reading and studying the above, you still wish to lodge a grievance please find the attached grievance referral form attached. This form is in pdf format as it has to be filled in by the person dealing with the grievance in every step of the process.