DISCIPLINE ISSUES IN ILO STANDARDS
MEET WITH THE COURT
SYMPOSIUM 2018

Shingo Miyake
Intl Labour Standards & Labour Law Specialist
ILO Office for the Caribbean

DISCIPLINE IN ILO STANDARDS

• No ILO Convention on discipline
• Termination of Employment Recommendation, 1982 (No. 166)
• Some other provisions
• Example: ILO Staff Regulations
RECOMMENDATION NO. 166  
(PARAGRAPHS 7-13)

Steps

1. Employer
   • Warning (for misconduct)
   • Warning and Instruction  
     (for unsatisfactory performance)

2. Worker: Defence (hearing)

3. Employer: Decision on the worker’s termination

4. Employer: Notify termination

1. Employer’s action towards a worker:  
   [ Misconduct ]
   • The worker should not be terminated  
     if the misconduct is repeated on one  
     or more occasions, unless the  
     employer has given the worker  
     appropriate warning.
   • The warning should be in writing.
RECOMMENDATION NO. 166 (CONT.)

1. Employer’s action towards a worker: [ Unsatisfactory performance ]
   • The worker should not be terminated
     • Unless the employer has given the worker warning and instruction, and
     • Unless the worker continues to perform poorly after reasonable time for improvement has elapsed.
   • The warning should be in writing.

2. Worker’s defence (Art. 7 of C.158)
   • The worker must be given a chance to defend himself/herself.
   • The worker should be assisted by another person.
   • This right may be specified in laws or regulations, collective agreements, works rules, arbitration awards or court decisions.
3. Employer’s decision on termination

• The employer’s right to terminate for misconduct should be considered waived if it is not exercised within a reasonable period.

• The employer may consult workers’ representatives before a final decision.
  • Encouraged for sound industrial relations.

4. Employer notifies termination

• The notification should be in writing.

• The terminated worker should be entitled to receive, on request, a written statement of the reasons of termination (except in case of collective dismissal in accordance with Convention No. 158).
TERMINATION OF EMPLOYMENT CONVENTION, 1982 (NO. 158)

- Termination must be justified
  - Valid
    - Capacity or conduct of the worker, operational requirements
  - Invalid
    - Union membership and activities
    - Lodging complaint or court proceedings
    - Discrimination
      - race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin
    - Taking maternity leave
    - Taking sick leave
    - Additional grounds (R166): age, and absence from work due to compulsory military service or other civic obligations

CONVENTION NO. 158 (CONT.)

- Right to defend oneself
- Appeal against termination
  - Time limit possible
  - Burden of proof
    - The worker (termination invalid)
    - The employer (existence of a valid reason)
    - Appeal body empowered to conclude on the reason
- Collective termination procedure provided separately.
ILO CONVENTIONS REFERRING TO DISCIPLINE ISSUES

• Abolition of Forced Labour Convention, 1957 (No. 105)
  - Forced labour must not be used as a means labour discipline ⇒
    Disciplinary measure must not go as far as forced labour

• OSH instruments (e.g. Occupational Safety and Health Convention, 1981 (No. 155))
  - The worker who removed himself/herself for safety must not be disciplined ⇒
    Exercising right to safe workplace is not subject for discipline.

ILO CONVENTIONS REFERRING TO DISCIPLINE ISSUES (CONT.)

• Labour Inspection Convention, 1947 (No. 81)
  - Breach of the duty of labour inspectors to maintain professional secret must be bound on pain of appropriate penalties or disciplinary measures.
ILO STAFF REGULATIONS

• Sanctions under ILO Staff Regulations
  1. Warning (removed after three years w/o sanction)
  2. Reprimand
  3. Censure
  4. Discharge
  5. Summary dismissal

ILO STAFF REGULATIONS (CONT.)

• Procedure for application of sanctions
  1. Proposal: A proposal to apply sanction is communicated (except for warning).
     • Reason must be stated
     • The official concerned must initial and return a copy within 8 days of receipt, with observations
  2. Appeal: The official has the right to appeal within one month of receipt (except for warning and reprimand)
  3. Sanction: The decision to apply a sanction is communicated. The official concerned must initial and return a copy.