



## MRTT DISCIPLINARY POLICY AND CODE

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## APPROVAL OF POLICY

The signatories hereof, being duly authorised thereto, by their signatures hereby authorise the execution of the work detailed herein, or confirm their acceptance of the contents of this Policy and authorise the implementation/adoption thereof, as the case may be, for and on behalf of the parties represented by them.

Name and Position	Date	Signature
ACTING CHAIRPERSON OF THE BOARD  Ms TE Mawelele _____	29-03-2021	



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## **1. PURPOSE OF THE POLICY**

- 1.1. The purpose of this Policy is to communicate and establish the standard of conduct required of all Employees and to provide a fair and consistent guideline or procedure for the management of Employee discipline.

## **2. OBJECTIVES OF THE POLICY**

- 2.1 To initiate corrective action where an Employee's performance and/or conduct is unacceptable to MRTT.
- 2.2 To maintain good employment relations within the MRTT workplace.
- 2.3 To encourage Employees to respect and adhere to the appropriate standards of conduct required of them.
- 2.4 Regulate discipline in a manner that is both substantively and procedurally fair.

## **3. SCOPE OF THE POLICY**

- 3.1 This Policy is applicable to all Employees regardless of their position within MRTT.
- 3.2 Disciplinary action against an Employee may emanate from Management, by another Employee or any other person, raising an issue, a complaint or concern related to an Employee's action(s), omission(s), conduct, behaviour and/or incapacity (which includes poor performance and/or ill-health).
- 3.3 All persons involved in workplace discipline are required to follow this Policy when making discipline related decisions.

#### **4. PRINCIPLES**

- 4.1 Disciplinary action is one of the responsibilities of Management, and is initiated when an Employee's behaviour or conduct transgresses MRTT's rules, policies or procedures.
- 4.2 The key principle of discipline is that Management and Employees should treat each other with mutual respect. The efficient operation of MRTT's business and employment justice are of primary concerns to MRTT. MRTT is entitled to satisfactory conduct and work performance from Employees whilst Employees are entitled to be protected from arbitrary action.

#### **5. APPLICABLE LEGISLATIVE**

- 5.1 This Policy shall be read in conjunction with the following legislation, where applicable:-
- 5.1.1 Labour Relations Act No. 66 of 1995, as amended; and
  - 5.1.2 Basic Conditions of Employment Act No. 75 of 1997, as amended.

#### **6. DEFINITIONS**

- 6.1 Unless the context of this Policy indicates otherwise, words denoting the masculine gender also include the feminine gender and any reference to the singular shall

include the plural and vice versa. The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings: -

- 6.1.1 “**CCMA**” means the Commission for Conciliation Mediation and Arbitration or its successor in title;
- 6.1.2 “**Employee**” means any person who is employed by MRTT and who receives, or is entitled to receive, any remuneration from MRTT;
- 6.1.3 “**HR Sub-Programme**” means the Human Resources department;
- 6.1.4 “**Initiator**” means an employee or an external person, (under special circumstances and subject to sub-clause 12.2.4), appointed by MRTT, to represent it or initiate a case on behalf of MRTT;
- 6.1.5 “**Line Manager**” means the manager the Employee is directly reporting to, and “**Supervisor**” shall have a corresponding meaning;
- 6.1.6 “**LRA**” means the Labour Relations Act No.66 of 1995 as amended;
- 6.1.7 “**Management**” means the managers, senior managers, general managers and/or executives of MRTT;
- 6.1.8 “**MRTT**” means the Mpumalanga Regional Training Trust, a non-profit company, bearing registration number: 1993/006132/08; “**the Company**” and/or “**the Employer**” shall have corresponding meanings;
- 6.1.9 “**Policy**” means this document including all annexures and, schedules;

- 6.1.10 **“Trade Union Representative”** means an elected representative of a registered trade union, or of two or more registered trade unions acting jointly, within MRTT’s workplace;
- 6.1.11 **“Working Day(s)”** means any day which is not a Saturday, Sunday or a public holiday in the Republic of South Africa;

## **7. POLICY GUIDELINES: INCAPACITY - POOR WORK PERFORMANCE**

7.1 It is Management’s responsibility to ensure that an Employee is aware, or could reasonably be aware, of the required performance standard. Performance standards are determined by an Employee’s employment contract read together with MRTT’s performance management policy and any related documents thereto, such as, though not limited to, a performance agreement. An Employee should not be dismissed for unsatisfactory performance unless:

- 7.1.1 Management has, where necessary, depending on the level of seniority of the Employee and/or his qualifications or job experience, given the Employee appropriate evaluation, instruction, training, guidance or counselling; and
- 7.1.2 a reasonable period of time for improvement has been given, which said period shall be dictated by the process (which shall include, though not limited to, counselling, mentoring, guidance and/or further training if necessary) or as agreed between the parties, the Employee continues to perform unsatisfactorily.



- 7.2 The procedure leading to dismissal should include an investigation to establish the reasons for the unsatisfactory performance and Management should consider other ways, short of dismissal, to remedy the matter.
- 7.3 A newly hired Employee will be placed on probation for a period of 03 (three) months or for a period that is reasonable given the circumstances of the position. Where appropriate and depending on the level of seniority of the Employee and/or his qualifications or job experience, the relevant manager should give the Employee whatever evaluation, instruction, training, guidance or counselling is necessary in order for the Employee to render a satisfactory performance or service.
- 7.4 Before dismissal, the Employee should have the right to be heard, and to be assisted and/or represented by a fellow Employee or a Trade Union Representative.
- 7.5 Any person determining whether a dismissal for poor work performance is appropriate, should consider:-
- 7.5.1 whether or not the Employee failed to meet a performance standard; and
  - 7.5.2 if the Employee did not meet a required performance standard whether or not-
    - 7.5.2.1 the Employee was aware, or could reasonably be expected to have been aware, of the required performance standard;
    - 7.5.2.2 the Employee was given a fair opportunity to meet the required performance standard; and
    - 7.5.2.3 dismissal is an appropriate sanction for not meeting the required performance standard.

## **8. POLICY GUIDELINES: ILL HEALTH OR INJURY**

- 8.1 Incapacity on the grounds of ill-health or injury may be temporary or permanent.
- 8.2 If an Employee is temporarily unable to work, Management should investigate the extent of the incapacity or the injury. If the Employee is likely to be absent for a time that is unreasonably long in the circumstances (such as, though not limited to, where the Employee has exhausted his leave days), the Line Manager should investigate all the possible alternatives short of dismissal. When alternatives are considered, relevant factors might include, though not limited to, the nature of the job, the period of absence, the seriousness of the illness or injury and the possibility of securing alternative employment, or adapting the duties or work circumstances of the Employee to accommodate the Employee's disability.
- 8.3 In the process of the investigation referred to above, the Employee should be given the opportunity to state his case and to be assisted and/or represented by a fellow Employee or Trade Union Representative.
- 8.4 The degree of incapacity is relevant to the fairness of any dismissal. The cause of the incapacity may also be relevant. In the case of certain kinds of incapacity, for example, alcoholism or drug abuse, counselling and rehabilitation may be appropriate steps for MRTT to consider before dismissal. MRTT shall not be obliged to consider re-occurring rehabilitation for the same Employee.

8.5 Particular consideration should be given to Employees who are injured at work or who are incapacitated by work-related illness, in other words, more effort should be made to find suitable alternatives for an Employee who was injured at work. For example, the Line Manager should consider the extent to which the Employee's work might be adapted to accommodate the disability, or suitable alternative work.

8.6 Any person determining whether a dismissal arising from ill health or injury is appropriate, should consider-

8.6.1 whether or not the Employee is capable of performing the work; and

8.6.2 if the Employee is not capable-

8.6.2.1 the extent to which the Employee is able to perform the work;

8.6.2.2 the extent to which the Employee's work circumstances might be adapted to accommodate disability, or, where this is not possible, the extent to which the employee's duties might be adapted; and

8.6.2.3 the availability of any suitable alternative work.

## **9. POLICY GUIDELINES: OPERATIONAL REQUIREMENTS**

9.1 Dismissals related to operational requirements shall be dealt with in terms of LRA, specifically section 189 or section 189A of the LRA, whichever is applicable.

## **10. POLICY GUIDELINES: MISCONDUCT**

- 10.1 The LRA, allows an employer to determine standard and communicate basic norms and rules which employees must follow and to implement corrective actions should employees deviate or transgress these norms and rules.
- 10.2 The LRA further requires that an employer must have a fair reason for discipline (this is the requirement of 'substantive fairness') and follow a fair procedure (this is called 'procedural fairness') when taking disciplinary steps against an employee who transgressed the aforementioned basic norms / rules.
- 10.3 Any person who is determining whether a dismissal for misconduct is appropriate should consider:-
- 10.3.1 whether or not the Employee contravened a rule or standard regulating conduct in, or of relevance to, MRTT's workplace; and
  - 10.3.2 if a rule or standard was contravened, whether or not-
    - 10.3.2.1 the rule was a valid or reasonable rule or standard;
    - 10.3.2.2 the Employee was aware, or could reasonably be expected to have been aware, of the rule or standard;
    - 10.3.2.3 the rule or standard has been consistently applied by the Employer (or that there are justifiable reasons for deviations); and
    - 10.3.2.4 dismissal was an appropriate sanction for the contravention of the rule or standard.

## **11. POLICY GUIDELINES: DISCIPLINARY MEASURES**

- 11.1 This Policy is not intended to nor does it set out all the grounds on which disciplinary steps may be taken. Importantly, the penalties provided for in this Policy should be seen as guidelines and may be deviated from, depending on the circumstances of a particular case.
- 11.2 Any contravention of some of the offences mentioned in this Policy may also constitute a criminal act. MRTT shall not be precluded from acting in terms of this Policy, whilst taking or initiating any criminal steps or procedures against the Employee.
- 11.3 An informal disciplinary process will be followed when a verbal, written warning or final written warning appears to be the most appropriate disciplinary action according to the provisions set out in this Policy.
- 11.4 Any Employee, who commits an act of misconduct or is guilty of an omission that falls short of an acceptable standard of conduct required of the Employee, may be subjected to appropriate disciplinary action.
- 11.5 The application of discipline may take any of the following forms, depending upon the circumstances of the particular case, the frequency and/or the severity of the misconduct:-
- 11.5.1 verbal warning (“**VM**”);
  - 11.5.2 written warning (“**WW**”);
  - 11.5.3 final written warning (“**FWW**”);

- 11.5.4 suspension without pay;
- 11.5.5 demotion; and
- 11.5.6 dismissal.

## **11.6 Verbal Warning (VW)**

- 11.6.1 In cases of minor disciplinary transgression of a rule or standard of the workplace, the Employee's Line Manager may, if necessary, issue verbal warning to an Employee.
- 11.6.2 The purpose of a verbal warning is to inform the Employee of the transgression and to correct the Employee's conduct by advising him of why the behaviour is incorrect and what is required of the Employee.
- 11.6.3 It shall not be necessary to give written notice of the allegations against an Employee, or to provide advance notice of the allegations when it is anticipated that only a verbal warning could result, however the Employee must be afforded the opportunity to present his case in answer to the allegations against him.
- 11.6.4 The verbal warning must be recorded on the Employee's personnel file and is valid for 3 (three) months.
- 11.6.5 A copy of any warning should be kept on the Employee's file, even after expiry thereof, so as to serve as a record of the Employee's disciplinary history.

## **11.7 Written Warning (WW)**

- 11.7.1 When a verbal warning is inappropriate due to the nature of the offence or where previous verbal warnings have not had the desired effect, the Line Manager may give an Employee a written warning. A template of a written warning is attached hereto. The purpose of the template is to provide guidance and it may be amended or supplemented where necessary.
- 11.7.2 The Line Manager shall provide the Employee with a written notice of the allegations against him.
- 11.7.3 Within 2 (two) Working Days of the Employee being informed of the allegations, a meeting shall be held between the Line Manager, the Employee, wherein the Line Manager shall advise the Employee of the allegations and allow the Employee a fair and reasonable opportunity to state his case.
- 11.7.4 The written warning must state the disciplinary transgression/s committed by the Employee and warn the employee not to repeat the transgression again.
- 11.7.5 A written warning must be recorded on the Employee's personnel file and is valid for 6 (six) months.
- 11.7.6 The Employee must sign for receipt of the written warning after its contents have been explained to the Employee. If the Employee refuses to sign for receipt of the warning, the written warning is nevertheless valid and a note that the Employee refused to sign for the written warning must be recorded on the warning.

11.7.7 A copy of any warning should be kept on the Employee's file, even after expiry thereof so as to serve as a record of the Employee's disciplinary history.

## **11.8 Final Written Warning (FWW)**

11.8.1 When a verbal or written warning is inappropriate due to the nature of the offence or where previous warnings have not had the desired effect or where the offence is of such a serious nature, the Line Manager may give an Employee a final written warning. A template of a final written warning is attached hereto. The purpose of the template is to provide guidance and it may be amended or supplemented where necessary.

11.8.2 The Line Manager shall provide the Employee with a written notice of the allegations against him.

11.8.3 Within 2 (two) Working Days of the Employee being informed of the allegations, a meeting shall be held between the Line Manager, the Employee, wherein the Line Manager shall advise the Employee of the allegations and allow the Employee a fair and reasonable opportunity to state his case.

11.8.4 The final written warning must state the disciplinary transgression/s committed by the Employee and warn the Employee not to repeat the transgression again.

11.8.5 A final written warning must be recorded on the Employee's personnel file and is valid for 12 (twelve) months.



11.8.6 The Employee must sign for receipt of the final written warning. If the Employee refuses to sign for receipt of the final written warning, the final written warning is nevertheless valid and a note that the Employee refused to sign for the written warning must be recorded on the warning.

11.8.7 A copy of any warning should be kept on the Employee's file, even after expiry thereof so as to serve as a record of the Employee's disciplinary history.

## **11.9 Suspension without pay**

11.9.1 Suspension without pay is a punitive measure that may be imposed, by agreement with the Employee as an alternative to dismissal, where a dismissal is justified with mitigating circumstances, which MRTT recognises. The period for suspension without pay is 2 (two) weeks or such other period as permitted by applicable law, along with a final written warning valid for 12 (twelve) months.

## **11.10 Demotion**

11.10.1 Demotion is a punitive measure that may be imposed, by agreement with the Employee as an alternative to dismissal, where a dismissal is justified but where there are mitigating circumstances that MRTT recognises.

## **11.11 Dismissal**

11.11.1 Dismissal is the most severe punitive measure that MRTT may impose if an Employee commits an offence for which a final written warning is still valid or if the nature of the offence warrants a dismissal.

11.11.2 Notwithstanding the above and that certain forms of misconduct will ordinarily require a sanction other than dismissal; an Employee may be dismissed for accumulated misconduct of a varying nature even though the Employee might not otherwise be liable to be dismissed in respect of any one particular category of misconduct. Dismissal may take place if an Employee has committed several acts of misconduct and has previous written and final written warnings, which are valid, notwithstanding the fact that the conduct complained of is unrelated to the previous conduct.

11.11.3 MRTT may only dismiss an Employee after a formal disciplinary enquiry is held. However this does not apply to termination of fixed term contracts due to non-renewal and/or by effluxion of time.

11.11.4 At a formal disciplinary enquiry and before a decision is taken to dismiss an Employee, consideration must be given to all relevant aggravating and mitigating circumstances such as, though not limited to, the Employee's previous disciplinary record, personal circumstances, length of service and the circumstances of the misconduct itself.

## **12. DISCIPLINARY ACTION**

### **12.1 Suspension**

12.1.1 MRTT has the right to suspend an Employee on full pay, pending a formal disciplinary enquiry, where MRTT believes:-

12.1.1.1 that the Employee's presence could cause challenges and/or issues within the workplace or lead to conflict;

12.1.1.2 where the Employee's presence could prejudice MRTT's investigation or be detrimental to MRTT's activities / operations;

12.1.1.3 where there is sufficient reason to doubt the willingness or ability of the Employee to work normally until the formal disciplinary enquiry has been finalised and not to be disruptive;

12.1.1.4 where it is in the interest or safety of the Employee;

12.1.1.5 where the continued presence of the Employee charged with misconduct has the potential of threatening other Employees, or

12.1.1.6 where other Employees are likely to be intimidated by the Employee charged with the misconduct.

12.1.2 Subject to sub-clause 12.1.4, if MRTT intends to suspend an Employee, it shall:-

12.1.2.1 give the Employee written notice of its intention and reasons to suspend and;

12.1.2.2 inform the Employee that he may submit written reasons to MRTT as to why he should not be suspended, so that such reasons may

be taken into consideration before a final decision is taken regarding the suspension of the Employee.

12.1.3 Notice of the final decision regarding the Employee's suspension shall be in writing.

12.1.4 Notwithstanding the aforementioned, and in considering all of the aforementioned factors under sub-clause 12.1.1, MRTT shall be entitled to suspend an Employee as a precautionary measure, without giving the Employee an opportunity to make representations before the said suspension is implemented. In this regard, such a decision (to suspend) by MRTT shall be final and binding.

## **12.2 Formal Disciplinary Enquiry**

12.2.1 A formal disciplinary enquiry must be held as soon as reasonably possible after the commission of an alleged offence.

12.2.2 MRTT shall endeavour to hold the formal disciplinary enquiry as soon as possible after it has finalised its investigation into the alleged conduct of an Employee. While MRTT shall make every effort to ensure that discipline is implemented contemporaneously with the offence allegedly committed by the Employee, it is recognised that certain investigations may take longer to complete and that it is not always possible to bring disciplinary proceedings contemporaneously.

- 12.2.3 An Employee has the right to be assisted and/or represented at a formal disciplinary enquiry by a fellow Employee or Trade Union Representative, but may choose not to exercise this right. The Employee who is facing disciplinary action must indicate to the HR Sub-Programme via his Line Manager the name of the Employee or Trade Union Representative to represent him. The fellow Employee or Trade Union Representative is required to obtain permission to be absent from his place of work in order to act in terms of this procedure, which permission shall not be unreasonably withheld.
- 12.2.4 MRTT shall be represented at a formal disciplinary enquiry by an Initiator. Legal representation for and/or on behalf of any party is not permitted in disciplinary proceedings, unless the parties agree to same or if special circumstances exist, which shall be decided upon by the chairperson. In this regard the chairperson's decision regarding the aforementioned shall be final and binding.
- 12.2.5 The Employee shall be given a minimum of 5 (five) Working Days written notice to attend a disciplinary enquiry and shall be informed of the allegations he has to answer to during the enquiry. The written notice must contain the following:
- 12.2.5.1 the nature of the charge or infringement with specific reference to the nature, date or period of time to allow the Employee an adequate opportunity to prepare for the inquiry;

- 12.2.5.2 the date, time and venue of the hearing;
- 12.2.5.3 notification that the Employee may be assisted and/or represented by a fellow Employee or Trade Union Representative at the hearing and that it is his duty to arrange for such representation. The Employee who is facing disciplinary action must indicate to the HR Sub-Programme via his Line Manager the name of the Employee or Trade Union Representative that will assist and/or represent him/her. The Employee is not entitled, as a right, to legal representation in disciplinary proceedings;
- 12.2.5.4 that if the Employee requires an interpreter, then MRTT should be notified of such a request, in writing, at least 2 (two) Working Days before the enquiry is held;
- 12.2.5.5 advise the Employee that he has the right to state his case and defend himself both in respect of the allegations of misconduct and in the determination of a sanction;
- 12.2.5.6 that the Employee may bring witnesses, if any, to the enquiry and that the Employee will have the right to examine and cross-examine witnesses;
- 12.2.5.7 subject to MRTT's protectable interests and/or trade secrets, confidential, and/or classified information, the Employee will be provided with copies of any documents reasonably required for purposes of conducting the enquiry and/or which shall be produced as evidence at the enquiry; and

- 12.2.5.8 notify the Employee that if he refuses and/or fails to attend the disciplinary enquiry, the enquiry shall take place in the Employee's absence and that his failure to attend the enquiry may have serious repercussions as the enquiry may be held in his absence without further notice and a sanction of dismissal may be imposed.
- 12.2.6 MRTT shall request the Employee to sign for receipt of the notice to attend the formal disciplinary enquiry. If the Employee refuses to acknowledge receipt of the notice, then the person handing the Employee the notice, may sign as having witnessed the delivery of the notice upon the Employee and such shall serve as *prima facie* evidence that the Employee received the notice.
- 12.2.7 A formal disciplinary enquiry shall be chaired by a person nominated by MRTT. Given the size of MRTT, capacity issues, the nature and/or complexity of the case, MRTT reserves the right to appoint an external, suitably qualified chairperson, which may include a legal qualified person. If the chairperson is an employee of MRTT, then he shall be no less senior than the Employee being disciplined.
- 12.2.8 A formal disciplinary enquiry shall be attended by the chairperson of the enquiry, the Employee concerned, the Employee's representative, the Initiator and any witness called to give evidence and such other persons considered appropriate by MRTT, such as a representative from the HR Sub-Programme.

12.2.9 After hearing all relevant evidence relating to the charges, the chairperson of the enquiry must communicate his decision in writing at the end of the enquiry or within 7 (seven) Working Days from the end of the enquiry or such other period as advised or determined by the chairperson. Thereafter, or if it is appropriate to do so at the end of the enquiry, the chairperson must hear evidence in aggravation or mitigation for purposes of imposing a sanction.

12.2.10 In considering what sanction to impose, the chairperson is entitled to consider other forms of disciplinary action as an alternative to dismissal, including, for example, suspension without pay or demotion. In determining an appropriate sanction, the chairperson must have regard to MRTT's approach to similar conduct in the past and recognise the importance of being consistent in the imposition of any sanction whilst also recognising that the circumstance of each individual case is different and circumstances may justify from departing from the usual form of sanction applicable to the conduct in question.

12.2.11 Where more than one Employee is alleged to have committed the same or a similar offence, MRTT may at its discretion, choose to take disciplinary action against the Employees as a group.



### **12.3 Conduct of the Formal Disciplinary Enquiry**

12.3.1 Although the chairperson of the enquiry may depart from these suggestions set out below, the enquiry shall at all times be conducted in a fair manner. In general and wherever possible the enquiry should be conducted as follows:-

12.3.1.1 where circumstances dictate and/or allow, the enquiry may be held in camera and/or through video conferencing;

12.3.1.2 the chairperson shall ensure that only those who are entitled to be present at the enquiry are present and that all witnesses are available. Witnesses shall be required to wait outside or only attend the proceedings as and when required to give evidence;

12.3.1.3 the chairperson shall ensure that everyone present at the enquiry introduces themselves and the chairperson shall explain everyone's role in the enquiry including his own;

12.3.1.4 at the commencement of the enquiry, the chairperson shall inform the Employee of his/her rights and shall inquire whether the Employee has any queries or complaints regarding these rights;

12.3.1.5 the chairperson shall read out the charges against the Employee and outline the nature of the misconduct. The chairperson shall then ask the Employee if he understands the nature of the offence and the reasons why he is being charged and how he pleads to each of the charges;

- 12.3.1.6 if the employee pleads guilty to the charges, the chairperson shall ask questions to determine whether the Employee understands the charges and implications of a guilty plea. If it is clear that the Employee understands the charges the chairperson must find the Employee guilty and move to consider evidence in mitigation and aggravation to determine the appropriate sanction to impose;
- 12.3.1.7 if the Employee pleads not guilty to the charges, the chairperson shall then proceed with the inquiry, which shall commence with the Initiator disclosing the full nature of the offence. The Initiator shall then be entitled to lead evidence regarding the offence by calling witnesses to give evidence and introducing documents as evidence. The Employee shall be entitled to cross-examine all witnesses and have access to all documents tendered at the enquiry. The Initiator may re-examine witnesses if necessary;
- 12.3.1.8 after the Employer has closed its case, the Employee will then be given an opportunity to state his case and call witnesses to give evidence on his behalf. The Initiator shall be entitled to cross examine witnesses and examine any documents tendered in evidence by the employee. The Employee shall be entitled to re-examine any witnesses;
- 12.3.1.9 the chairperson shall be entitled to ask witnesses questions relating to any evidence they have led. The chairperson is entitled to inquire from the Initiator or the Employee whether they intend leading evidence regarding any matter, which requires clarification;

12.3.1.10 after all evidence has been led, each party shall be given a chance to summarise its case after which the enquiry shall be adjourned to allow the chairperson to consider the evidence and decide on whether the Employee is guilty or innocent of the misconduct with which he has been charged;

12.3.1.11 if it is convenient to do so, prior to the enquiry adjourning, evidence in mitigation and aggravation shall be led. Alternatively, and only if a finding of guilty is made and communicated to the parties, the parties shall be required to give evidence in mitigation or aggravation of sentence. Such evidence may be made by written submissions or take the form of an oral hearing if it is specifically required or requested; and

12.3.1.12 after all mitigating and aggravating circumstances have been considered, the chairperson must consider such evidence together with the Employee's work record and/or disciplinary record before making a decision on the appropriate sanction.

12.3.2 The chairperson, before imposing the sanction of dismissal ought to consider clauses 10.1 to 10.3.2.4 and to clauses 11.11.1 to 11.11.4 above.

12.3.3 The chairperson shall communicate his finding and sanction in writing to the parties together with brief reasons.

### **13. APPEAL PROCESS**

- 13.1 The Employee has the right to appeal against a disciplinary decision or sanction.
- 13.2 The Employee must lodge his appeal within 7 (seven) Working Days of being informed of the disciplinary decision or sanction. The grounds of the appeal must be clearly set out.
- 13.3 An appeal shall be chaired by a person nominated by MRTT. Given the size of MRTT and capacity issues, MRTT reserves the right to appoint an external, suitably qualified appeal chairperson. If the appeal chairperson is an employee of MRTT, then he shall be no less senior than the chairperson of the formal disciplinary enquiry.
- 13.4 The appeal will only be heard on the grounds of the appeal submitted by the Employee and by having regard to the record of the proceedings and submissions and arguments based thereon. The appeal should not entail the rehearing of the matter de novo.
- 13.5 The appeal may be dealt with on “on paper”, i.e. through written submissions by the parties without an oral hearing being held or it may take the form of an oral hearing.
- 13.6 The appeal chairperson shall have the power to confirm or set aside any decision, determination or finding and to confirm, set aside or reduce any sanction imposed.

- 13.7 The appeal chairperson shall fix the time, date and venue of the appeal hearing which shall take place within 10 (ten) Working Days of date of his appointment. In consultation with the parties, the chairperson of the appeal may vary the time and date and order a mutually convenient time, date and venue.
- 13.8 The parties shall deliver to the other and to the chairperson a brief statement of case at least 2 (two) Working Days prior to the hearing and no further pleadings shall be exchanged unless otherwise agreed.
- 13.9 The statement of case shall concisely set out the facts, conclusions upon which the party relies and the relief the party seeks.
- 13.10 The hearing will be conducted by the appeal chairperson in whatever manner and procedure that will produce the most expeditious hearing of the matter.
- 13.11 The appeal chairperson shall make his determination, in writing, within ten (10) Working Days from the last Working Day of the hearing or such other period as advised or determined by the appeal chairperson and communicate same, with brief reasons, to the parties.
- 13.12 Should the Employee still be dissatisfied with the result, the Employee may refer the matter to the CCMA.

#### **14. REVIEW**

- 14.1 MRTT has the right to review a decision or sanction, of the chairperson in the disciplinary and/or appeal process, subject to and in terms of section 158(1)(h) of the LRA.

#### **15. DISCIPLINARY CODE OF OFFENCES**

- 15.1 In the interests of consistency, the disciplinary action to be taken when a specific rule has been transgressed must be clearly stated. The disciplinary action should be taken with careful consideration first being given to the circumstances of each case.
- 15.2 It is required that the Line Manager or the chairperson to apply his mind to the circumstances of each case in order to determine an appropriate disciplinary action or sanction, even if this means a deviation from this code.
- 15.3 The sanctions listed below will therefore be applied only as guidelines for the consistent discipline of Employees and will be fairly and appropriately applied in relation to the circumstances of each case.
- 15.4 Any other action or omission of an Employee which is detrimental to the employment relationship and/or clients/customers of MRTT may also be regarded as a transgression in terms of the disciplinary code.
- 15.5 The disciplinary code does not derogate from MRTT's right to dismiss on any grounds that the law regards as sufficient.

**15.6 Offences relating to absenteeism and other time-keeping offences**

<b>Offences relating to absenteeism and other time-keeping offence</b>	<b>1st Offence</b>	<b>2nd Offence</b>	<b>3rd Offence</b>	<b>4th Offence</b>	<b>5th Offence</b>
Bad time keeping such as late coming and extended breaks	Counselling	VW	WW	FWW	Dismissal
Leaving workplace, MRTT premises or place of duty while scheduled for duty, without authorisation	WW	FWW	Dismissal		
Loitering on MRTT premises while on duty	WW	FWW	Dismissal		
Absent from work without permission	WW	FWW	Dismissal		
Failing to report absence to MRTT 1 hour before your scheduled shift	WW	FWW	Dismissal		
Absent from work for less than 4 consecutive days without a valid reason	FWW	Dismissal			
Abuse of leave	WW	FWW	Dismissal		

<b>Offences relating to absenteeism and other time-keeping offence</b>	<b>1st Offence</b>	<b>2nd Offence</b>	<b>3rd Offence</b>	<b>4th Offence</b>	<b>5th Offence</b>
Failing to produce a medical certificate when required	FWW	Dismissal			
Failing to report for overtime work when after agreeing to do so without a valid reason	WW	FWW	Dismissal		

**15.7 Offences relating to work ethic and employee's work obligations**

<b>Offences relating to work ethic and employee's work obligations</b>	<b>1st Offence</b>	<b>2nd Offence</b>	<b>3rd Offence</b>
Failing and/or refusing to comply with MRTT policies or procedures	WW	FWW	Dismissal
Failure to carry out duties diligently or at all	WW	FWW	Dismissal
Negligence in carrying out duties	FWW	Dismissal	
Sleeping on duty	FWW	Dismissal	
Conflict of interest / competing with MRTT / having an interest in a business in competition with MRTT /having an interest in a business that is a supplier to MRTT/ failure to promote the interest of MRTT	Dismissal		



Gross Negligence in carrying out duties	Dismissal		
Insubordination meaning failure an/or refusal to obey a lawful and reasonable instruction	FWW	Dismissal	
Insolence which may be impudence, cheekiness', rudeness, disrespect	FWW	Dismissal	
Gross Insubordination meaning the failure / refusal to obey a lawful and reasonable instruction	Dismissal		
Gross Insolence which may be impudence, cheekiness', rudeness, disrespect	Dismissal		
MRTT driver: deviating from one's route, picking up hitchhikers or transportation of unauthorised personnel or goods	Dismissal		
Failing to take disciplinary action when required or necessary	FWW	Dismissal	
Any act which promotes racial tension or disharmony in the workplace or within MRTT's premises	Dismissal		
Unsatisfactory work performance	Counselling or WW	FWW	Dismissal

**15.8 Offences relating to MRTT property and assets**

<b>Offences relating to MRTT property and assets</b>	<b>1st Offence</b>	<b>2nd Offence</b>	<b>3rd Offence</b>	<b>4<sup>th</sup> Offence</b>
Excessive and or abusive personal use of MRTT telephones, e-mail or internet	FWW	Dismissal		
Poor maintenance or neglect of equipment, material, vehicles or any MRTT property.	FWW	Dismissal		
Driving MRTT vehicle without authority	FWW	Dismissal		
Reckless or negligent driving of MRTT vehicle on or off MRTT premises	FWW	Dismissal		
Using MRTT property for personal purposes without written authority	FWW	Dismissal		
Failing to report damage of MRTT property, employees', customers' or visitors' property immediately.	FWW	Dismissal		
Intentional damage to MRTT, visitors, suppliers', customers' or Employee's property or loss of MRTT property	Dismissal			

<b>Offences relating to MRTT property and assets</b>	<b>1st Offence</b>	<b>2nd Offence</b>	<b>3rd Offence</b>	<b>4<sup>th</sup> Offence</b>
Using MRTT property for the distribution or accessing of offensive material or information	FWW	Dismissal		
Disclosing MRTT records or information of a confidential nature without authorisation	Dismissal			
Industrial espionage or bribery	Dismissal			
Bringing MRTT's name into disrepute and or tarnishing it on media or social media platforms	Dismissal			

**15.9 Offences of Dishonesty**

<b>Offences of Dishonesty</b>	<b>1st Offence</b>
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<p>Theft, Fraud, attempted theft, attempted fraud in respect MRTT, a fellow employee, client, supplier or visitor</p> <p>Conspiracy</p> <p>Forgery or giving false or misleading statements to MRTT or to customers, suppliers, employees or persons having dealings with MRTT</p> <p>Falsification of records / documents / information</p> <p>Changing a medical certificate or using a false medical certificate</p> <p>Misappropriation of company property, i.e.to appropriate wrongly or dishonestly or to misuse or to embezzle.</p> <p>Removal of MRTT property without authority</p> <p>Being in possession of MRTT property without authorisation</p> <p>Any other dishonest conduct which is conduct with the intention to deceive or a reasonable person would believe has an intention to deceive.</p> <p>Non-disclosure/ misrepresentation of relevant information- Failure to declare previous convictions, a record of misconduct or chronic ill health before employment. Nondisclosure of direct or indirect outside interests/ sources of income or gifts and benefits received</p>	<p>Dismissal</p>
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**15.10 Offences to the person or dignity of a fellow employee or any other person the employee comes into contact with in the course of his/her work**

<b>Offences to the person or dignity of a fellow employee or any other person the employee comes into contact with in the course of his/her work</b>	<b>1st Offence</b>	<b>2nd Offence</b>
Abusive or insulting language, signs or behaviour	FWW	Dismissal
Promoting or engaging in racist incitement or being racially abusive or engaging in discriminatory behaviour based on sex, creed, political beliefs, sexual orientation or the like, including jokes of this nature.	Dismissal	
Harassment, including sexual harassment, unsolicited sexual behaviour, innuendo, suggestion or gesture and other inappropriate behaviour of a sexual or discriminatory nature	Dismissal	
Threats to Employees, customers, suppliers or visitors	Dismissal	
Assaulting a person or fighting with any person on MRTT premises	Dismissal	
Intimidating or inciting Employees, customers, suppliers or visitors, also including intimidation of Employees in respect of unlawful work stoppages	Dismissal	

### 15.11 Offences relating to Health and Safety

<b>Offences relating to health and safety</b>	<b>1st Offence</b>	<b>2nd Offence</b>
Creating or causing or allowing any condition or situation at work that did or could endanger the general safety or health of employees or other persons	Dismissal	
Failure to use protective clothing and/or equipment when required by legislation and / or MRTT Policy	FWW	Dismissal
Smoking in a non-designated smoking area	FWW	Dismissal
Failing to immediately report an accident, incidents (including near misses) or injury on duty	FWW	Dismissal

### 15.12 Alcohol or drug related offences

<b>Alcohol or drug related offences</b>	<b>1st Offence</b>	<b>2nd Offence</b>
Under the influence and/or testing positive for alcohol or drugs on MRTT premises or whilst on duty	Dismissal	
In possession of alcohol or drugs not prescribed to the possessor on MRTT premises or while on duty	Dismissal	
Unlawful distribution of alcohol or drugs on MRTT premises	Dismissal	

**15.13 Possession of dangerous weapons**

<b>Possession of dangerous weapons</b>	<b>1st Offence</b>
Being in possession of a firearm or dangerous weapon on MRTT premises or while on duty, unless authorised in writing by MRTT	Dismissal

**15.14 Breach of Company security measures**

<b>Breach of Company security measures</b>	<b>1st Offence</b>	<b>2nd Offence</b>
Being present in an area in which the Employee is not permitted	FWW	Dismissal
Failing or refusing to submit to a security search	Dismissal	
Not adhering to MRTT security implemented procedures and putting other Employees at risk	FWW	Dismissal
Intentionally leaving open or obscuring a door / access from not being closed.	FWW	Dismissal



**15.15 General offences**

<b>General Offences</b>	<b>1st Offence</b>	<b>2nd Offence</b>
Abuse of MRTT privileges	FWW	Dismissal
Improper conduct / conduct unbecoming and /or bringing MRTT's name in disrepute.	FWW	Dismissal
Unauthorised statements or comments to the media, press or third parties regarding MRTT	Dismissal	
Breach of confidentiality, whether in respect of information regarding or belonging to MRTT or its clients or in general for personal gain	Dismissal	
Distributing notices, posters etc. without authorisation and/ or which may be contrary to the interests of MRTT or distasteful, or removing or altering MRTT notices without its written permission	Dismissal	
Any action which may damage the trust relationship implied by the contract of employment	Dismissal	

**16. MONITORING AND EVALUATION**

Programme	Name and Position
Planning and Performance Information	FW Magwandana

**17. POLICY REVIEW**

Programme	Designation	Date Reviewed	Next Date of Review	
Corporate Services	Manager : Human Resource	29-03-2021	29-03-2023	

**18. AMENDMENTS**

18.1 This Policy does not form part of any other document; it replaces and supersedes any previous MRTT grievance policies, procedures or any other similar document.

18.2 This Policy shall only be amended, varied or altered in writing. MRTT reserves the right to make such amendments, variations or alterations to this Policy from time to



time with written notice of one calendar month being given after proper consultation with all relevant stakeholders.

### **TEMPLATE: WRITTEN WARNING**

Employee:

Position:

Sub-Programme / Programme:

Date:

Dear \_\_\_\_\_

#### **Written warning in terms of the MRTT Disciplinary Code and Procedure**

This letter serves as a written warning in that you breached MRTT's Disciplinary Code and Procedure in the following respect(s): *(provide date and details of misconduct)*

This notice serves as a written warning valid for six (6) months.

This warning will be retained in your personnel file. Should you be found guilty of further offences while this warning is still in force, this warning could influence the penalty that it imposed on you.



We regret that this action has been necessary and sincerely hope that your future conduct will make it unnecessary for us to invoke further action to ensure that you maintain acceptable levels of behaviour.

Yours sincerely

---

Manager

*I, the undersigned employee, hereby acknowledge that I have understood the contents of this letter and have received a copy of such letter.*

---

Signature of Employee

---

Date

---

Signature of Witness [if necessary]

\_\_\_\_\_

Date

**TEMPLATE: FINAL WRITTEN WARNING**

Employee:

Position:

Sub-Programme / Programme:

Date:

Dear \_\_\_\_\_

**Final Written warning in terms of the MRTT Disciplinary Code and Procedure**

This letter serves as a final written warning in that you breached MRTT's Disciplinary Code and Procedure in the following respect(s): *(provide date and details of misconduct)*

This notice serves as a written warning valid for twelve (12) months.

This warning will be retained in your personnel file. Should you be found guilty of further offences while this warning is still in force, this warning could influence the penalty that it imposed on you.



We regret that this action has been necessary and sincerely hope that your future conduct will make it unnecessary for us to invoke further action to ensure that you maintain acceptable levels of behaviour.

Yours sincerely

---

Manager

*I, the undersigned employee, hereby acknowledge that I have understood the contents of this letter and have received a copy of such letter.*

---

Signature of Employee

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Date

---

Signature of Witness [if necessary]



\_\_\_\_\_

Date

**TEMPLATE: NOTICE TO ATTEND A DISCIPLINARY ENQUIRY**

NAME OF EMPLOYEE: \_\_\_\_\_

DATE OF NOTICE: \_\_\_\_\_

You are hereby notified that a disciplinary enquiry will be held on

DATE OF HEARING: \_\_\_\_\_

TIME OF HEARING: \_\_\_\_\_

PLACE OF HEARING: \_\_\_\_\_

The purpose of the enquiry is to consider the following allegations of misconduct committed by you:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



You have the right to be assisted and/or represented at the disciplinary enquiry by a fellow employee or trade union representative. It is your responsibility to arrange for such representation.

You must indicate to the HR Sub-Programme via your Line Manager the name of the Employee or Trade Union Representative to represent you.

An Employee is not entitled, as a right, to legal representation in disciplinary proceedings unless the parties agree to same or if certain special circumstances exist that would reasonably entitle you to be represented by a legal representative.

You have the right to submit documentary evidence, to call witnesses and to cross-examine witnesses called by MRTT.

You must make the necessary arrangements for your own witnesses to attend the hearing. If any of your witnesses are employees of MRTT you must advise your Line Manager or Supervisor of their names and details, before the hearing, so that the necessary arrangements can be made to release them from duty.

If you require an interpreter, please advise the person who signed this notice sufficiently in advance, i.e. at least 2 (two) Working Days, before of the enquiry is held so that one may be arranged for you.

You will be given the opportunity at the disciplinary enquiry to state your case and defend yourself both in respect of the allegations of misconduct and in the determination of a sanction.

If you refuse and/or fail to attend the disciplinary enquiry, the enquiry shall take place in your absence and your failure to attend the enquiry may have serious repercussions as the enquiry may be held in your absence without further notice and a sanction of dismissal may be imposed.





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Signature

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Title of person signing notice

**Note to employee:** *By signing this form, you simply acknowledge that you have received the notice of the disciplinary enquiry and it in no way constitutes an admission of guilt.*

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Signature of employee

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Date of employee's signature

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Signature of witness

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Date of witness's signature