

Statutory Instrument 70 of 2017.

[CAP. 28:01

Collective Bargaining Agreement: Tobacco Industry (Tobacco
Industry Code of Conduct)

IT is hereby notified that the Collective Bargaining Agreement set out in the Schedule, which replaces the agreement published in Statutory Instrument 322 of 1996 has been registered in terms of section 101 of the Labour Act [*Chapter 28:01*].

SCHEDULE

NATIONAL EMPLOYMENT COUNCIL FOR THE TOBACCO
INDUSTRY

COLLECTIVE BARGAINING AGREEMENT: TOBACCO
INDUSTRY (TOBACCO INDUSTRY CODE OF CONDUCT)
(MISCELLANEOUS AND CIGARETTE AND TOBACCO
MANUFACTURING) INDUSTRIES

This agreement, to be known as the "Tobacco Industry Code of Conduct", has been made and entered into in terms of the Labour Act [*Chapter 28:01*] between the Employers' Associations of the Tobacco (Miscellaneous) Industry, the Cigarette and Tobacco Manufacturing and Grading Industry of the one part, and the Zimbabwe Tobacco Industrial Workers' Union, of the other part, being parties to the National Employment Council for the Tobacco Industry.

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PART I

INTRODUCTION AND APPLICATION

1. This Code of Conduct (hereinafter referred to as the "Code") may be cited as the Tobacco Industry Code of Conduct. This Code shall come into operation on the date of registration by the Registrar of Labour. The Code shall apply to employers and or management and employees in the Tobacco Industry.

2. The Labour Act [*Chapter 28:01*], remains in force as the fundamental basis of labour standards and provides the legal basis and authority for our industry to have a Code of Conduct to govern relationships at the workplace to further the process of self-governance.

3. This Code introduces a system of dealing directly with labour difficulties and problems in the industry. It does so by providing—

- (a) a disciplinary system at the workplace accepted by both management and employees;

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- (b) grievance and disciplinary procedures;
- (c) definitions of labour offences at various levels of seriousness that may be committed by employees in the course of employment relationships;
- (d) the responsibilities of workers committees, works councils and the employment council in the disciplinary and grievance processes.

Aims and objectives

4. The principal purposes of this Code are that all grievances and disciplinary matters shall be settled within the industry, and to assist in the achievement of good standards of conduct, work attendance and job performance. To these ends the Code incorporates—

- (a) principles governing the Code;
- (b) a framework for consultation, dispute settlement, conciliation and communication in the conduct of labour relations;
- (c) the rights and duties of employers and employees and their representatives;
- (d) the agreed procedures for the better handling of grievances, disciplinary measures and dismissal.

Principles

5. This Code recognises and shall be operated upon the following basic principles—

- (a) peaceful and orderly conduct of labour relations;
- (b) mutual responsibility between employers and employees;
- (c) fairness and justice at the workplace;
- (d) promotion of stability and increased productivity in the industry;
- (e) the right of each employee to be represented by a workers committee member or another employee of his or her choice or trade union official or legal representative;
- (f) respect for the basic right of freedom of association;
- (g) prevention of any unlawful form of collective job action.

PART II

DEFINITION OF TERMS

6. In this Industry Code:

“Act” means the Labour Act [*Chapter 28:01*] and includes any statutory instrument made and in force under the Act;

“Code” means the set of agreed procedures, principles and acts which are designed to regulate and promote good behavior at the workplace;

“chairman of council” includes the acting chairman of council as provided for in the constitution of the council;

“council” means the National Employment Council for the Tobacco Industry;

“day” means a working day excluding Saturday, Sunday and a public holiday;

“employee” means any person who performs work or services for another person for remuneration or reward on such terms and conditions as agreed upon by the parties or as provided for in the Labour Act, and includes a person performing work or services for another person—

- (a) in circumstances where, even if the person performing the work or services supplies his or her own tools or works under flexible conditions of service, the hirer provides the substantial investment in or assumes the substantial risk of the undertaking; or
- (b) in any other circumstances that more closely resemble the relationship between an employee and employer than that between an independent contractor and hirer of services;

“employer” means any person whatsoever who employs or provides work for another person and remunerates or expressly or tacitly undertakes to remunerate him or her;

“employers’ association” means the Employers Association of the Tobacco (Miscellaneous Sector), Cigarette and Tobacco Manufacturing and Grading Sectors or any other

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association that is registered to represent the interests of employers in the industry;

“Grievance and Disciplinary Committee” means a committee established in terms of section 9 of this Code. The committee shall be composed of two members from ZTIWU, two members from the employers’ association and the chairman of the Employment Council;

“Labour Court” means the Labour Court established in terms of the Act;

“misconduct” means an act specified in Appendix I of the Code;

“supervisor” means an employee appointed to direct and supervise work carried out by other employees;

“trade union” means the Zimbabwe Tobacco Industrial Workers Union or any other trade union that is registered to represent the interests of employees in the industry;

“worker representative” means a person nominated by an employee concerned to attend disciplinary and/or grievance procedures who shall either be a trade union official, workers’ committee member, fellow employee, or a legal practitioner;

“workers committee” means a workers committee elected or appointed in terms of the Labour Act [*Chapter 28:01*] to represent the interests of non-managerial employees at the workplace;

“works council” means a works council as defined in the Act;

“ZTIWU” means the Zimbabwe Tobacco Industrial Workers Union.

PART III

DUTIES AND RIGHTS AT THE WORKPLACE

Employers’ rights and duties

7. This Code recognises that employers have the following principal rights and duties —

- (a) manage and conduct the business of the industry effectively;
- (b) set standards of performance and conduct in the industry;
- (c) administer discipline and ensure that grievances are resolved according to the accepted procedures;
- (d) maintain, jointly with the employees or employees' representatives, effective arrangements for negotiation, consultation and communication, and for settling of grievances and labour disputes;
- (e) to ensure that the responsibilities of employees are clearly defined in the industry;
- (f) abide by the terms and conditions of collective bargaining agreements and act in good faith in relationships with employees and employees' representatives;
- (g) lockout as avoided for in the Labour Act;
- (h) provide adequate time off for training of shop floor representatives and of all employees.

Employees' rights and duties

8. This Code recognises that employees have the following principal rights and duties—

- (a) develop jointly with employers effective procedures in the industry for the negotiation of terms and conditions of employment, and for the peaceful settlement of grievances and disputes;
- (b) understand the standards of performance and conduct expected of employees in the industry;
- (c) to be treated fairly, openly and consistently in the exercising of discipline and resolution of grievances;
- (d) suggest amendments, modification or revision of laid down procedures in the Code in consultation with employers;
- (e) appeal against any harsh or unjustified disciplinary action by management;

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- (f) call for collective job action as provided for in the Labour Act;
- (g) abide by the terms and conditions of collective bargaining agreements and act in good faith in relationships with employers.

PART IV

INSTITUTIONAL ARRANGEMENTS

(see Appendix II)

9. There shall be established a Grievance and Disciplinary Committee constituted as follows—

- (a) two representatives from the employers association; and
- (b) two representatives from the trade union; and
- (c) the Chairman of the Council.

The chairman of the council shall chair the Grievances and Disciplinary Committee. The chairman shall vote only in the event of a deadlock and, in that event, his or her vote shall be a casting vote.

10. The Grievance and Disciplinary Committee shall consider valid appeals made to it in terms of this Code, and shall make and notify its determinations thereon to the appellant and respondent within 14 days of receipt of the appeal.

11. An appeal from the determination of the Grievance and Disciplinary Committee shall lie to the Labour Court within such time and in such manner as may be provided for, or prescribed in terms of the Act.

PART V

GRIEVANCE PROCEDURE

(see Appendices V and VI)

Definition of grievance

12. A grievance is a complaint or dissatisfaction by an employee or employees brought about by any particular condition or happening at

work, or about conditions of employment or any offending behaviour on the part of management or a fellow employee. All employees have a right to seek redress of grievances.

Grievance procedure

13. (1) **First step:** Immediate supervisor, as follows—

- (a) an aggrieved employee or a group of employees must first put verbally or in writing the grievance to the immediate supervisor within two days;
- (b) in attempting to resolve the grievance, the supervisor shall—
 - (i) hold a hearing of the grievance;
 - (ii) permit the employee to be represented by a member of the workers committee or another employee of his or her choice;
 - (iii) offer counseling if necessary with a view to arriving at an equitable settlement of the grievance;
 - (iv) evaluate the grievance and communicate the decision to the aggrieved employee or group of employees;
- (c) the supervisor shall complete this process within a period of two days.

(2) **Second Step: Department manager/Head of department:** If the aggrieved employee is dissatisfied with the supervisor's decision, he or she should submit a written grievance in the form in Appendix V within a period of two days. The department head shall do his or her best to resolve the grievance and communicate his or her decision in writing to the aggrieved employee or group of employees within a period of two days.

(3) **Third step:** Works council as follows—

- (a) in a case where the decision of the department head or equivalent is not acceptable, the matter shall be referred to the works council in writing within a period of five days by the aggrieved employee or group of employees;
- (b) the works council may hear the aggrieved employees and any representative of his or her and shall make its

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ruling which shall be communicated in writing to the aggrieved employee or group of employees within a period of five days from the date of receipt of the appeal;

- (c) if the grievance is not resolved, the matter shall be referred within five days to the Grievance and Disciplinary Committee by the chairman of the works council, together with all documentation.

(4) **Fourth step:** National Employment Council: The Grievance and Disciplinary Committee shall make a decision within 14 days of receipt and communicate it in writing to the aggrieved party, management and the chairman of the works council.

(5) **Fifth step:** Referral to designated agent: If a grievance remains unresolved after the expiry of 30 days from the date of its reference to an immediate supervisor in terms of subsection (1)(a), the aggrieved employee may refer the grievance to a designated agent, who may then deal with it in terms of the Act.

General requirements: grievances

14. (1) Management and the workers committee shall ensure that the necessary clerical and other facilities are made available for the smooth functioning of the grievance machinery.

(2) Any employees involved in the grievance hearing including complainant, shall not suffer loss in wages for the time lost in this manner.

(3) A member of management staff shall not handle or deal with a grievance in which the complaint made involved him or her. In this instance, management shall appoint another suitable manager to handle the grievance.

(4) The representatives on the Grievance and Disciplinary Committee shall have the right of access to any document connected with the inquiry which may be necessary to understand the employee's, or group of employees', grievance, except that where appropriate in the case of a document of a confidential nature, management may impose the duty of confidentiality upon the parties involved in the dispute.

(5) Where a grievance arises in connection with or is used to hinder or inhibit a lawful order the aggrieved shall register his or her grievance or disagreement orally and shall comply forthwith with the

order. The supervisor shall arrange a hearing within two days after the grievance has been registered, and shall notify all concerned.

PART VI

DISCIPLINARY PROCEDURE

Determination of offences

15. No employee shall be subjected to any disciplinary proceedings for misconduct unless the alleged offence is specified in Appendix 1.

Investigating processes, records, rights of appearance and appeal

16. (1) Every alleged offence shall be investigated.

(2) In every case, the investigation shall be conducted by the employee's immediate head or superior.

(3) An investigation in terms of subsection (2) shall require the following—

- (a) written statements from accused employee(s);
- (b) statements from witnesses and others involved;
- (c) examination of documents and records;
- (d) physical examination of equipment or vehicles involved in the alleged breach;
- (e) written description of the event.

(4) After an investigation, the investigator shall determine whether or not there is a *prima facie* case for a hearing. If there is no *prima facie* case, the matter shall be closed and the accused employee informed immediately in writing. If there is a *prima facie* case, the following shall apply—

- (a) if the alleged offence is occurring for the first time and would, if proven, attract a maximum penalty of a verbal warning, the investigator shall conduct the hearing. The accused employee shall be given two days notice of the hearing. The accused employee shall be entitled to be represented by a legal practitioner at his or her own expense, a member of the workers committee or fellow employee. At the hearing, there must be present a member

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of the workers committee as an observer. If the verdict is "guilty", a verbal warning shall be imposed and this shall be in the form of a minute witnessed by the member of the workers committee attending as an observer. If the accused employee is acquitted, the employee's record shall be cleared of all references to the case;

- (b) in all other cases, the matter shall be heard by a hearing committee composed of a chairperson, who shall be a member of management who is not the investigator and equal numbers of up to two representatives of the workers committee and management. It shall be the duty of the investigator to inform the accused employee, in writing, of the nature of the charge at least three days before the hearing. The notice to attend the hearing must indicate the time and venue for the hearing. The accused employee shall be entitled to be represented by a legal practitioner at his or her own expense, trade union, workers committee member or a fellow employee of his or her choice and to call and/or cross examine witnesses.

(5) In all cases, the verdict of a disciplinary process, together with reasons, must be made and conveyed to the accused employee within five days. An employee found guilty must always be informed about the right of appeal provided for in this Code.

Suspension pending investigation

17. Suspension may be ordered by the employer in accordance with the following—

- (a) if the employer considers it appropriate, summary suspension with or without pay and benefits may be effected immediately:

Provided that there shall be no suspension for an offence in Category A;

- (b) where the employee has been suspended without pay and benefits this shall not exceed ten days;
- (c) where an alleged offence is not proved, or the employees' appeal is upheld, any pay and benefits withheld shall be reinstated forthwith in full.

PART VII

PENALTIES

(see Appendices I, III and IV)

Nature of penalties and types of warnings

18. Penalties for acts of misconduct shall be in accordance with Appendix I and shall be in four levels of severity as follows: verbal warning, written warning, final written warning and dismissal:

Provided that none of these penalties shall be mandatory.

Written warnings

19. (1) Written warnings shall be in the form set out in Appendix IV and shall be signed as provided therein. If the employee refuses to sign to acknowledge receipt, this shall be deemed to be insubordination. This shall not impair the employee's right to enter an appeal.

(2) A first written warning shall be disregarded for disciplinary purposes after nine months, and a final written warning after twelve months. Both categories of warning shall be retained on file for record.

(3) Where an offence which would ordinarily attract a verbal warning occurs during the subsistence of a verbal warning for a similar offence, a written warning shall be given setting out the details of the offence in the form set out in Appendix IV.

(4) Where a first written warning exists and the same offence is repeated, a final written warning shall be given with a caution that dismissal will result from any further offence during the validity of that final warning.

(5) An offence is regarded as a second offence when the penalty for the first one is still valid.

(6) Whenever a final written warning is given, it shall be accompanied by a dismissal caution stating that any commission of a similar offence during the currency of the final written warning may lead to dismissal.

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Dismissal procedure

(see Appendix III)

20. (1) An employee shall not be dismissed arbitrarily.

(2) An employee shall not be dismissed solely because a criminal charge is pending, or because he or she is absent having been remanded in custody or held for questioning by the police.

(3) An employee can only be dismissed after following the procedures in section 16(1).

PART VIII

APPEALS

21. (1) There shall be no right of appeal against a verbal warning.

(2) All appeals against the decision of the hearing committee shall go to the works council. The appeal shall be lodged within five working days after receipt of the verdict of the hearing committee. A copy of the appeal shall at the same time be delivered to the committee which effected the dismissal (see Appendix III). The works council shall make a determination within 14 days of receipt of the appeal. Where there is no works council or the works council fails to hear or finalise the matter within 14 days, the appeal shall be referred to the Grievance and Disciplinary Committee.

(3) An appeal against the decision of the works council lies with the Grievance and Disciplinary Committee, and to be valid shall be lodged in writing to the chairman within ten days of the receipt of the works council's decision. A copy of the appeal shall at the same time be delivered to the works council chairman (see Appendices II and III).

(4) The Grievance and Disciplinary Committee shall make a determination within 14 days of receipt of the appeal provided this period may be extended in writing to the party concerned.

(5) Appeals against determinations referred to in subsection (4) may be made to the Labour Court within the time prescribed in the Act.

(6) The works council and the Grievance and Disciplinary Committee, appellants and respondents shall observe the requirements

relevant to them of Appendix II, which sets out procedures for those bodies.

(7) If a matter remains unresolved after the expiry of 30 days from the date of the notification referred to in subsection (5) of section 16, any party to the matter may refer it to a designated agent, who may then deal with it in terms of the Act.

Declaration including rescission of previous agreement and application

The employers and trade union organisations, having agreed the foregoing, declare this to be the Tobacco Industry Code of Conduct.

Signed at Harare this 8th day of February, 2017.

T. ZIMONDI,
Chairman of Council.

E. SIBANDA,
General Secretary,
Zimbabwe Tobacco Industrial Workers Union.

T. KWARAMBA,
Chairman,
Tobacco (Miscellaneous Sector Employers' Association).

S. MAKUNIKE,
Chairperson,
Cigarette and Tobacco Manufacturing Sector Employers' Association.

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NATIONAL EMPLOYMENT COUNCIL FOR THE TOBACCO
INDUSTRY CODE OF CONDUCT AND GRIEVANCE PROCEDURE

APPENDIX I

OFFENCES AND PENALTIES

1. The Schedule below defines offences and prescribes the relevant penalties. The abbreviations shall be interpreted as follows—

- VW -Verbal warning, validity three months
- WW -Written warning, validity nine months
- FWW -Final written warning, validity twelve months
- D -Dismissal

2. Offences are in four categories depending on their seriousness. The categories are:

- Category A: Minor offences
- Category B: Moderate offences
- Category C: Serious offences
- Category D: Gross Misconduct

3. Definition of offences

1. **Unauthorised absence during working hours:** Wandering off from one's work station without permission or reasonable excuse when he or she should be present at his or her place.
2. **Unauthorised absence or absence without leave:** Taking time off without authorised leave or without being granted leave of absence.
3. **Lateness for work:** Failure to be at one's place of work at the stipulated time.
4. **Leaving work early without permission or valid excuse:** Knocking off before the stipulated time without permission or reasonable excuse.
5. **Minor damage of company property:** This is where an employee damages property without necessity or justification or willfully causes damage to any property in circumstances where the resulting damage is regarded by the employer as minor.
6. **Malicious damage to company property:** Where an employee willfully damages property without necessity or justification or destroys it or throws it away if useful or the employee is reckless or does not care whether any such property would be damaged or destroyed.
7. **Misuse of company property/abuse of company property:** use of company property for unauthorised purposes or to remove some from company premises to use for private purposes without authorisation.

8. **Loafing:** Spending time idly or hanging about doing nothing when one should be working or socialising at length with another employee, guest or member of the public.
9. **Laziness:** An employee shows laziness if he or she shows or avoids work assigned to him or her by the employer provided the work is within his or her job description. It is also laziness to do one's work at a deliberately slow pace.
10. **Habitual and/or substantial neglect of duty:** Failure to perform one's duty at all or partially performing it or abandoning it or engaging in other unauthorised activities during working time.
11. **Negligence:** An employee is negligent if he or she fails to take reasonable care in the performance of his or her job to avoid acts or omissions that are reasonably foreseeable and are likely to cause prejudice or damage or injury.
12. **Breach of duty of confidentiality:** It is a breach of confidence if an employee who has access to confidential information by virtue of his or her position makes disclosures to unauthorised persons or fails to safeguard the secrecy of confidential information in his or her care.
13. **Refusal to obey lawful instructions:** Willfully disobeying lawful instructions, verbal or written and includes intentionally failing to carry out an order.
14. **Gross negligence:** This refers to glaring failure to exercise proper care and attention to the manner of discharge of duty to the extent that tasks have to be repeated or equipment or persons are at risk of damage or injury.
15. **Divulging of information to third parties:** This involves divulging information, whether confidential or not in circumstances where doing so damages the business interests of the company.
16. **Drunkenness:** This is where an employee, while on duty, consumes or has in his or her possession, alcohol or narcotic drugs or is under the influence of alcohol or narcotic drugs. It also includes calling an employee to drink.
17. **Sleeping on duty:** Failure to remain awake when one is supposed to be awake. The offence is aggravated if the job involves security or operating a moving machine.
18. **Clocking another employee's time card:** Intentionally clocking in or out on behalf of another employee and making unauthorised alterations on the time or job card.
19. **Insubordination:** Deliberate refusal to carry out instructions so as to undermine the authority of one's supervisor or manager. The offence is aggravated if the refusal is committed in the presence of other employees or clients.

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20. **Assault:** A physical attack by a person or persons on another person or persons and includes fellow employees, customers and suppliers on or outside company premises. Assault includes pushing, pulling, butting, slapping, shoving, feigning a blow, kicking and a threat of the use of force and is aggravated if the assaulted person is a superior.
21. **Misrepresentation:** This refers to presenting misleading information negligently.
22. **Dishonesty or deliberate misrepresentation:** An employee commits this act of misconduct if he or she deliberately misleads or misrepresents information to his or her superiors or colleagues acting in the bona fide performance of their duties.
23. **Improperly calling a meeting:** Calling a meeting during working hours without following agreed procedures.
24. **Fighting:** This is an exchange of blows between or among employees on company premises or at company functions even outside working hours or company premises.
25. **Possession of a firearm or other dangerous instrument:** Being found in possession of a firearm or other weapons which have the potential to injure or harm other people or property without special permission from the employer.
26. **Possession of drugs:** Being found in possession of illegal drugs or trafficking in illegal drugs while at the workplace. It also includes the act of controlling or manufacturing, selling, dealing or attempting to deal with any illegal drugs.
27. **Organising or taking part in illegal strikes:** Instigating, organising or taking part in a strike, withdrawal of one's labour or services, boycott or sit-in in order to force the employer to accede to demands related to conditions of employment without following the procedures in terms of the Labour Act.
28. **Theft:** Taking property belonging to the employer or another employee or customer/supplier with the intention of permanently keeping the thing taken or to dispose of it as his or her own property.
29. **Fraud:** Making a false statement or claim whether in oral or written form and any false representation by words or conduct in order to obtain material/financial advantage. It also involves the falsification of documentation or information as part of fraudulent activities against the company or customers/suppliers/another person and thus cause them loss.
30. **Aiding and abetting theft:** Where an employee enables, assists, encourages or permits any person to steal the employer's property or another employee's

- or customer's property or refuses to give information within his or her knowledge concerning the stolen property or deliberately closes eyes to the obvious. It also entails deliberately giving false testimony related thereto.
31. **Embezzlement:** Conversion of company property or funds to one's use, which property would have been received by him or her on behalf of the employer.
 32. **Extortion:** It amounts to extortion for an employee during the performance of his or her duties to demand directly or indirectly a gift, fee or reward for services rendered or to be rendered.
 33. **Conviction for any criminal offence:** An employee is guilty of misconduct if he or she is convicted of any criminal offence relating to company business and leading to imprisonment, with or without the option of fine, for a period in excess of ten days.
 34. **Sexual harassment:** Means behaviour that abuses, harasses, denigrates, ridicules or offends another employee because of his or her sex. It involves but is not limited to unwanted, unwelcome, unsolicited sexual advances, contacts or comments, which include deliberate or repeated sexual gestures, sounds, pictures, pornographic material in the workplace. It can be verbal, non-verbal or physical.
 35. **Intimidation:** Using threats so as to prevent or obstruct another employee from performing their duties. It also entails using unlawful norms in order to compel another employee to act against their will.
 36. **Corruption:** Involves receiving/giving/soliciting bribes or extorting money in cash or kind or other services in relation to one's duties in order to gain favours or influence outcomes.
 37. **Inconsistent conduct or omission:** Any behaviour that runs contrary to accepted norms when read with one's contract of employment.
 38. **Disorderly behaviour:** Includes failure to comply with standing rules or instructions or to follow established procedures; the uttering of any words or the publication of any words abusive or otherwise indicating hate, ridicule or contempt towards any person or group or race, tribe, religion or sex, insolence towards a superior by act, words or demeanour, constituting insubordination, threatening or attempting to do bodily harm to another person whether or not such attempt is successful, engaging in or inciting others to engage in disorderly behaviour on company premises, whether or not damage is caused to company premises and property or any other person's property.
 39. **Willfully making false reports or false entries:** this involves deliberately making material misrepresentation of facts, testimonials, documents or

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evidence when providing information to the employer or making false documents which relate to the employment of the employee with a view to obtaining a privilege or benefits.

40. **Refusing to give evidence:** This is where an employee refuses to supply information or facts known to him or her for purposes of any investigation relating to the affairs of the employer.
41. **Non-disclosure:** This arises in the context of dealing with grievances, disciplinary cases or negotiations. An employee commits an act of misconduct if he or she fails and/or refuses to disclose material facts known to him or her.
42. **Lack of skill which the employee expressly or impliedly held himself or herself out to possess:** Means an employee lacks expertise or skill which he or she indicated in writing or verbally that he or she possesses
43. **Wilful victimisation of a subordinate:** Treating an employee less favourably than his or her colleagues without a valid reason.
44. **Failure to wear or use protective clothing and equipment:** This refers to failure to wear or use protective clothing and equipment where it is provided.
45. **Minor breaches of company rules or laid down procedures:** This is any breach of company rules or laid down procedures considered by the employer to be minor.
46. **Violating safety rules or measures:** This occurs where an employee either negligently or intentionally breaches safety rules or measures resulting in injury to the employee or others.
47. **Habitual smelling of alcohol at workplace:** This is where an employee, on more than three occasions within a three months period, is established to be smelling of alcohol at the workplace.
48. **Insulting or abusive language:** Uttering words understood to be insulting, ridiculing or contemptuous, particularly when related to race, tribe, religion, colour, sex or gender.
49. **Inciting other employees to commit violent acts:** This is encouraging, organising, leading or otherwise ensuring that other employees commit acts of violence either to management or against company property or assets.

S.I. 70 of 2017

SCHEDULE

MISCONDUCT

Penalties and Occurrences

Category	Offences	First	Second	Third	Fourth
A	(1) unauthorised absence during working hours	VW	WW	FWW	D
A	(2) lateness for work or poor time-keeping without justification	VW	WW	FWW	D
A	(3) Leaving work early without permission or valid excuse	VW	WW	FWW	D
A	(4) loafing and/or laziness, lack of care and attention	VW	WW	FWW	D
A	(5) failure to wear or use protective clothing and equipment	VW	WW	FWW	D
A	(6) minor breaches of company written rules or laid down procedures	VW	WW	FWW	D
B	(7) non disclosure for purposes of dealing with grievances, disciplinary cases or negotiations	WW	FWW	D	
B	(8) habitual smelling of alcohol at work place	WW	FWW	D	
B	(9) minor damage or misuse or loss of company property, plant, tools or equipment	WW	FWW	D	
B	(10) unauthorised absence for up to two working days without valid excuse	WW	FWW	D	
B	(11) negligence, or act or omission which causes accident, minor loss or minor injury	WW	FWW	D	

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B	(12) disorderly behavior on company premises or whilst on company business	WW	FWW	D	
B	(13) misrepresentation	WW	FWW	D	
C	(14) improperly calling a meeting	FWW	D		
C	(15) absence for three to four days without the employers permission or without justification or reasonable excuse	FWW	D		
C	(16) violating safety rules or measures resulting in injury to self or other	FWW	D		
C	(17) insulting or abusive language.	FWW	D		
C	(18) sleeping on duty	FWW	D		
D	(19) clocking another employee's time card intentionally	D			
D	(20) willful victimisation of a subordinate	D			
D	(21) refusing to give evidence or willfully making false statements in any investigation relating to company matters	D			
D	(22) threatening or intimidating behavior	D			
D	(23) drunkenness, or under the influence of alcohol or unlawful drugs whilst on duty (this act to be witnessed by two people, one of whom, where possible, should be an employee representative)	D			
D	(24) absence for five or more consecutive working days without permission or reasonable excuse	D			

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D	(25) malicious damage to, or abuse of company property, plant, tools or equipment and assets	D			
D	(26) habitual and/or substantial neglect of duties	D			
D	(27) breach of the duty of confidentiality	D			
D	(28) gross negligence	D			
D	(29) refusal to obey lawful instructions given by a superior	D			
D	(30) divulging of information to third parties which may be damaging to the business interests of the company	D			
D	(31) lack of skill which the employee expressly or impliedly held him/herself out to possess	D			
D	(32) assault	D			
D	(33) willful or serious breach of company safety or security regulations, or act, or omission which endangers the health and safety of others, causing permanent disability or death	D			
D	(34) insubordination	D			
D	(35) being in possession of a firearm or other dangerous instrument or drugs whilst on duty without proper authority	D			
D	(36) inciting other employees to commit violent acts.	D			

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D	(37) organising or taking part in illegal strikes, go slow or work to rule action.	D			
D	(38) sexual harassment	D			
D	(39) dishonesty or deliberate misrepresentation	D			
D	(40) theft, or aiding and abetting theft, fraud or embezzlement or extortion or corruption.	D			
D	(41) willfully making false reports or false entries on return, documents, or records	D			
D	(42) conviction for any criminal offence relating to company business	D			
D	(43) any act, conduct or omission inconsistent with the express or implied conditions of the contract of employment	D			

APPELLATE BODIES: REQUIREMENTS AND PROCEDURE

Works council composition and procedures

1. (1)–

- (a) for the purpose of considering an appeal, the works council shall consist of its appointed chairman and an equal number of not less than two employer representatives and two employee representatives who were not involved in the disciplinary process and action which is the subject of the appeal;
- (b) in order for a decision to be arrived at the chairman shall, in the event of an equality of votes, exercise a casting vote.

(2) The appeal shall be in writing and shall set out the grounds on which it is made, and shall be copied to the authority which issued the decision being appealed against.

(3) Management shall within two days of the appeal furnish the works council with all records of the investigation, and the reasons for the action taken.

(4) The appellant may be accompanied at a hearing by a representative of his or her choice from the workplace, a member of the trade union or a legal practitioner.

(5) If the works council considers an interpreter to be necessary, such a facility shall be provided by the employer.

(6) The works council shall consider all valid appeals and may make a decision based on the records or call for and hear further evidence. At all hearings, the rights of cross examination and argument in rebuttal shall be accorded.

(7) A decision shall be arrived at in respect of each appeal and records made of evidence, deliberations, findings and reasons.

(8) The decision and reasons thereof shall be conveyed in writing to both parties not later than five days after receipt of the appeal.

NEC Grievance and Disciplinary Committee procedure

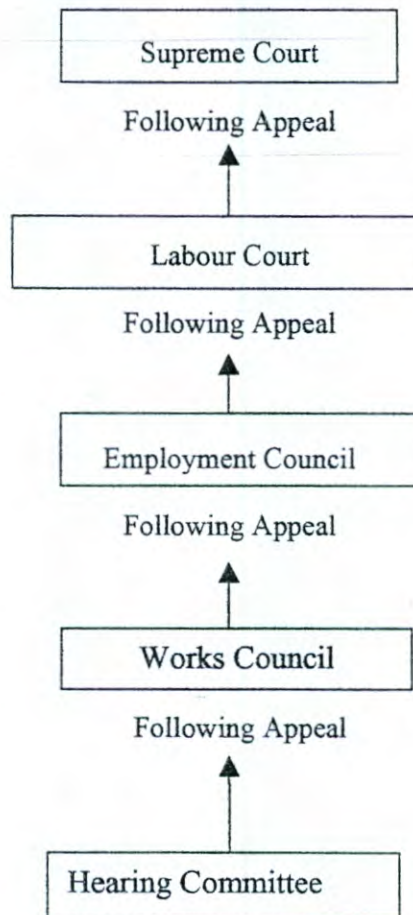
3. (1) On arrival at the NEC, an appeal made under section 21(3) shall, unless judged by the Committee to be frivolous or without merit, be copied to the relevant employer with a letter inviting representations if the appeal is to be opposed. These representations shall be lodged with the NEC within ten days and shall include five copies of—

- (a) a memorandum setting out detailed representations in respect of the grounds of appeal;

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- (b) the letter notifying the employee of the alleged defaults;
 - (c) any statement of case/defence by the employee in respect of the allegations;
 - (d) the records of the initial hearing into the allegations, including witnesses' statements, other material evidence, cross-examinations and the findings of the hearing;
 - (e) the detailed record of the works councils' hearing of the employee's appeal together with their decision and the reasoning thereof;
 - (f) the comments or views of the works council in respect of the appeal to the N.E.C.
- (10) In order to arrive at a determination, the committee may—
- (a) if in its opinion the written submissions are sufficient, uphold or dismiss the appeal either wholly or in part; or
 - (b) remit the appeal and/or the respondents' representations for rectification or for further evidence; or
 - (c) hear argument from the parties concerned in the appeal, who may be legally represented, provided the other party is given the right to appear, cross-examine, and to argue in rebuttal.
11. The determination shall be conveyed in writing to the appellant and respondent, or to those representing them, and is subject to appeal as set out in section 11.

DISMISSALS



WRITTEN GRIEVANCE FORM

To: Management Date:

From: Department:
(Name of employee)

Description of grievance

Suggested solution by employee

.....
Employee's signature

.....
Witnesses signature

Date of hearing:

Management's resolution

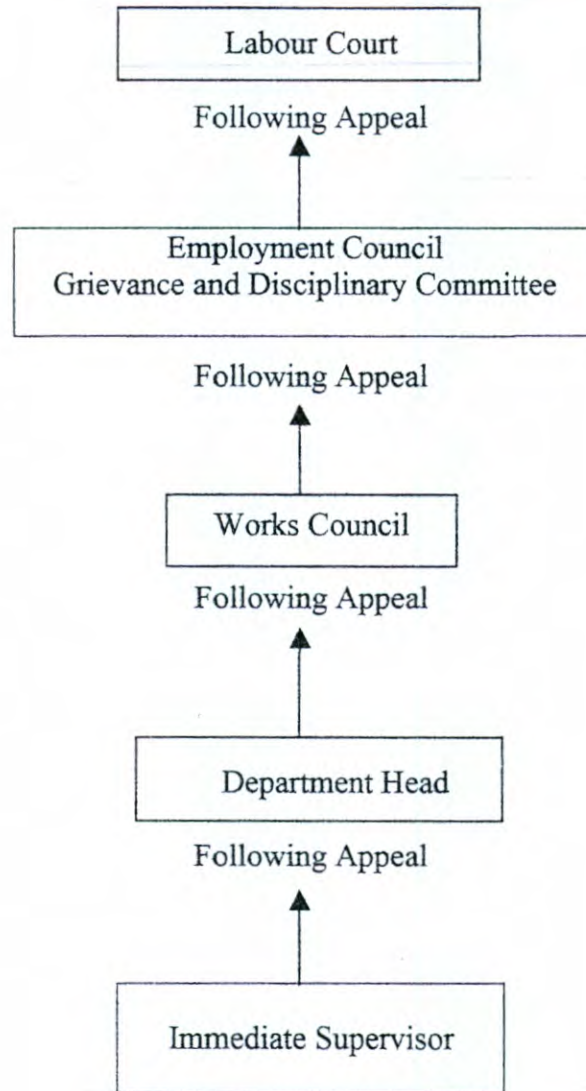
Grievance resolved..... Unresolved.....

(Place X in appropriate box).....
If grievance unresolved state why

Management signatory:..... Designation:.....

Employee:

GRIEVANCE PROCEDURE



FORM OF APPEAL TO THE NEC GRIEVANCE AND DISCIPLINARY
COMMITTEE

(N.B. – To be valid, this must be delivered within ten working days of the receipt of the works council's decision).

To: Chairman,
NEC for the Tobacco Industry

From: (Name and address of appellant)

I hereby appeal against the decision of the works council of (name of employer) received by me on (date). The decision was (nature of decision)

The offence/grievance for which I am appealing is (nature of offence/grievance).....
.....
.....

The grounds of my appeal are—
.....
.....
.....
.....
.....
.....

.....
Signature of appellant

.....
Date

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APPENDIX VIII

NOTIFICATION TO PARTY TO ATTEND PROCEEDINGS AT NEC

To:

(Name and address of party)

You are hereby notified that the matter concerning:

(Subject of appeal/matter)

in respect of which a notice of reference was made on the and to which you are a party/to which you have been joined as a party/shall be heard before:

(Specify the tribunal or the name designation of the officer, as the case may be)

at:

(Place)

on: at the hour

(Date)

(Time)

NB: If as a party you fail to attend the hearing at the time and place notified, the hearing may proceed without you to the possible detriment of your interests.

Given under my hand at this day of 20

Signed: