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UNFAIR DISMISSAL

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Guidelines on the termination of employment

This brochure serves only as a *guide-line on the termination* of employment and to explain some relevant concepts. Although this brochure has been cleared with the President of the Industrial Court, *it should not be considered a complete authoritative source on the law.* Each individual case should be considered on its own merits and in accordance with the available facts.

The guide-lines are mainly applicable to employees falling under the jurisdiction of the Labour Relations Act, 1956. (Hereafter referred to as the Act.) It is important to note that not **all** employees fall under the jurisdiction of the Act (for example farm workers and domestic workers in private households are excluded). However, the guidelines can generally be applied with success to all employment relationships.

The employment relationship

Origin of the employment relationship: Generally, a contract of service regulates the employment relationship between an employer and an employee. Like any other contract it can originate by implication, verbally or explicitly (in writing).

Content of the employment relationship: Contracts of service/employment relationships differ from one another in essence. It is important however to note that the parties are free to organise their rights and duties to suit the circumstances of each individual case.

Termination of the employment relation-

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ship: An employment relationship can be terminated in various ways. The following are the most important:

- Notice of termination of employment by the employer or employee; or
- summary termination of the employment relationship by the employer or employee because of misconduct or breach of contract; or
- the expiration of a fixed-term contract of service without the renewal thereof.

Unfair dismissal

It should be emphasised that the most important consequence of the Act is that in terms of common law an employee's service may be terminated legitimately by an employer (e.g. where the employer gives the required notice of termination of employment), but that such a termination may be **unfair** in terms of the Act. The practical implication hereof is that it is not sufficient for the termination of employment to comply with the terms of a contract of service; it should also comply with the requirements of **fairness** in terms of the Act.

Dismissal as an unfair labour practice in terms of the Act

The Act provides that certain actions by an employer against an employee **may** in certain circumstances constitute unfair dismissal.

First, if an employee is dismissed as a result of **disciplinary action** (e.g. as a result of neglect of duty, disobedience, etc.) **without any valid or fair reason or without complying with a fair procedure, this may constitute an unfair labour practice**. In this regard there are certain exceptions:

- The dismissal of an employee during **the first six (6) months** of his employment with a particular employer or during such shorter period as may have been agreed upon, provided that a fair procedure is complied with.

*• Dismissal **where an employer has failed to hold a hearing or a disciplinary enquiry** and the Industrial Court thereafter decides that it could not reasonably be expected of the employer to hold such a hearing or enquiry.

*• Dismissal where an employer has failed to hold a hearing or a disciplinary enquiry and **the Industrial Court thereafter decides that the employee was granted a fair opportunity to state his case** and that the finding of the hearing or enquiry would not have had a different effect on the dismissal.

- Any dismissal after **substantial compliance with the terms of an agreement** that relates to the dismissal. The existence of such an agreement can in practice clarify the position for employers and employees.

It is important to note that the two exceptions marked* above are a deviation from the rule that a hearing should be held and that these exceptions apply only in exceptional circumstances. In both cases the Industrial Court must decide whether the failure to hold a hearing constitutes an unfair labour practice and the Court has indicated that, when these exceptions are being relied on, it will strictly judge the merits thereof. It

is preferable therefore to follow a fair procedure.

Secondly, the Act further provides that the termination of an employee's employment on grounds other than disciplinary action (e.g. incompetence, inadaptability or retrenchment), may be an unfair labour practice, unless –

- the termination takes place **during the first six months** of employment with a particular employer or during an agreed period, and in **accordance with an applicable agreement, wage regulating measure or contract of service**; or

- **prior notice** of the termination of employment was given to the employee in accordance with an applicable agreement, wage regulating measure or contract of service (and unless, if such an employee is represented by a trade union or other body or group that is recognised as being representative by the employer, prior notice was given to such a trade union, body or group); and

- **prior consultation** took place with the employee or his representative trade union or body or group regarding his dismissal; and

- the termination of employment takes place **in compliance with a contract of service or an agreement**; and

- in the case of retrenchment, **fair criteria** are applied regarding the **selection** of employees that are to be retrenched. This would include criteria such as the period of service, competence, performance, productivity and conduct of employees as well as the operational requirements and needs of the organisation of the employer. It should however be borne in mind that these criteria are not limited to those contained in the Act. They may be supplemented by further criteria, e.g. seniority (Last In First Out (LIFO)).

It is important to note that *all four* of the above-mentioned requirements should be met.

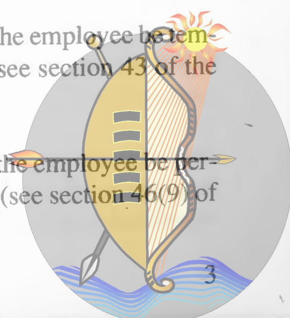
Where and by whom are the disputes settled?

In the event of an alleged unfair dismissal where there is an **industrial council** with jurisdiction over the parties to the dispute, the dispute must be declared at the industrial council. If there is no such industrial council, application must be made to the local Regional Director of the Department of Manpower for the appointment of a **conciliation board**. The industrial council or the conciliation board will try to settle the dispute, but if the parties cannot satisfactorily resolve the dispute the **Industrial Court** will settle the dispute according to the undermentioned guide-lines, unless the parties resort to arbitration.

In the case where a dispute concerning an unfair dismissal is heard by the Industrial Court the Court may –

- direct or refuse that the employee be temporarily reinstated (see section 43 of the Act);

- direct or refuse that the employee be permanently reinstated (see section 46(9) of the Act);



- decide that the employee need not be reinstated, but direct that compensation be paid.

Factors that are taken into account by the Industrial Court when the fairness of the dismissal is being considered

The employee will have to submit proof that he was dismissed. Where the conduct of the employer is such that the employee is forced to resign, the resignation will be viewed as a dismissal (constructive dismissal).

Furthermore there must be a **valid and fair reason** for the dismissal. The fairness of the dismissal will be judged on substantive as well as procedural fairness.

- In this regard the Court will take into account whether the facts on which the employer has based his case actually exist. The Court has, for example, found in the past that the dismissal of an employee on the grounds of drunkenness and/or assault was unfair because the employer could not prove that the employee was drunk or that the assault took place.

- As soon as the Court has established that the facts for the dismissal do exist, it will then decide whether such facts constitute a fair and valid reason for dismissal.

What is meant by substantive and procedural fairness?

Any consideration as to what constitutes a fair reason for dismissal will depend on the individual circumstances of each case. When the Court considers the question of fairness, it will take into account the –

- **substantive fairness** of the dismissal; and

- the **procedural fairness** of the dismissal.

In evaluating **substantive fairness**, the Court has indicated that the following aspects may be considered relevant:

- Was the reason for dismissal such that a material or fundamental clause of the employment relationship was breached? The following are some examples:

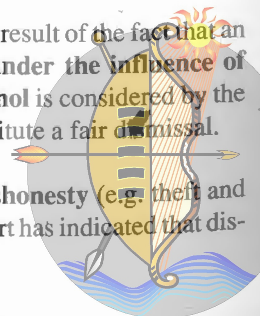
  - **Assault** as a reason has in the past been considered by the Court a fair reason to dismiss an employee. Factors such as the severity of the assault and provocation are aspects which the Court will consider.

  - **Threats**. Justification for dismissal will in this case depend on the nature of the threat and the circumstances in which it was made, as well as the person who was threatened. The Court had indicated, however, that a threat of assault does not necessarily justify dismissal.

  - **Incidents of violence and intimidation** during a strike would normally justify dismissal.

  - Dismissal as a result of the fact that an employee is **under the influence of drugs or alcohol** is considered by the Court to constitute a fair dismissal.

  - In cases of **dishonesty** (e.g. theft and fraud) the Court has indicated that dis-



missal is justified. Such dishonesty must however be proved and not only suspected.

- Where it is justified (e.g. a security guard), the Court has indicated that dismissal because of **sleeping on duty** would constitute a fair dismissal.

- **Refusal or neglect to carry out a reasonable and legitimate instruction** may justify dismissal, provided that such a refusal or neglect was deliberate or intentional.

- The provisions of the disciplinary code of the employer. If a certain action is not in terms of the disciplinary code considered serious enough to justify dismissal, the termination of employment for that action can be regarded as unfair. The fundamental principle is that the employer must be aware of the provisions of the disciplinary code.

- The consistency of an employer's conduct in the past. If an employee is dismissed for regularly arriving late for work, but it appears that the employer has never in the past dismissed any employee for this reason, that fact will be an important factor in determining the unfairness of the action.

- The personal circumstances of the employee, e.g. his status in the company and his disciplinary history, have in the past been considered relevant.

- The circumstances of the employer and the nature of his business are also considered relevant (e.g. in the case of a specific business where beer is brewed dismissal because of drunkenness was considered fair.)

- The fact that an employee was recently warned for disciplinary offence similar to the one resulting in his dismissal will also be relevant.

- The attitude or disposition of the employee and the employer before or during dismissal affects the fairness of the dismissal. (The Court has e.g., in the past considered the dismissal of an employee precipitately or in a fit of rage an unfair labour practice).

In evaluating **procedural fairness**, the Court has indicated that a dismissal should not only have been for a fair reason, but the procedure for dismissal should also have been fair. The requirements for procedural fairness would include, *inter alia,* that the employee —

- should be informed of the nature of the offence as well as the details of the charge;

- should receive adequate notice before the investigation;

- may appoint a representative (e.g. a shop-steward, co-worker, etc.);

- may call witnesses;

- may request an interpreter;

- should be informed of the findings of the investigation;

- should have his service record taken into account;

- should be informed about the penalty;

- may appeal against the finding.

The above-mentioned are only guide-lines. The important question will always be whether the employee was given a fair hearing during which he had the opportunity to state his case.

Some other points employers should be aware of

In its judgements the Industrial Court has laid down certain guide-lines which can be followed in order to reduce the risk of an unfair labour practice. It is again emphasised that these guide-lines should not be considered hard and fast rules. The Industrial Court still has the prerogative to amend these guide-lines in accordance with the Act and other developments. These guide-lines are mainly the following:

- There should be fair and just procedures for disciplinary action against employees. Fair procedures should likewise exist for dealing with employees' grievances. Procedures that have been mutually agreed upon carry more weight than those which are instituted unilaterally.

- Particular care should be taken when a group of employees is dismissed. It must be ensured that there are no factors that may, as a result of the individual circumstances of members within the group, render the dismissal unfair.

- The selective reinstatement of dismissed employees should be in accordance with fair criteria. In this regard the Industrial Court has considered the following matters relevant in deciding whether the employer has applied fair criteria:

  - Were **objective and acceptable criteria** applied? The Court has, for example, found in the past that "poor performance" as a reason for refusing to reinstate certain employees was too vague, and that the selective reinstatement was therefore unfair.

  - Misconduct of strikers has also in the past been considered a valid reason for refusing to reinstate them.

  - A reasonable notice period should be given to employees for reporting for reinstatement.

  - The terms of any agreement between the union and the employer in which reinstatement is regulated should be adhered to.

  - In general an employer is expected not to be too hasty in recruiting a new permanent workforce and to be willing to consult with the relevant trade union on the matter.

  - Selective reinstatement on the grounds of the employee's trade union activities will be unfair.

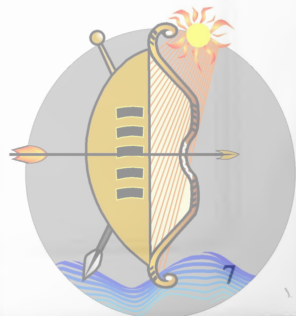
- Retrenchments should not be used as a smoke-screen to get rid of trade union representatives.

- Consultation and negotiation should always take place in good faith.

- **Dismissal is a serious action and should only be considered if the nature of the offence is serious enough to justify dis-**

missal or when all other disciplinary procedures (e.g. written warnings or temporary suspension of employment) have failed.

- All disciplinary action should always be approached in a calm manner and the Court should not be relied upon to judge the procedure fair and reasonable.



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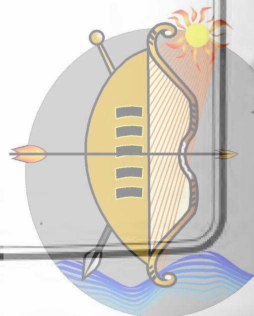


ONBILLIKE ONTSLAG

Riglyne oor diensbeëindiging

Hierdie brosjure bevat slegs *riglyne oor diensbeëindiging*, en enkele tersaaklike begrippe word verduidelik. Alhoewel hierdie brosjure met die President van die Nywerheidshof uitgeklaar is, *moet dit nie beskou word as 'n volledige gesagsbron van die reg nie*. Elke individuele geval moet op eie meriete en ooreenkomstig die beskikbare feite beoordeel word.

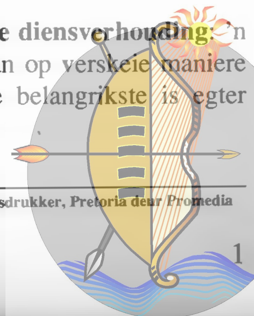
Die riglyne is hoofsaaklik van toepassing op werknemers wat onder die Wet op Arbeidsverhoudinge, 1956, val. (Voortaan word slegs verwys na die Wet.) Dit is belangrik om daarop te let dat nie **alle** werknemers onder die Wet se jurisdiksie val nie (byvoorbeeld plaaswerkers en huisbediendes in privaathuishoudings is hierby uitgesluit) maar dat die riglyne algemeen met vrug by alle diensverhoudinge aangewend kan word.

Diensverhouding

Ontstaan van die diensverhouding: In die algemeen reël 'n dienskontrak die diensverhouding tussen 'n werkgewer en 'n werknemer. Net soos enige ander kontrak kan die diensverhoudinge stilswyend, mondelings of uitdruklik (skriftelik) ontstaan.

Inhoud van die diensverhouding: Dienskontrakte/diensverhoudinge verskil in wese van mekaar. Dit is egter belangrik om daarop te let dat dit die partye vrystaan om hulle regte en verpligtinge te reël om by die omstandighede van elke besondere geval te pas.

Beëindiging van die diensverhouding: 'n Diensverhouding kan op verskeie maniere beëindig word. Die belangrikste is egter waar—



Uitgegee deur die Departement van Mannekrag, Privaatsak X117, Pretoria 0001. Gedruk vir die Staatsdrukker, Pretoria deur Promedia Drukkers, Posbus 255, Silverton 0127.

- die werkgewer of werknemer kennis van diensbeëindiging gee; of

- die werkgewer of werknemer die diensverhouding summier beëindig weens wangedrag of kontrakbreuk; of

- 'n vasgesteldetermyn-dienskontrak sonder die hernuwing daarvan verstryk:

Onbillike ontslag

Die belangrikste gevolg van die Wet wat benadruk moet word, is dat 'n werkgewer 'n werknemer se diens kragtens die gemenereg op 'n heeltemal **regmatige** wyse kan beëindig (bv. as die werkgewer die vereiste kennisgewing van diensbeëindiging gegee het), maar dat so 'n diensbeëindiging ingevolge die Wet **onbillik** kan wees. Die praktiese implikasie hiervan is dat dit nie genoegsaam is dat diensbeëindiging kragtens 'n dienskontrak moet geskied nie, maar ook dat dit aan die vereistes van **billikheid** ingevolge die Wet moet voldoen.

Ontslag as 'n onbillike arbeidspraktyk ingevolge die Wet

Die Wet reël dat sekere optrede deur 'n werkgewer teenoor 'n werknemer in sekere omstandighede op 'n onbillike ontslag **kan** neerkom.

Eerstens, indien 'n werknemer as gevolg van **dissiplinêre optrede** (bv. weens pligsversuim, ongehoorsaamheid, ens.) ontslaan is **sonder enige geldige of billike rede of sonder dat 'n billike prosedure nagekom is, kan dit 'n onbillike arbeidspraktyk uitmaak**. In hierdie verband bestaan daar **sekere uitsonderings**:

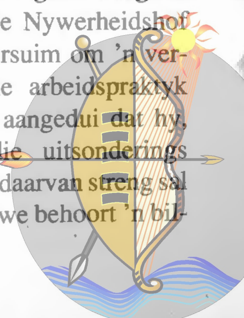
- Die ontslag van 'n werknemer gedurende die **eerste ses (6) maande** van sy diens by 'n bepaalde werkgewer of gedurende sodanige korter tydperk as waaroor ooreengekom is, met die voorbehoud dat ook hier 'n billike prosedure gevolg moet word.

*• Ontslag **waar 'n werkgewer versuim het om 'n verhoor of dissiplinêre ondersoek te hou** en die Nywerheidshof daarna beslis dat dit nie redelikerwys van die werkgewer verwag kon word om so 'n verhoor of ondersoek te hou nie.

*• Ontslag waar die werkgewer nagelaat het om 'n verhoor of dissiplinêre ondersoek te hou en **die Nywerheidshof daarna bevind dat die werknemer 'n billike geleentheid gegun is om sy saak te stel** en dat die uitslag van die verhoor of ondersoek nie 'n ander uitwerking op die ontslag sou gehad het nie.

- Enige ontslag wat plaasvind na **behoorlike nakoming van die bepalings van 'n ooreenkoms** wat op die ontslag betrekking het. Die bestaan van so 'n ooreenkoms kan in die praktyk meer duidelikheid vir werkgewers en werknemers skep.

Dit is belangrik om in gedagte te hou dat die twee uitsonderings gemerk * hierbo 'n afwyking is van die reël dat 'n verhoor gehou moet word en dat hierdie uitsonderings net in buitengewone omstandighede sal geld. In beide gevalle is dit die Nywerheidshof wat moet beslis of die versuim om 'n verhoor te hou 'n onbillike arbeidspraktyk uitmaak, en die Hof het aangedui dat hy, wanneer daar op hierdie uitsonderings gesteun word, die meriete daarvan streng sal beoordeel. Veiligheidshalwe behoort 'n bil-



like prosedure dus gevolg te word.

Tweedens bepaal die Wet verder dat die beëindiging van 'n werknemer se diens op ander gronde as dissiplinêre optrede (bv. onbevoegdheid, onaanpasbaarheid of personeelkorting) 'n onbillike arbeidspraktyk kan uitmaak, tensy —

- die diensbeëindiging plaasvind **gedurende die eerste ses maande** of gedurende 'n **ooreengekome tydperk van diens by 'n bepaalde werkgewer en in ooreenstemming met 'n toepaslike ooreenkoms, loonreëlende maatreël of dienskontrak**; of

- **vooraf kennis** van die diensbeëindiging aan die werknemer gegee is in ooreenstemming met 'n toepaslike ooreenkoms, loonreëlende maatreël of dienskontrak (en tensy, indien so 'n werknemer verteenwoordig word deur 'n vakbond of ander liggaam of groep wat deur die werkgewer as verteenwoordigend erken word, vooraf kennis ook aan sodanige vakbond, liggaam of groep gegee is); en

- **vooraf** aangaande die diensbeëindiging **oorleg** gepleeg is met die werknemer of sy verteenwoordigende vakbond of liggaam of groep; en

- die diensbeëindiging geskied **ooreenkomstig** 'n dienskontrak of ooreenkoms; en

- in die geval van personeelinkorting, **billike maatstawwe met betrekking tot die seleksie** van dié wat afgedank word, toegepas word. Dit sal insluit faktore soos die tydperk van diens, bekwaamheid, werkverrigting, produktiwiteit en gedrag van die werknemers, asook die bedryfsvereistes en behoeftes van die onderneming van die werkgewer. Daar moet egter in gedagte gehou word dat gemelde maatstawwe nie tot dié wat in die Wet genoem word, beperk is nie en verder aangevul kan word deur byvoorbeeld senioriteit (Laaste In Eerste Uit (LIEU)).

Dit is belangrik om daarop te let dat aan *al vier* voorafgaande vereistes voldoen moet word.

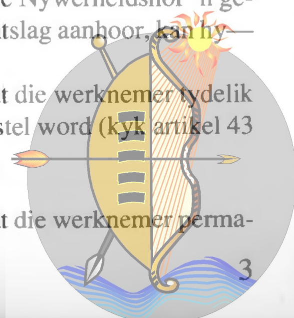
Waar en deur wie word die geskille besleg?

In die geval waar 'n ontslag na bewering onbillik is en daar 'n **nywerheidsraad** bestaan wat jurisdiksie het oor die partye wat by die geskil betrokke is, moet die geskil by dié nywerheidsraad verklaar word. As daar in so 'n geval egter geen nywerheidsraad wat jurisdiksie het, bestaan nie, moet aansoek by die plaaslike Streekdirekteur van die Departement van Mannekrag gedoen word om 'n **versoeningsraad**. Die nywerheidsraad of die versoeningsraad sal poog om die geskil op te los, maar indien die geskil nie na bevrediging besleg word nie, sal die **Nywerheidshof** aan die hand van ondergenoemde riglyne uitspraak daaroor lewer, tensy die partye die weg van arbitrasie volg.

In die geval waar die Nywerheidshof 'n geskil oor onbillike ontslag aanhoor, kan hy —

- gelas of weier dat die werknemer tydelik weer in diens gestel word (kyk artikel 43 van die Wet);

- gelas of weier dat die werknemer perma-



nent weer in diens geplaas word (kyk artikel 46(9) van die Wet);

- beslis dat die werknemer nie weer in diens geneem hoef te word nie, maar gelas dat kompensasie betaal word.

Faktore wat die Nywerheidshof in ag neem by die beoordeling van die billikheid van die ontslag

Die werknemer sal moet bewys dat hy afgedank is. Waar die werkgewer se gedrag van sodanige aard is dat die werknemer gedwing word om te bedank, sal die bedanking as ontslag beskou word (konstruktiewe ontslag).

Verder moet daar 'n **geldige en billike rede** vir die ontslag wees. Die billikheid van die ontslag sal beoordeel word op grond van die substantiewe sowel as die prosessuele billikheid van die ontslag.

- In hierdie verband sal die Hof daarop let of die feite waarop die werkgewer staatmaak, wel bestaan. Die Hof het byvoorbeeld al bevind dat die ontslag van 'n werknemer weens dronkenskap en/of aanranding onbillik was, aangesien die werkgewer nie bewys het dat die werknemer dronk was of dat die aanranding plaasgevind het nie.

- Sodra die Hof vasgestel het dat die feite vir die ontslag bestaan, sal hy besluit of die feite 'n billike en geldige rede vir ontslag verskaf.

Wat is substantiewe en prosessuele billikheid?

Of 'n rede as 'n billike rede vir ontslag beskou moet word, sal afhang van die omstandighede van elke saak. By die beoordeling van die vraag oor billikheid stel die Hof ondersoek in na —

- die **substantiewe billikheid** van die ontslag; en

- die **prosessuele billikheid** van die ontslag.

By die beoordeling van **substantiewe billikheid** het die Hof aangedui dat die volgende faktore as relevant beskou kan word:

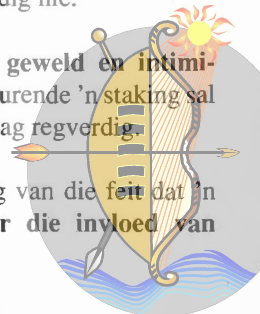
- Was die rede vir ontslag sodanig dat dit 'n wesenlike of belangrike bepaling van die diensverhouding aantas? Die volgende dien as voorbeelde:

  - **Aanranding** as 'n rede is al deur die Hof as geregverdig beskou om 'n werknemer te ontslaan. Faktore soos die graad van die aanranding en provokasie is aspekte wat deur die Hof oorweeg sal word.

  - **Dreigemente**. Regverdiging vir ontslag sal hier afhang van die aard van die dreigement en die omstandighede waarin dit gemaak is, asook wie gedreig is. Die Hof het aangedui dat 'n dreigement tot aanranding nie noodwendig ontslag sal regverdig nie.

  - **Handelinge van geweld en intimidasie** gepleeg gedurende 'n staking sal normaalweg ontslag regverdig.

  - Ontslag as gevolg van die feit dat 'n werknemer **onder die invloed van**



dwelmmiddels of alkohol is, is deur die Hof as regverdigbaar beskou.

- In gevalle van **oneerlikheid** (bv. diefstal en bedrog) het die Hof aangedui dat ontslag geregverdig is. Die oneerlikheid moet egter bewys word en nie slegs vermoed word nie.

- Waar die meriete dit regverdig (bv. by 'n sekuriteitswag), word ontslag as gevolg van **slaap op diens** as regverdigbaar beskou.

- 'n **Weiering of versuim om 'n redelike en wettige/regverdige bevel uit te voer**, kan ontslag regverdig, met die voorbehoud dat so 'n weiering of versuim opsetlik of doelbewus moes plaasvind.

- Die bepalings van die werkgewer se dissiplinêre kode. Indien, ingevolge die dissiplinêre kode sekere optrede nie as ernstig genoeg beskou word om ontslag te regverdig nie, kan die beëindiging van diens weens daardie optrede as onbillik beskou word. Die grondliggende beginsel is dat die werkgewer bewus moet wees van die bepalings van die dissiplinêre kode.

- Die konsekwentheid van 'n werkgewer se optrede in die verlede. Sou 'n werknemer ontslaan word weens die feit dat hy gereeld laat by die werk opdaag, maar dit blyk dat die werkgewer nooit in die verlede enige werknemers om hierdie rede ontslaan het nie, sal dit 'n belangrike faktor wees om die onbillikheid van die optrede aan te dui.

- Die persoonlike omstandighede, byvoorbeeld die status van die werknemer binne die organisasie en sy dissiplinêre geskiedenis, is al as relevant beskou.

- Die omstandighede van die werkgewer en die aard van sy besigheid word ook as relevant beskou (byvoorbeeld in die geval van 'n sekere sakeonderneming waar bier gebrou word, is ontslag vanweë dronkenskap as geregverdig beskou).

- Die feit dat 'n werknemer in die onlangse verlede gewaarsku is weens 'n soortgelyke dissiplinêre oortreding as dié waarvoor hy ontslaan is, sal ook relevant wees.

- Die houding of gesindheid van die werknemer en die werkgewer voor of tydens ontslag beïnvloed die billikheid van die ontslag. (Dit is byvoorbeeld al deur die Hof as onbillik beskou om 'n werknemer oorhaastig of in 'n woedebui te ontslaan.)

By die beoordeling van **prosessuele billikheid** het die Hof aangedui dat 'n ontslag nie alleen om 'n billike rede moes gewees het nie, maar ook die proses van ontslag moes billik gewees het. Die vereistes vir prosessuele billikheid sou onder andere inhou dat die werknemer —

- ingelig word oor die aard van die oortreding asook oor die besonderhede van die aanklag;

- voldoende kennis ontvang voor die ondersoek;

- 'n verteenwoordiger byvoorbeeld 'n werkwinkelverteenwoordiger, 'n mede-werknemer, ens. mag aanwys;

- getuies mag roep;

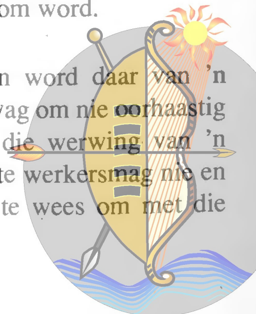
- 'n tolk mag aanvra;
- die bevinding van die ondersoek meegedeel word;
- se vorige diens in ag geneem moet word;
- die straf meegedeel word;
- appèl mag aanteken teen die bevinding.

Bogenoemde is slegs riglyne. Die belangrike vraag sal altyd wees of die werknemer 'n **billike** verhoor ontvang het waartydens hy die geleentheid gehad het om sy saak te stel.

Enkele ander aspekte waarop die werkgewer bedag moet wees

Die Nywerheidshof het in sy uitsprake verskeie riglyne neergelê wat gevolg kan word ten einde die risiko van 'n onbillike arbeidspraktyk te verminder. Weer eens word daar beklemtoon dat hierdie riglyne nie as onbuigsaam beskou moet word nie en dat die Nywerheidshof hom steeds die prerogatief voorbehou om die riglyne by die Wet en ontwikkelings aan te pas. Hierdie riglyne is in hoofsaak die volgende:

- Daar behoort billike en regverdige prosedures te bestaan vir dissiplinêre optrede teenoor werknemers. Insgelyks moet daar billike prosedures bestaan vir die hantering van werkers se griewe. Prosedures waaroor gesamentlik ooreengekom is, dra meer gewig as dié wat eensydig ingestel is.
- Besondere omsigtigheid moet aan die dag gelê word wanneer 'n groep werknemers ontslaan word. Daar moet veral verseker word dat daar as gevolg van die individuele omstandighede van lede van die groep nie ander faktore bestaan wat hulle ontslag onbillik sal maak nie.
- Die **selektiewe herindiensneming** van ontslane werknemers moet ooreenkomstig billike maatstawwe geskied. In hierdie verband het die Nywerheidshof die volgende aangeleenthede as relevant beskou by die vraag of die werkgewer billike maatstawwe toegepas het:
  - Is **objektiewe en aanvaarbare kriteria** toegepas? Die Hof het byvoorbeeld al bevind dat "swak werksprestasie" as rede vir die weiering om sekere werkers weer in diens te neem, te vaag is en dat die selektiewe herindiensneming gevolglik onbillik was.
  - Wangedrag deur stakers is ook al beskou as 'n geldige rede om te weier om hulle weer in diens te neem.
  - 'n Redelike kennistydperk vir aanmelding deur werkers vir herindiensneming behoort gegee te word.
  - Die bepalings van enige ooreenkoms tussen die vakbond en die werkgewer waarin herindiensneming gereël word, moet ook nagekom word.
  - In die algemeen word daar van 'n werkgewer verwag om nie oorhaastig op te tree met die werwing van 'n nuwe permanente werkersmag nie en ook om bereid te wees om met die



relevante vakbond oor die aangeleentheid te beraadslaag.

- Selektiewe herindiensneming op grond van 'n werknemer se vakbondbedrywighede sal onbillik wees.

- Personeelinkorting moet nie as 'n rookskerm gebruik word om vakbondverteenwoordigers uit te dun nie.

- Beraadslaging en onderhandeling moet deurentyd te goeder trou geskied.

- **Ontslag is drastiese optrede en behoort slegs oorweeg te word as die graad van die oortreding ernstig genoeg is om ontslag te regverdig, of as alle ander dissiplinêre optrede (bv. 'n skriftelike waarskuwing of 'n tydelike opskorting van diens) misluk het.**

- Dit is belangrik om enige dissiplinêre optrede altyd kalm te benader en nie daarop staat te wil maak dat die Hof die prosedure as regverdig en billik sal beoordeel nie.