

# CHAPTER 12 - SA DISCIPLINARY CODE AND POLICIES – ASA Rules and Regulations

## 1. Introduction

- 1.1. This Disciplinary Code is applicable to any individual, institution or representative structure defined in the ASA Constitution.
- 1.2. Acceptance of this Disciplinary Code will be a prerequisite for any employee, individual, institution or representative structure defined in the ASA Constitution to become a member of ASA.
- 1.3. It is ASA policy to follow non-discriminatory labour practices, especially in respect of:-
  - 1.3.1. Selection, employment and termination of ASA employees, office bearers and members
  - 1.3.2. Applying the principle of equal pay for equal work of equal value executed with equal effectiveness.
  - 1.3.3. The fair and equitable treatment of ASA employees, office bearers and members
- 1.4. ASA disciplinary policies procedures are intended to:-
  - 1.4.1. Ensure the smooth and effective operation of ASA and that its standards, rules and behaviour patterns are observed.
  - 1.4.2. Be lawful – i.e. carried out in terms of the relevant laws and regulations.
  - 1.4.3. Be fair, both procedurally and substantively.
- 1.5. Non-compliance with the conditions of employment or unacceptable behaviour by ASA employees, office bearers and members justifies disciplinary action.

## 2. Objectives

- 2.1. The objectives of ASA disciplinary policies are to: -
  - 2.1.1. Maintain acceptable standards
  - 2.1.2. Correct unacceptable behaviour or performances of ASA employees, office bearers and members
  - 2.1.3. Utilise punitive measures only when other measures have failed to produce the desired results. An investigation is conducted prior to disciplining ASA employees, office bearers and members.

## 3. Application

- 3.1. The disciplinary procedure applies to all ASA employees (including management), office bearers and Members as defined in the ASA Constitution including all persons registered and licensed with Athletics South Africa.

## 4. Disciplinary Code

- 4.1. While this code does not cover all circumstances, which can lead to disciplinary action, it does provide guidance to management and ASA employees, office bearers and members regarding appropriate disciplinary action. It is emphasised that it is within the discretion of management to determine the degree of transgression and therefore the disciplinary action, which correlates with the specific circumstances applicable to each incident.

- 4.2. Discipline is procedurally fair when the correct procedure is used ensuring that the ASA employees, office bearers and members' rights have been observed, including;
- 4.2.1. The right to be told the nature of the misconduct with relevant particulars of the charge;
  - 4.2.2. The right of the hearing to take place as soon as possible;
  - 4.2.3. The right to be given adequate notice prior to the enquiry;
  - 4.2.4. The right to some form of representation, to ensure that the disciplinary procedure is fair and equitable;
  - 4.2.5. The right to call witnesses;
  - 4.2.6. The right to a translator;
  - 4.2.7. The right to a finding (if found guilty, the right to be told the full reason why);
  - 4.2.8. The right to have previous service considered;
  - 4.2.9. The right to be advised of the penalty imposed;
  - 4.2.10. The right of appeal, i.e. usually to a higher level of management.
- 4.3. Discipline is substantively fair if the offence warrants the penalty.

## 5. Minor Forms of Misconduct

- 5.1. ASA employees, office bearers and members who are guilty of the following, of similar forms of misconduct, may be given a verbal warning at the first occurrence thereof. Written or severe warnings or dismissal are at the option of management.
- 5.1.1. Late for work or leaving early without good reason;
  - 5.1.2. Absence from work place without permission;
  - 5.1.3. Failure to keep appropriate authorities, e.g. SAIDS, WADA, IAAF Integrity Unit, etc. informed of whereabouts;
  - 5.1.4. Unacceptable dress (the dress code will be established by management from time to time);
  - 5.1.5. Unacceptable behaviour including excessive "horse playing" or "skylarking" at work, as member of a team and during competitions or related projects
- 5.2. A verbal warning shall be kept on an ASA employee / member's record. It shall prescribe after three months.
- 5.3. In the case of licensed members, disciplinary sanction may include Suspension from the activities and competitions of ASA for a limited period.

## 6. Misconduct of a More Serious Nature

- 6.1. **ASA employees, office bearers and members may be given a written warning for repeated minor forms of misconduct. An ASA employee / member may also be given a written warning at the occurrence of any of the following forms of misconduct, or others of a similar nature; or a severe warning or face dismissal at the option of management. Written and severe warnings shall be kept on the ASA employees', office bearers' and members' record but shall prescribe after six months.**
- 6.1.1. Insolence or disrespectful behaviour;
  - 6.1.2. Addressing abusive and/or obscene language at a fellow ASA employee / member or an executive, or in a clients' presence;
  - 6.1.3. Sexual harassment;
  - 6.1.4. Sleeping on duty;
  - 6.1.5. Negligence or poor performance;

- 6.1.6. Unauthorised use of ASA' property or equipment;
- 6.1.7. Violation of safety and hygiene rules and regulations;
- 6.1.8. Absence without permission;
- 6.1.9. Conduct detrimental to the image, performance or commercial interests of ASA;
- 6.1.10. Possession/consumption of liquor or non-prescribed drugs on ASA' premises as part of a team, and during competitions and related projects.

## **7. Serious Misconduct**

7.1. ASA employees, office bearers and members may be summarily dismissed (i.e. without notice or payment in lieu of notice) in the event of any material breach of his/her service contract. The following or similar forms of misconduct are examples of material breaches for which an ASA employee / member may be summarily dismissed at the first occurrence thereof: -

- 7.1.1. Bringing ASA's name into disrepute;
- 7.1.2. Unauthorised possession of ASA' property/equipment
- 7.1.3. Intimidating, inciting or persuading ASA employees, office bearers and members to participate in any unconstitutional strike or action involving dishonesty;
- 7.1.4. Intentionally interfering with or obstructing other ASA employees, office bearers and members in the performance of their duties;
- 7.1.5. Being found guilty of a criminal offence involving gross dishonesty (or paying an admission of guilt fine to avoid such verdict);
- 7.1.6. Offering/receiving a bribe;
- 7.1.7. Wilful damage to ASA' property/equipment;
- 7.1.8. Insubordination or blatant disrespect to management or clients and sponsors;
- 7.1.9. Failure to exercise due care and attention to tasks assigned;
- 7.1.10. Providing a false statement or a false report;
- 7.1.11. Possession of an unlicensed firearm or dangerous weapon on ASA' premises;
- 7.1.12. Under influence of alcohol/drugs when arriving at work;
- 7.1.13. Negligent or reckless driving of an ASA' vehicle or driving under the influence of alcohol/drugs;
- 7.1.14. Drinking or taking non prescribed drugs during working hours or being incapable of properly performing work due to influence of alcohol/drugs;
- 7.1.15. Extended absence without permission (over five days);
- 7.1.16. Any conduct prejudicing the integrity of ASA and its services;
- 7.1.17. Creating a disturbance at work, including threatening violence, fighting, assault, and/or using offensive weapons;
- 7.1.18. Refusal or failure to obey a proper instruction;
- 7.1.19. Illegal possession of liquor/non prescribed drugs on ASA premises, at work, as member of a team and during competitions or related projects;
- 7.1.20. Any other misconduct constituting breach of contract under common law or any other legal provisions.

7.2. Dismissal with notice or the issuing of a severe warning or unpaid suspension from work may be alternative forms of action for any of the above stated misconduct depending on the evidence, circumstances and seriousness of each situation.

7.3. For licensed members, discipline for cases of serious misconduct may include permanent expulsion from the sport.

## **8. Dismissal / Expulsion**

## **8.1. With Notice**

- 8.1.1. Dismissal (or expulsion from the sport) is the ultimate disciplinary measure available to ASA. As a matter is of the gravest consequence to the ASA employee / member, it merits the most careful investigation and decision. The final decision to dismiss/expel will always rest with the Board or Chief Executive Officer. Dismissal must be seen to be both substantively and procedurally fair.
- 8.1.2. Breach of rules and regulations, gross misconduct, a serious breach of the ASA employees, office bearers and members' contract/license of employment or where corrective action (for example written warnings) have failed to produce the desired performance. It must in all cases be preceded by a formal disciplinary enquiry.

## **8.2. Summary Dismissal (without Notice)**

- 8.2.1. ASA employees, office bearers and members can be summarily dismissed i.e. without notice or payment in lieu of notice, due to a serious breach of contract or serious neglect of duties. Provided the circumstances warrant it, the following grounds have been accepted by South African courts as sufficient grounds for summary dismissal.
  - 8.2.1.1. Being intoxicated on duty;
  - 8.2.1.2. Gross negligence
  - 8.2.1.3. Incompetence to a serious degree
  - 8.2.1.4. Deliberate absenteeism
  - 8.2.1.5. Refusal or failure to carry out orders to perform work
  - 8.2.1.6. Repeated un punctuality
  - 8.2.1.7. Serious disrespect, insubordination, impudence or insolence
  - 8.2.1.8. Assault
  - 8.2.1.9. Dishonesty in the course of duties
  - 8.2.1.10. Intimidating an ASA employee / member to participate in any unconstitutional strike action or action involving dishonesty
- 8.2.2. The offence or accumulation of offences must be so serious as to strike at the roots of the contract of employment, that it causes an irreconcilable or irretrievable breach in the relationship between employer and ASA employees, office bearers and members.
- 8.2.3. The responsibility always rests on management to show that, on the clear Balance or probability, the offence took place as alleged.

## **9. Appeals**

- 9.1. If an ASA employee / member is dissatisfied with the outcome of the disciplinary enquiry then the ASA employee / member may, within two working days, appeal. Grounds for appeal include:-
  - 9.1.1. Being unfairly disciplined;
  - 9.1.2. Incorrect procedure followed;
  - 9.1.3. Presentation of fresh evidence;
- 9.2. The Chief Executive Officer (or other person assigned by the Board) shall review the disciplinary action/s and thereafter shall notify the ASA employee / member concerned and/or his/her

representative as to whether he supports the appeal of he/she conforms the disciplinary action decided upon by the chairman of the Disciplinary Enquiry.

- 9.3. In the event of a licenced Member being Suspended or Expelled, after all appeal processes have been concluded, the final decision to Suspend or Expel shall be communicated by the ASA office to all members for implementation.

## **10. ARBITRATION RULES**

### **10.1. INITIATING ARBITRATION**

- 10.1.1.** Any party to a dispute (Claimant) shall initiate arbitration proceedings by addressing a written communication to such other parties as may be involved in such a dispute (Defendant/Defendants) setting out briefly the nature of the dispute.
- 10.1.2.** The parties shall meet within 5 (five) days of the Claimant initiating proceedings in an endeavour to settle the dispute amicably.
- 10.1.3.** Unless all parties to the dispute agree to the contrary, the meeting referred to in paragraph 2 above shall be chaired by a mediator mutually agreed upon between the parties or, if no mediator is agreed upon, by mediator appointed by the ASA Disciplinary Committee.
- 10.1.4.** The mediation meeting referred to in paragraph 2 above shall be conducted on a without prejudice basis, informally, and at a venue and time mutually agreed upon.
- 10.1.5.** If all parties to the dispute agree thereto, the initial mediation meeting may be postponed to or continued at a later date.

### **10.2. APPOINTING THE ARBITRATOR**

- 10.2.1.** In the event of the matter not being settled under Rule 1 or should the parties agree not to submit their dispute to mediation under Rule 1, the parties shall appoint as an arbitrator a person mutually agreed upon. Failing such agreement, the Arbitrator shall be appointed by the Chairman for the time being of Arbitration Foundation of Southern Africa (AFSA) who shall:

- 10.2.1.1.** if the matter under dispute is primarily a legal matter, appoint as a mediator an attorney or counsel who has been in practise for not less than five years;
- 10.2.1.2.** If the dispute concerns mainly a matter of sports administration, appoint as an Arbitrator someone with suitable experience in the administration of the sport in question.

- 10.2.2.** Before the matter is taken any further the Claimant shall pay to AFSA the minimum prescribed administration fee.

- 10.2.3.** If the Arbitrator agreed upon, or appointed as per Rule 2.1 above, is unable or unwilling to so act then AFSA shall within 3 (three) days of being requested to do so appoint a replacement Arbitrator accredited by AFSA.

- 10.2.4.** Except with the prior written consent of the parties, no person shall act as Arbitrator in any dispute in which that person has any financial or personal interest.

- 10.2.5.** The Arbitrator shall be obliged to disclose to the parties any prior professional, business, personal or other relationship that he/she may have or may have had with either one of them.

- 10.2.6.** The Arbitrator shall not be the mediator who conducted the mediation proceedings in terms of Rule 1, unless both parties request such mediator in writing to act as Arbitrator.

### **10.3. ARBITRATION PROCEEDINGS**

- 10.3.1. Within 7 (seven) days of the appointment of an Arbitrator the parties shall submit to the Arbitrator their outline of the issues in dispute, the facts material to such dispute on which they rely and the relief, if any, which they claim in such dispute.
- 10.3.2. Either party shall have the right, within 7 (seven) days of receiving the other party's outline of the dispute in terms of Rule 3.1 above, to respond in light of that.
- 10.3.3. After the exchange of documents in terms of Rule 3.1, the parties shall as expeditiously as possible attend a meeting chaired by the Arbitrator, to discuss the further determination of the matter and all procedural aspects relevant thereto.
- 10.3.4. No time limits shall be extended except by leave of the Arbitrator.
- 10.3.5. The arbitration shall take place on a date determined by the Arbitrator. The arbitration shall take place at, an appropriate venue which is nearest to the area where the parties are based. If there is no such office, the venue will be determined by the Arbitrator, having regard to issues of convenience and to the interests of the parties.
- 10.3.6. Documents may be delivered by hand, by telefax or sent by post. In the latter event, receipt of documents shall be deemed to have occurred 5 (five) days after posting.
- 10.3.7. No formal record of the proceedings shall be kept unless unanimously decided upon by the Arbitrator and the parties.
- 10.3.8. The parties shall co-operate fully with the Arbitrator.
- 10.3.9. The Arbitrator shall be entitled when making an award to rely on his/her own knowledge and/or experience of the related industry.
- 10.3.10. Wherever under these Rules the Arbitrator is given powers, such powers shall be exercised in the sole and absolute discretion of the Arbitrator.
- 10.3.11. Except where they conflict with the provisions of these Rules and/or procedures decided upon by the Arbitrator under these Rules, the provisions of the Arbitration Act of 1965 shall apply.
- 10.3.12. The arbitration shall be conducted expeditiously in order to minimise delay and with a view of minimising costs.
- 10.3.13. The Arbitrator shall in his discretion not necessarily be bound to the application of the normal rules of evidence in respect of the proceedings.
- 10.3.14. The Arbitrator may call for additional evidence and/or submissions in regard to issues in dispute.
- 10.3.15. The Arbitrator may proceed inquisitorially to ascertain the relevant facts and to this end may question any party or witness at any stage of the proceedings.
- 10.3.16. The Arbitrator shall conduct the arbitration proceedings in such manner as he deems fit, and shall make such rulings in relation to any procedural matter as he considers appropriate: provided that no such ruling may be in conflict with the express provision of any of these Rules.
- 10.3.17. Any of the parties to a dispute may, on not less than 24 hours' notice to the other parties, approach the Arbitrator for an interim ruling on any procedural matter.
- 10.3.18. The Arbitrator shall, in respect of the dispute, be competent to make such order as may, in law, be made in relation to the issues in dispute: save that, except where the parties agreed to the contrary before the commencement of the arbitration hearing, no costs order may be made by the Arbitrator unless the Arbitrator is of the view that a party has, in the arbitration proceedings, acted in a frivolous or vexatious manner by initiating or defending the dispute in the arbitration proceedings or by such party's conduct during the arbitration proceedings. Before awarding any such costs the Arbitrator shall afford both parties an opportunity of addressing him on the question of whether such costs should be awarded.

#### **10.4. SERVICE**

- 10.4.1. The notice referred to in Rule 1.1 and the written outline referred to in Rule 3.1 shall be served personally by each party at the home or principal place of business of each of the other parties, and such service shall be proved by an affidavit sworn by the person who affected such service.
- 10.4.2. All other notices and documents in terms of this Rule shall be served personally, by fax or by registered post.
- 10.4.3. If service of the documentation required under Rule 1.1 and 3.1 cannot be effected in the manner referred to in Rule 4.1 above, the parties may approach the mediator appointed in terms of Rule 1.3 or the Arbitrator appointed in terms of Rule 2 for appropriate directions as to service.

## **10.5. CONFIDENTIALITY**

- 10.5.1. The proceedings shall be confidential. Neither the parties nor the Arbitrator shall disclose to third parties any information regarding the proceedings, the award, or settlement terms unless the parties otherwise agree in writing.

## **10.6. DEFAULT AND NON-COMPLIANCE**

- 10.6.1. In the event that the Arbitrator is of the opinion that any party to the arbitration has not co-operated fully and/or caused unnecessary and/or wilful delay or whose conduct merits same the Arbitrator shall be entitled to make any award of costs he/she deems fit.
- 10.6.2. Provided that there has been proper service of the documentation required by Rules 1.1 and 3.1 above, the arbitration can proceed in the absence of any party.
- 10.6.3. The Arbitrator shall be entitled to make a default award. [This rule falls away if the appeal rule as contained below is ultimately agreed to.]
- 10.6.4. An award made by the Arbitrator in terms of Rule 7 below shall not be subject to rescission by reason of the fact that such award was made in the absence of a party, unless such party is able to prove that service of the documentation referred to in Rule 1.1 and 3.1 above was not effected in the manner required by Rule 4.1. Should service not have been thus affected, an application for rescission may be brought by the party affected, on written notice to all other parties to the dispute, and on good cause shown.

## **10.7. AWARD**

- 10.7.1. The Arbitrator shall within 30 (thirty) days of the termination of the proceedings render a final and binding written award including interest and costs, without assigning reasons unless otherwise agreed and the award may be made an order of court in terms of Section 31 of the Arbitration Act of 1965.
- 10.7.2. In considering his/her award the Arbitrator may take into account any equitable factors that in his/her opinion are relevant to the making of the award.
- 10.7.3. The award shall be published either by hand delivery to the parties or by telefax or by post.
- 10.7.4. Notwithstanding the provision of this Rule, the Arbitrator shall be entitled to make such interim awards as he/she deems necessary.

## **10.8. APPEALS**

- 10.8.1. Any party aggrieved by the award of the Arbitrator may appeal against such award by delivering a notice of appeal within 7 days of receipt of the award.
- 10.8.2. The appeal shall be heard by an appeal panel consisting of 3 persons, who shall be appointed by AFSA.
- 10.8.3. The party wishing to prosecute an appeal shall, within 30 days of giving notice of the appeal and at such party's own cost, deliver a full and comprehensive record of the proceedings before the Arbitrator, and a copy of the Arbitrator's award, to AFSA and to each of the other parties to the arbitration.
- 10.8.4. The appeal shall be heard within 30 days of the delivery of such record.
- 10.8.5. The appeal tribunal shall, prior to the hearing of the appeal, be entitled to give such procedural directions as it deems appropriate, including directions as to the presentation of argument and the submission of written heads of argument. Such directions shall be furnished in writing to each party to the dispute.
- 10.8.6. The appeal tribunal shall be obliged to give its decision within 30 days of the hearing of the appeal.
- 10.8.7. The appeal tribunal may, in respect of the dispute, make the same orders as the Arbitrator is entitled to make in terms of Rule 3.18 above.

## **10.9. GENERAL**

- 10.9.1. A reference in these Rules to days means calendar days, including Saturdays, Sundays and public holidays.
- 10.9.2. The provision of these Rules shall not preclude the parties from approaching a Court having jurisdiction for urgent interdictory relief, where grounds exist for the seeking of such relief.
- 10.9.3. These Rules may from time to time be amended by AFSA.
- 10.9.4. The address of AFSA for all purposes arising from or connected to these Rules or arbitrations conducted in terms thereof, shall be as listed on the AFSA website.
- 10.9.5. AFSA may, from time to time, determine an administrative charge which shall be borne by the parties, in equal shares, in order to cover any staff, secretarial and administrative expenses incurred by AFSA in respect of the dispute in question.