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# *Misconduct and Incapacity Dismissals*

*- a Framework*

*CAGI HRM Meeting*

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## Awareness of Work Related Rule

Was the Employee Aware of a Work related rule?

- Aware that conduct of this nature is unacceptable?
- Reasonably understood that conduct of this nature was unacceptable regardless?
- Was the issue in question work related?

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## Breach of Rule

Was there a Breach of that Rule?

- Sometimes this is not in dispute
- Sometimes there is a dispute of fact whether or not a breach was committed
- What fair sanction/penalty to apply?

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## Reasonable Rule

Was the Rule Reasonable?

- Can it still be argued that the rule in question was unreasonable?
- Must be determined on the basis of evidence presented

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## Consistent Application

Has the Rule been Consistently Applied?

- In order to be fair, discipline has to be applied consistently
- This ensures that employees are aware of the consequences of their action
- Due regard must be had to the specific circumstances of each offence

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# Appropriate Sanction

Was Dismissal an Appropriate Sanction?

- Does the penalty fit the crime?
- What is a fair outcome based on the facts of the case?

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## Misconduct Dismissals: Case Studies

Group Exercise – six short cases

Apply the framework just presented to the case studies, and decide whether in your opinion the dismissals are fair.

# Incapacity Dismissal Framework

- Established Performance Standards
- Are these standards being met by others?
- Was employee made aware of required standards and consequences for failure?
- Was reasonable time allowed for employee to meet standards – fair opportunity
- Training, guidance, instruction provided?



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## Poor Work Performance

- Did the employee fail to meet a performance standards?
- Was the standard reasonable and known to the employee?
- Was the employee given a fair opportunity to meet the required standard by?
  - Appropriate evaluation, instruction, training, guidance or counselling, time to improve?
- Was dismissal the appropriate sanction?

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## Poor Health and Injury

- Is the employee capable of performing the work?
- If the employee is not capable –
  - The extent to which the employee is able to perform the work?
  - Can duties be adapted to accommodate the problem?
  - The availability of any suitable alternative work?

# Operational Requirements: Dismissals for Redundancy

- Disclosure of relevant information to employees to be retrenched and/or their representatives
- Consultations to reach agreement to:
  - Avoid/minimise the retrenchments
  - Fair selection criteria to identify employees
  - Select the employees to be retrenched;
  - Compensate the employees to be retrenched
  - Appropriate consideration, and preferential rehiring at some future stage

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## Incapacity Dismissal Case Study

- Consider the facts set out in the case study and decide whether the dismissal is fair?

CAGI Website: [www.cagi.org.gy](http://www.cagi.org.gy)