



GRIEVANCE MANAGEMENT COMMUNIQUE

Volume 11

MANAGEMENT OF GRIEVANCES BY DEPARTMENTS: AREAS OF IMPROVEMENT

General observation on compliance
with the *Grievance Rules*

Roles of different officials and
executive authorities when dealing
with grievances of employees

ROLES OF DIFFERENT OFFICIALS AND EXECUTIVE AUTHORITIES WHEN DEALING WITH GRIEVANCES OF EMPLOYEES IN THE PUBLIC SERVICE

INTRODUCTION

The purpose of Volume 11 of the Grievance Management Communique is to provide general observations on compliance with the grievance procedure made by the Public Service Commission (PSC) in the handling of grievances dealt with in terms of section 196(4)(f)(ii) of the Constitution of the Republic of South Africa, 1996 (the Constitution); and to clarify roles of different officials and executive authorities when

dealing with grievances of employees in the Public Service.

BACKGROUND

Section 196(4)(f)(ii) of the Constitution mandates the PSC to investigate grievances of employees in the Public Service and recommend appropriate remedies. Section 35 of the *Public Service Act, 1994* (the PSA)ⁱ provides for employees to lodge grievances concerning official acts or omissions with executive authorities (EAs) of their departments, and that if they are not resolved they be referred to the PSC within “the prescribed time and in the prescribed manner”. Further that the PSC may make recommendations to EAs to act in terms of certain provisions of the Act or

any other law.

Concerning the prescribed manner of lodging and referral of grievances with EAs and the PSC, respectively, the State as the employer and the Trade Unions in the Public Service agreed on Resolution 14 of 2002. The Resolution was also gazetted by the PSC as Rules for Dealing with the Grievances of Employees in the Public Service, 2003 (Grievance Rules, 2003). The prescribed manner of dealing with grievances of members of the Senior Management Service (SMS) is provided for in Chapter 10 of the SMS Handbook, as well as in the Rules for Dealing with Grievances of Members of the Senior Management Service, Including Heads of Departments, 2010 (SMS Grievance Rules).

In line with Section 11 of the Public Service Commission Act, 1997, the PSC also gazetted, the Public Service Commission Rules on Referral and Investigation of Grievances of Employees in the Public Service, 2016 (PSC Rules on Grievance Referral), to govern the process of grievance referrals to the PSC and management by the PSC itself. Aggrieved employees and departments must ensure compliance with all the above-mentioned Rules.

In pursuance of the Constitutional mandate, the PSC investigates grievances that various departments and employees refer to it and make appropriate recommendations to the EA's.

GENERAL OBSERVATIONS ON COMPLIANCE WITH THE GRIEVANCE RULES

Identified practises

In the course of execution of its mandate to investigate grievances, the PSC has made the following observations regarding non-compliance by the departments:

- Grievance referrals to the PSC are made without attaching Grievance Forms "Annexure A" of the Grievance Rules, 2003/SMS Grievance Rules 2010, or completing Grievance Referral Forms in terms of the PSC Rules on Grievance Referral, 2016.
- Grievances are referred to the PSC despite having been lodged outside the 90 day period without providing clarity on how the late lodging of such grievances was condoned.
- Departments do not deal with grievances within the prescribed 30/45 day period.
- Non-adherence to timeframes when referring grievances where EAs have made decisions and aggrieved employees are still not satisfied and have requested referral to the PSC.
- Grievances that are referred to the PSC by the Executive Authority without proof that a decision was made on the matter.
- Non-adherence to timeframes when referring grievances where EAs have made decisions.

Where there is non-compliance with the grievance procedure, the PSC Rules provides that¹: the PSC must close a grievance if –

- (a) there is prima facie no compliance with the grievance procedure of the relevant department and the aggrieved failed to provide proof;*
- (b) the aggrieved failed to complete the Grievance Referral Form;*
- (c) the aggrieved informs the Commission that he is withdrawing the grievance;*
- (d) the executive authority (EA) or employee informs the Commission that the grievance was resolved internally;*
- (e) the Commission is informed by*

¹ Rule 13(1) of the PSC Rules on Referral of Grievances, 2016

either the EA or aggrieved that the matter is pending before the bargaining council, Court or other Dispute Resolution forum or institution having jurisdiction to entertain the matter;

- (f) the grievance was referred by a former employee after leaving employment in which case the grievance would be referred to the EA for further handling;*
- (g) the grievance relates to allegations of unfair dismissal; or*
- (h) the grievance relates to a matter which is the subject of disciplinary action against the aggrieved.*

❖ **Failure to complete the mandatory Grievance Form and PSC Grievance Referral Forms**

- ✓ *Grievance Form not completed*

The Grievance Rules provide that “A grievance must be lodged in writing and all decisions taken during the process must be in writing.”²

Further that “an employee may lodge a grievance with an employee designated to facilitate the resolution of grievances in the Department.”³

The prescribed form at Annexure A **must** be used when a grievance is lodged. It therefore follows that for grievances to be valid, they have to be lodged with the department by completing the prescribed Form at Annexure A, in terms of the applicable Grievance Rules. Failure to complete the form renders the grievance invalid. The PSC does not entertain grievances where there is no formal lodgement of a grievance by completing a

² Rule C.6 of the Grievance Rules, 2003 / Rule 3(f) of the SMS Rules 2010

³ Rule, F.1 of the Grievance Rules, 2003 / Rule 6(a) of the SMS Grievance Rules, 2010

Grievance Form⁴. That reinforces the requirement in both Grievance Rules.⁵

Where a grievance is referred without a copy of the Grievance Form showing that the grievance was properly lodged with the department, the PSC would not investigate it, but would close it on the above basis.

- ✓ *Grievance Form not acknowledged by the designated employee*

The prescribed Grievance Form at Annexure A of both Grievance Rules, makes provision for the designated employee to acknowledge receipt by appending a signature and providing the date of receipt. The PSC has observed that in some cases aggrieved employees refer their grievances to the PSC with a Grievance Form that is not signed by the designated employee as proof that the grievance was received by the department. In such cases it is assumed that either the designated employee did not acknowledge receipt of the grievance by signing the Grievance Form, thereby making it difficult to establish from the face of the document whether a formal grievance has been lodged or not; or the aggrieved employee did not lodge the Grievance Form with the designated employee but submitted it directly to the PSC.

In other cases, although the Grievance Form is not signed, a copy of the outcome letter to the grievance is attached, which shows that the grievance was lodged and investigated by the department.

- ✓ *PSC Referral Form not completed*

An executive authority must submit grievances that could not be resolved to the satisfaction of the aggrieved employees to

⁴ Rule 13(1)(b) of the PSC Rules on Referral of Grievances, 2016

⁵ Rule F.2 of the Grievance Rules,2003/Rule 6(a) of the SMS Grievance Rules, 2010

the PSC. Employees may also refer grievances lodged with the department and the executive authority failed to provide the employee with an outcome within the prescribed period⁶.

The PSC Rules on Grievance Referral require that a Grievance Referral Form be completed when referring a grievance to the PSC (Rules 5(1)(a) and 5(4)(a)).

Rule 3(5) of the PSC Rules provides that *“If an official of a recognised trade union as representative of an employee acts on behalf of the employee in terms of subrule (4), the relevant part in the Grievance Referral Form must be completed by both the employee and the representative.”*

Rule 3(6) of the PSC Rules states that *“In case of lodging of a collective grievance, all employees concerned must sign the Grievance Referral Form.”*

Rule 5(1)(a) of the PSC Rules states that *“Referral by an executive authority in terms of rule 3(1) must be done in writing by the executive authority, or an employee so delegated by the executive authority, within the timeframe prescribed in rule 3(3), using the Grievance Referral Form.”*

Rule 5(4) (a) of the PSC Rules states that *“In referring the grievance in terms of rule 3(4) (5), or (6) the aggrieved employee must complete and sign the Grievance Referral Form in full in order to provide the Commission with the information required in the Grievance Referral Form.”*

Rule 13(1) (b) of the PSC Rules states that *“The Commission must close grievances without further investigation if the aggrieved employee has failed to complete the Grievance Referral Form.”*

❖ **Lodgement of grievances outside**

the 90 day period

Some employees lodged their grievances outside the 90 day period prescribed in the rules which stipulates that a grievance **must** be lodged with the employer within 90 days from the date on which the employee became aware of the official act or omission which adversely affects him/her⁷.

The PSC has observed that designated employees accept the grievances and proceed to investigate, despite the lodgement being out of time. The Rule is mandatory and as a result, the PSC does not accept such grievances, and they are closed without investigation in line with the PSC Rules. The Rules provides that, the PSC **must** close a grievance if there is prima facie no compliance with the grievance procedure of the relevant Department, and the aggrieved failed to provide proof of such compliance. It is expected of departments that once a grievance lodged outside the prescribed 90 days of becoming aware of the official act or omission is received, they should respond in writing to the aggrieved employee and advise him / her that the grievance is not compliant with the prescribed 90-day rule.

In some instances when aggrieved employees first lodged their formal grievances, they would be advised by labour relations officers not to proceed with the formal process or to withdraw the grievance for it to be dealt with informally, but such ends up not being done. Subsequently, when aggrieved employees, due to no progress or update on the matter, lodge formal grievances, they are informed that their grievances are outside the prescribed 90-day timeframe. Department would then dismiss and close such grievances based on non-compliance with the 90-day period of becoming aware of the official act or omission, In spite of

⁶ Rule 3(1) &(4) of the PSC Rules on Grievance Referral, 2016

⁷ Rule D.3 of the Grievance Rules / Rule 4(c) of the SMS Rules, 2010

departments advise to firstly deal with matters outside the grievance rules.

Whereas aggrieved employees are encouraged to first try to resolve grievances informally with departments, they should always guard against waiting beyond the 90 days of becoming aware of the official act or omission. In other words, they must lodge their grievances in writing when they realise that the 90-day period of becoming aware of the official act or omission is about to lapse and the matter is not resolved. Also, when there is no communication in writing from the employer that the matter will be resolved, or is still being attended to. Relying on verbal promise from the employer makes it difficult for the aggrieved to provide proof that they did not lodge the grievance because the department had advised that the matter would be resolved.

There are also cases where grievances are referred by both the aggrieved and departments without indicating the date of becoming aware on the Grievance Form. This also delays investigation by the PSC because PSC must first determine whether the 90-day rule has been complied with before dealing with the substantive issues.

❖ **Departments' failure to deal with grievances within the prescribed 30/45 day period**

The PSC had also observed throughout the years when dealing with grievances that departments delay investigating grievances with the knowledge that after the prescribed period lapses, aggrieved employees will refer their matters to the PSC for consideration. Some of these delays are deliberate and others are by omission on the part of the employer.

Departments (including EA's) have 30/45 days to deal with grievances.⁸ The period

⁸ Rule F.8 of the Grievance Rules,2003/ Rule 6(h) of SMS Rules, 2010

may be extended by mutual agreement in writing.

❖ **Failure to inform aggrieved employees of the status of their grievances.**

The Grievance Rules determine that Designated Employees must liaise with the relevant structures of authority of the departments in an attempt to resolve grievances, and inform the aggrieved of the status and progress in the resolution of the grievance⁹. Should the aggrieved remain dissatisfied then the grievance must be escalated to the E/A for a decision.

In some instances, after aggrieved employees have lodged grievances, they are not provided with any updates, and the prescribed 30 / 45 days lapses without any feedback. The aggrieved employees then, especially where they are not even approached to request for extension, assume that their cases are not being attended to, and end up referring their grievances to the PSC. This is against the spirit of the Grievance Rules because they advocate for a speedy resolution of grievances in departments¹⁰.

❖ **Failure to provide aggrieved employees with the opportunity to escalate to the Minister**

Some departments do not inform aggrieved employees of their right to request that their grievances be escalated to EA's, after their dissatisfaction with decisions made by employees at lower levels of authority. This failure denies the aggrieved the right to escalate the grievance to the EA for a decision, and the EA of the opportunity to make a decision on the matter before it is escalated to the PSC. The result is that employees end up referring their grievances

⁹ Rule F.3 and Rule F.5 of the Grievance Rules, 2003/Rule 5(c) and (d) of the SMS Rules, 2010

¹⁰ Grievance Rule B1(c) of the Grievance Rules 2003/ Rule 2(a)(iii) of the SMS Rules,2010

to the PSC even if such grievances could have been resolved at the level of the EA.

The Rules determine that if a grievance cannot be resolved, then the EA must inform the aggrieved accordingly¹¹. Should an aggrieved not be happy then s/he has to indicate within 10 days of receipt of the EA decision so that the EA or delegated employee can refer the grievance to the PSC¹².

If grievances are not referred within the prescribed timeframe after the aggrieved has requested referral to the PSC, it results in aggrieved employees referring their matters on their own. Such referrals carry the risk of being made without the necessary documentation, thus taking long for the PSC to deal with, since it first has to request relevant information from the department.

Other departments, contrary to the Grievance Rules applicable to them, advise aggrieved employees in outcome letters from the EA or lower level officials, that if they are not satisfied with the decision they can refer the matter to the bargaining council.

Employees have to be informed of the progress made towards the resolution of their grievances.¹³ There is an obligation on the employer to provide aggrieved employees with a copy of the grievance form after each applicable level of authority has dealt with the grievance¹⁴.

❖ **Non-extension of the 30/45 day period**

¹¹ Rule F.7 of the Grievance Rules 2003, / Rule 6(f) of the SMS Rules, 2010

¹² Rule F.9 of the Grievance Rules 2003, / Rule 6(h) of the SMS Rules, 2010

¹³ Rule F.5 of the Grievance Rules, 2003 / 6(d) of the SMS Rules, 2010

¹⁴ Rule E.4 of the Grievance Rules, 2003 / 5(d) of the SMS Rules, 2010.

Departments do not seek extension at the expiry of the 30/45 day period, as expected by the provisions of the Rules, and as a result, employees end up referring their grievances to the PSC on their own due to non-communication by departments¹⁵.

In other instances where an extension is sought and granted, there is no agreement on the timeframe of the extension requested or granted. Consequently, aggrieved employees refer grievances for which they have granted an extension.

❖ **Failure to investigate grievances**

The PSC has also observed that some departments do not investigate grievances at all, particularly where there are relationship issues. They wait for the 30/45 day period to lapse and then advise aggrieved employees to refer their grievances to the PSC in terms of Rule F.11 / SMS 6(j). This amounts to abdication of responsibility and the PSC takes a dim view of such an approach.

There are also instances where aggrieved employees raise their dissatisfaction informally with the employer, and the employer instead of trying to resolve the matter at that stage, would encourage the employee to lodge a formal grievance, which at the end is not investigated and the aggrieved refers to the PSC. In other instances employees they refer to bargaining councils and end up being sent back to follow the grievance process.

Some Designated Employees inform employees of the non-resolution of their grievances at the lower levels and advise them to refer their grievances to the PSC without affording the EA the opportunity to deal with the grievance in line with the Rules. In many instances, the 30-day period would have lapsed and the aggrieved would then refer the matter to the PSC. This

¹⁵ Rule F.8 of the Grievance Rules 2003, / Rule 6(h) of the SMS Rules, 2010

conduct is also discouraged, as it is an irresponsible way of dealing with grievances.

In most of the cases that were handled by the PSC in the 2018/19 period, there was non-compliance with Grievance Rules F.8 or 9 / SMS Rules 6(g) or (h) respectively. The PSC in such situations recommends remedial action against the responsible official in the department.

❖ **Grievances that are referred to the PSC by the executive authority without proof that a decision was made on the matter**

Departments tend to refer grievances to the PSC without a decision by the EA, despite the requirement that the EA must inform the aggrieved of his decision regarding the grievance.¹⁶

The PSC has on numerous occasions received grievances that were investigated by departments, and outcomes were provided to the aggrieved and the aggrieved had explicitly expressed their dissatisfaction about the outcomes of the investigation, and also indicated that the matter must be referred to the executive authority for a decision. In this case, the executive authority referred the grievances to the PSC for consideration without first making decisions and give reasons. The rule of law, which is one of the founding values of our democratic state, does not require authorities to act arbitrarily and not to account for their actions or decisions. Accounting for one's decision would require that the decision-maker should give reasons for such a decision. See *Mphahlele v First National Bank of SA Ltd* 1999 (2) SA 667 (CC) para 12.

Reasons should be provided to enable affected parties to assess the rationality

¹⁶ Rules F.7 of the Grievance Rules, 2003 / Rule 6(f) of the SMS Rules, 2010

thereof, and also to rebut the defence by the decision-maker where this is found to be necessary. Lawrence Baxter *Administrative Law* (1984) at 228 supports the view in the statement he made below, which was endorsed by Schutz JA in *Transnet Limited v Goodman Brothers (Pty) Ltd* 2001 (1) SA 853 (SCA) para 5:

'In the first place, a duty to give reasons entails a duty to rationalise the decision. Reasons therefore help to structure the exercise of discretion, and the necessity of explaining why a decision is reached requires one to address one's mind to the decisional referents which ought to be taken into account. Secondly, furnishing reasons satisfies an important desire on the part of the affected individual to know why a decision was reached. This is not only fair: it is also conducive to public confidence in the administrative decision-making process. Thirdly – and probably a major reason for the reluctance to give reasons – rational criticism of a decision may only be made when the reasons for it are known. This subjects the administration to public scrutiny and it also provides an important basis for appeal or review. Finally, reasons may serve a genuine educative purpose, for example where an applicant has been refused on grounds which he is able to correct for the purpose of future applications.

Furnishing reasons also provides guidance to others in similar situations. It also increases confidence in both the substantive and procedural fairness and enables the person against whom a decision is taken to determine whether or not the decision-maker committed an error of fact or law in coming to a conclusion.

In *Pharmaceutical Manufacturers Association of SA: In re Ex Parte President of South Africa* 2000 (2) SA 674 (CC) (para 20) it was held that the principle of legality also requires that the exercise of public power should not be arbitrary or irrational.

In terms of the Grievance Rules, *“If the grievance cannot be resolved, the executive authority must inform the aggrieved employee accordingly; If a grievance has been referred to the executive authority for a decision, he/she must inform the member of his or her decision in writing by completing Part C of the prescribed Grievance Form within the prescribed time frame.”*

Rule 5(2) (a) of the PSC Rules states that *“The executive authority must, when referring a grievance in terms of subrule (1), provide the Commission with the executive authority’s decision and reasons for decision.”*

This means that before the EA can refer the matter to the PSC, he or she should have made their independent decision on the matter and inform the aggrieved employee (s) accordingly of their decision and reasons for such decision to enable the aggrieved to give reasons for not accepting the EA’s decision.

❖ **Non-adherence to timeframes when referring grievances where EAs have made decisions**

After the EA has made a decision on a grievance, and the aggrieved has communicated his dissatisfaction to the EA, then the EA has to refer the grievance to the PSC within 5 days¹⁷.

In terms of Rule F.9 of the grievance Rules or Rule 6(h) of the SMS Grievance Rules, if this is not followed by the EA, the matter ends up being referred to the PSC in terms of Rule F.11 of the Grievance Rules or Rule 6 (g) of the SMS Grievance Rules and it creates an impression that the department failed to investigate the grievances within the prescribed 30 or 45 days. However, the PSC Rules on Referral require that the EA

refer the grievance to the PSC within ten days, which is double the period allowed in both grievance rules¹⁸.

The PSC has noted that departments in most cases refer grievances to the PSC long after the aggrieved made their election without reason or explanation. It appears as though there is no time prescribed for the referral. The PSC takes a deem view of such practice.

❖ **Grievances that are referred to the PSC by the executive authority without the aggrieved employee indicating that they want the matter to be referred to the PSC**

The PSC has in the past also received grievance referrals from EAs / departments which are not compliant with Rule F.9 of the Grievance Rules and Rule 6(h) of the SMS Grievance Rules, in that such referrals were not requested by aggrieved employees. Part C of the Grievance Form provides for the aggrieved employee to indicate when the grievance is not resolved to their satisfaction to request the EA to refer the matter to the PSC. The Rules do not provide for automatic referral to the PSC by the EA or department.

Some departments do not even bother to wait for the aggrieved employee to exercise their election to escalate grievances to the PSC. Once a decision is made by levels of authority other than EA’s and the aggrieved employee indicates a dissatisfaction, Labour Relations units would refer the grievances to the PSC. In other instances when the EA makes a decision, which is not favorable to the aggrieved, some designated employees would refer the grievances to the PSC without allowing the aggrieved employee to exercise his choice.

Referrals to PSC that were not requested by

¹⁷ Rule F.9 of the Grievance Rules2003/ Rule6(j) of the SMS Rules, 2010

¹⁸ Rule 3(3) of the PSC Rules on Referral of Grievances, 2016

the aggrieved create challenges. In most cases, the PSC found that the aggrieved employee had decided to refer their matters to other disputes resolution institution like the GPSSBC and are not aware that the EA had referred their matters to the PSC.

ROLES OF DIFFERENT OFFICIAL AND EXECUTIVE AUTHORITIES WHEN DEALING WITH THE GRIEVANCES OF EMPLOYEES IN THE PUBLIC SERVICE

The following role players are involved in the grievance resolution process;

- Designated employees/ Investigating Officers;
- Heads of Department; and
- The Executive Authority

❖ **The role of designated employees / investigating officer**

The PSC Guidelines for Dealing with Grievances¹⁹ define a designated employee as *“an employee who performs the role of the “Investigating Officer.”* In terms of the guidelines, the designated employee must facilitate the investigation and resolution of a grievance lodged with the department. He or she must be fully familiar with all aspects of the public service legislation/regulations/and other prescripts¹; be conversant with dispute resolution in the Public Service; and is the person whom the Head of Department should appoint for the purposes of grievance resolution within the department.

The designated employee plays a critical role in dealing with grievances lodged with the department and failure by the designated employee to manage the grievance efficiently and effectively can

damage the employer and employee relationship.

Rule B (1)(c) of the Grievance Rules, 2003 / Rule 2(a) of the SMS Grievance Rules provides for the grievance procedure to, amongst others, promote speedy, impartial and equitable handling of grievances, sound labour relations and resolutions of individual grievances at the lowest possible level in a department. The designated employee is entrusted with the following responsibilities:

- ✓ *Check that the Grievance Form is completed in full*

It is imperative for the designated employee to assess that the Grievance Form is completed accurately. The Grievance Form must contain all the required information including the date of becoming aware of the official act or omission by the employer before it is acknowledged by the designated employee. He / she must ensure that Part A and B of the Form is completed in full, and if not, to advise the aggrieved employee to do so. He / she can also advise the aggrieved employee to request assistance from the union representatives when completing the grievance form. For instance, if he / she has observed that the aggrieved is struggling in completing the details of the grievance form.

- ✓ *Acknowledge receipt of the Grievance Form*

Rule F.1 provides *that “an employee may lodge a grievance with an employee designated to facilitate the resolution of grievances in the department.”*

The prescribed Grievance Form must be used when a grievance is lodged²⁰. The Grievance Form provides for the designated employee to acknowledge receipt of the grievance by indicating the name and rank of the designated employee together with

¹⁹ The PSC Guidelines on New Grievance Rules 12 August 2004

²⁰ Rule F.2 of the Grievance Rules, 2003 / and Rule 6 (a) of the SMS Grievance Rules, 2010

the date of receipt by the designated employee. Provide the aggrieved employee or whoever is lodging the grievance on his / her behalf, with a copy of the Grievance Form showing that the Form was received and acknowledged.

Aggrieved employees must insist on being provided with a copy of the Grievance Form showing that the grievance was acknowledged by the designated employee. Aggrieved employees will need to attach a copy of the acknowledged form to the PSC when referring the grievance to the PSC when the department has failed to deal with the grievance within 30/45 days²¹.

- ✓ *Facilitate speedy resolution of the grievance as close to the point of origin*

Rule C1 of the Grievance Rules 2003 / Rule 3 (a) of the SMS Grievance Rules, 2010 states that *“a grievance must as far as possible be resolved by an employer and as close to the point of origin as possible.”* Once an employee has lodged a grievance in writing with the designated employee, the designated employee must investigate the point of origin and facilitates the resolution thereof at that point. If the resolution cannot be done at that point and a decision needs to be taken at a particular level, then he or she should provide the decision-maker with the recommendation on how the grievance should be resolved, based on the facts and findings emanating from his / her investigation. Any decision taken on the matter must be communicated to the aggrieved employee in writing²².

Where necessary, if technical skills are needed to determine the existence or possible existence of adverse effect of a particular act or omission of the employer,

²¹ See also Rule 4.3, 5(2) (d) and 7(2)(a) of the PSC Rules, 2016

²² Rule C.6 of the Grievance Rule, 2003 / Rule 3 (f) of the SMS Grievance Rules 2010

the designated employee may request the head of department to appoint an investigator with the necessary skills and expertise to investigate the matter.

Once a grievance is received, the designated employee must speedily facilitate the process of resolution to ensure that the grievance is dealt with within the prescribed timeframe. To that end, he / she must develop a monitoring system to track all cases including decision making process so that the department does not fail to comply with the prescribed timeframes.

Where the designated employee foresees that the department would not be able to meet the prescribed timeframe for dealing with the grievance, he / she must request the aggrieved for an extension as provided for in Rule Rule F.8 of the Grievance Rules, 2003 and Rule 4(h) of the SMS Grievance Rules, 2010.

In his / her facilitation role, the designated employee must also assist the head of department to submit unresolved grievances to the EA of the department for his / her decision on the matter. The designated employee's responsibilities for grievance resolution include ensuring that the aggrieved employee is provided with a response from the EA or delegated authority of the department.

- ✓ *Keep the aggrieved employee informed of developments in his / her grievance*

The designated employee must, throughout the process, keep the aggrieved employee informed of developments in the process of resolving his / her grievance²³.

The designated employee must, where a decision is taken at different levels of decision-making, complete Part C of the

²³ Rule E.3 of the Grievance Rules, 2003 / and Rule 6 (d) of the SMS Grievance Rules, 2010

Grievance Form, provide the aggrieved with the decision and ask him / her to—

- indicate by ticking yes or no on the Form, to indicate whether the grievance is resolved to their satisfaction or not,
- complete the comment section²⁴, if any, and
- sign and date Part C of the Form.

The designated employee must provide the aggrieved with a copy of Part C once completed.²⁵

Rule E.3 states that “*an employee must be provided with information about the status of the grievance and the progress made towards the planned finalization date.*” Rule F.1 provides that “*an employee may lodge a grievance with an employee designated to facilitate the resolution of grievances in the department.*”

- ✓ *Keep and maintain a record of grievances lodged with the department*

The designated employee must keep and maintain a database of grievances lodged with the department, which he / she updates on regular basis, and report to the head of the Labour Relations component or Head of Department. This will assist in providing the head of department with the necessary information to enable him / her to report not only to the PSC on a six-monthly basis, but also to the EA of the department on a regular basis.

²⁴ Completing the comment section will assist the next person handling the grievance as to why the aggrieved employee is still dissatisfied with the outcome provided. It helps to provide way forward or better understanding of the aggrieved employee’s contention.

²⁵ Rule E.4 of the Grievance Rules, 2003 / and Rule 5(d) of the SMS Grievance Rules, 2010.

- ✓ *Follow up with all involved in grievance resolution*

The designated employee has the responsibility to follow up with all stakeholders involved in grievance resolution to ensure that the grievance is dealt with within the prescribed timeframe; and that timeframes provided for at different levels of resolution are complied with. For instance,—

- ✓ where the aggrieved employee has been provided with the decision of the EA, that he / she within the prescribed timeframe²⁶, advise whether or not he / she would like his / her matter to be referred to the PSC. This can be done by ensuring that the aggrieved employees indicates that the date on which he / she received the EA’s decision, and also expressly informing the aggrieved that he / she has 10 days from the date of receipt of the outcome to indicate whether or not s/he is satisfied with the outcome, failing which the department would regard the grievance as resolved.

Aggrieved employees must note that the PSC shall not consider their grievances which they personally or through their union representatives referred in terms of Rule F.9 of the Grievance Rules, Rule 6(h) (i) and Rule 3.4 (a) of the PSC Rules, whereas they have failed to request, within the prescribed timeframe, that the department should refer same to the PSC.

- ✓ where the aggrieved has requested referral of his / her grievance to the PSC, that this is done within the

²⁶ That is within 10 days of receipt of the outcome. See Rule F.9 (a) of the Grievance Rules, 2003 and Rule 6(h)(i) of the SMS Grievance Rules, 2010.

prescribed timeframe, which is currently five days²⁷.

Non-compliance with this timeframe would mean that the aggrieved employee can refer the grievance to the PSC in terms of Rule F. 11 of the Grievance Rules, Rule 6(j)(i) of the SMS Grievance Rules.

❖ **Role of the Head of Department**

Being responsible for the overall management of the department, the head of department must ensure the following:

✓ *Appointment of designated employee(s)*

The head of department must ensure that there is / are employee(s) designated to facilitate the resolution of grievances within the department.

The PSC Guidelines for dealing with grievances encourage departments to capacitate designated employees with investigation skills.. The Head of Department should appoint designated employees and such persons should be from the following areas:

- Personnel Unit/Human Resource Division;
- Labour Relations Unit;
- Industrial Relations Unit;
- A person familiar with all aspects of dispute resolution; and
- A proper and fit person as identified by the Head of Department.

The Head of Department should provide the designated employee with a general letter of authority that will clearly outline the terms and reference of the investigation/s.

The PSC Guidelines for dealing with grievances provide for the duties of the designated employees as follows:

- Receive and expedite the resolution of a grievance;
- Record and report all grievances received to the Labour Relations component/ Head of Department immediately and keep them informed of progress made;
- Actively assist in removing any obstacles for the resolution of a grievance;
- Investigate the grievance, request the necessary Managers/Supervisors to assist with the resolution thereof (Rule F4), draft the necessary report/s, request the Head of Department for a decision, and where necessary inform the Executive Authority;
- At all times keep the aggrieved informed, in writing, of progress made towards finalizing the grievance (Rule F.5);
- Where necessary, inform an aggrieved of his or her rights in terms of the grievance rules; and
- Ensure that the grievance is resolved within the time frames as contemplated in Rule F.8 (30 working day period) and Rule 6.g (45 working day period); and

✓ *Take decisions on grievances*

Where grievances could not be resolved at a lower level and are submitted to him / her for decision-making, the head of department must speedily take a decision on the matter and provide reasons indicating how he / she came to that conclusion. The decision and reasons must be in writing and communicated to the aggrieved employee without delay.

Furthermore, the HoD must—

- ✓ *ensure that grievances that are not resolved at his / her level are*

²⁷ See rule Rule F.9 (b) of the Grievance Rules and 6(h) (ii) of the SMS Grievance Rules, 2010.

escalated to the EA in line with the applicable provisions of the Grievance Rules.

- ✓ *On a six-monthly basis report to the PSC about the grievance resolution within his / her department, by providing information in the format as prescribed by the PSC.*
- ✓ *Ensure that performance agreements of those tasked with the facilitation and management of grievances expressly covers such, and implement consequence management to deal with dereliction of duties relating to grievance management and or failure to carry their responsibilities.*

❖ **The role of Executive Authorities**

Section 35 of the Public Service Act, 1994 as amended provides for the executive authority of a department to submit the grievance of an employee to the Commission where there is dissatisfaction by the employee with regard to the outcome of the investigation by the department and the final decision of the EA.

Rule F.9 of the Grievance Rules states that *“If after the aggrieved employee is informed of the outcome of the grievance and he/she remains dissatisfied-*

- (a) he/she must inform the executive authority thereof in writing within 10 days;*
- (b) the executive authority must in terms of section 35 (a) of the Public Service Act, 1994 as amended forward the grievance and the relevant documentation to the PSC for recommendation within five days of being informed by the aggrieved employee.”*

In terms of the above, the aggrieved employee has to inform the executive authority in writing about their dissatisfaction of the outcome of the grievance before the matter can be referred to the PSC. This

means that it is not an automatic referral by the executive authority. Part C of the grievance form must be completed by the aggrieved employee to indicate that the matter is not resolved and they want the executive authority to refer the matter to the PSC. Referral to the PSC is optional on the part of the aggrieved employee; they can opt to utilize other dispute resolution mechanisms to resolve their grievance.

- ✓ *upon receipt of the PSC recommendation, inform the aggrieved employee of his / her decision*

The PSC communicates the outcome of its investigations to the executive authority²⁸ and the aggrieved employee. In a case where the matter was referred in terms of Rule F.11 of the Grievance Rules and Rule 6(j) of the SMS Grievance Rules, the PSC communicates the outcome of its investigation also directly to the aggrieved employee. However the EA has to communicate his decision on the PSC recommendation to the aggrieved employee. The outcome includes the findings and recommendations made on the matter.

Rule 19 (1) of the PSC Rules states that *“The Commission must issue findings and make recommendations in respect of a grievance investigation to the executive authority, who must within 10 days of receipt of the findings and recommendations notify the Commission whether or not the executive authority is going to implement the recommendations made by the Commission.”*

Rule 19 (2) of the PSC Rules states that *“The executive authority must, in the case*

²⁸ Rule 15(1) of the PSC Rules provides that *“The Commission must, after investigating a grievance, communicate the outcome thereof in writing to executive authority.”*

where the executive authority decides not to implement the recommendations by the Commission, provide the Commission with reasons for not doing so within 10 days period referred in terms of subrule (1).”

Rule 19 (3) of the PSC Rules states that “The executive authority must, in the case where the executive authority decides to implement the recommendations by the Commission, provide the Commission with an update and proof of that implementation within 60 days of the date of receipt of the findings and recommendations in terms of subrule (1).”

EAs should note that the PSC shall report their non-compliance with the Grievance Rules to the National Assembly and Provincial Legislatures. Rule 19(5) of the PSC Rules states that “The Commission must in its annual report in terms of subrule (4)(c) also report about departments who fail to comply with subrules (1) (2) and (3).”

Rule 5(1) of the PSC Rules on Referral and Investigation of Grievances provides the following:

- (a) Referral by an executive authority in terms of rule 3(1) must be done in writing by the executive authority, or an employee so delegated by the executive authority, within the timeframe prescribed in rule 3(3), using the Grievance Referral Form.
- (b) The delegated employee must provide proof that he or she has the delegated authority to decide or refer the grievances to the Commission.

CONCLUSION

It is common cause that dissatisfactions between an employee and the employer will always be there in the workplace.

The management of the grievance process is affected by the manner in which grievances are handled in departments. Failure and unnecessary delays in investigating grievances of employees lead

to lack of trust and confidence in the grievance process of departments, and also frustrate the objectives of the Grievance Rules. In turn employees are more ready to escalate grievances to the PSC or other dispute resolution structures.

It is important that Labour Relations units in departments deal speedily with grievance matters to restore confidence and for the effective resolution of grievances.

Non-compliance with the Grievance Rules has negative consequences in that grievances that have merit end up not being investigated, thereby—

- inhibiting informed decision-making on the substantive issue; and
- denying the aggrieved the opportunity to understand the reason from an independent third party like the PSC as to why the department arrived at a particular decision, or knowing whether or not there was substance in his/her grievance.

In order to maintain a good relationship between the employer and the employee, grievances of employees must be treated the same, whether there is merit or not. Employers must develop grievance procedure/guidelines in line with the applicable prescripts/legislations and rules in order to assist the employer and employees to deal with dissatisfaction.

Departments are encouraged to conduct workshops for employees, union representatives and management with regard to the rules and prescripts relating to grievances.

Rule 1.2 of the Grievance Rules states that “The Commission must report on the management of grievances and efficiency of grievance procedure at least once a year to the National Assembly and in respect of its activities in a Province to the Legislature of that Province.”

It is important for the department to manage their grievances accordingly and keep a proper record of all the grievances lodged with the department in order for the PSC to report efficiently and effectively to the National Assembly and the relevant Provincial Legislatures. The PSC is obliged to report to the National Assembly and the Provincial Legislature. Therefore, the PSC relies on the cooperation of departments to fulfil its monitoring and reporting mandate.

REFERENCES

1. The Constitution of the Republic of South Africa, 1996.
2. The Public Service Act, 1994 as amended.
3. The Public Service Commission Act, 1997 (Act No 46 of 1997).
4. The Public Service Coordinating Bargaining Council, Resolution 14 of 2002.
5. The Senior Management Service Handbook, Chapter 10 Rules for Dealing with the Grievances of Members of the SMS in the Public Service as promulgated in Government Gazette Number 33540 of 17 September 2010.
6. The Rules for Dealing with Grievances of Employees in the Public Service, as promulgated in Government Gazette No. 25209 dated, 25 July 2003.
7. The PSC Rules on Referral and Investigations of Grievances of Employees in the Public Service, Gazetted in Government Gazette Number 40359 on 21 October 2016.
8. The PSC Guidelines on New Grievance Rules, 12 August 2004.

ⁱ Public Service Act, 1994