

**AFRICAN CONSERVATION TRUST** (“the Employer”)

**DISCIPLINARY CODE AND PROCEDURE** (“this Code”)

**1. PURPOSE**

1.1 The purpose of this Code is:

1.1.1 to provide a set of guidelines which will be applicable to all employees;

1.1.2 to guide action taken by the Employer to correct behaviour which contravenes this Code and any other policy, practice, rule or standard which may be prescribed by the Employer from time to time;

1.1.3 to promote good order and efficient functioning of the business of Employer.

1.1.4 to ensure that discipline is applied in a prompt, fair and consistent manner.

1.1.5 to provide employees with a quick and easy guide to disciplinary procedures.

1.1.6 to prevent conflict in the workplace, to protect the interests of both the Employer and employee and to promote the practice of sound and equitable industrial relations.

1.2 This Code adopts the concept of corrective or progressive discipline. This approach regards the purpose of discipline as a means for employees to know and understand what standards are required of them. This Code aims to correct the employee’s behaviour through a system of graduated disciplinary measures such as counselling and warnings, unless the misconduct of the employee is of such a serious nature as to warrant summary dismissal.

**2. STANDARD OF CONDUCT**

2.1 This Code is subject to the provisions of the Labour Relations Act and, in particular, the Code of Good Practice: Dismissal in Schedule 8.

2.2 The various categories of misconduct and disciplinary action are set out in Annexure A to this Code. The list of offences and sanctions is not exhaustive. Management may discipline an employee in respect of any other form of misconduct not mentioned in Annexure A.

2.3 The recommended sanctions in Annexure A are guidelines only and may be departed from in appropriate circumstances, in the discretion of the Employer.

2.4 Where applicable, the incident giving rise to the hearing shall be investigated to determine whether there are sufficient grounds to warrant taking disciplinary action against an employee.

2.5 A reference to a supervisor or person in authority shall include an employee’s team leader or timekeeper.

### **3. DISCIPLINARY SANCTIONS**

#### **3.1 Verbal Warning**

- 3.1.1 In the event that the employee commits a minor offence, the employee shall be issued with a verbal warning and an instruction from the employee's superior to correct that behaviour.
- 3.1.2 The verbal warning should, if practical, be given to the employee in the presence of a shop steward or employee representative and the reason for the warning should be explained to the employee.
- 3.1.3 A record that such a warning has been given should be placed in the employee's employment file. A verbal warning shall remain valid for a period of three months.

#### **3.2 Written Warning**

- 3.2.1 If a verbal warning fails to correct an employee's conduct, or if the conduct warrants a written warning without a prior verbal warning, the employee's supervisor or any other person in authority to exercise discipline may give the employee a written warning.
- 3.2.2 the supervisor and/or any other person in authority shall discuss the nature of the transgression, the corrective action and the disciplinary steps with the employee in the presence of a shop steward or employee representative.
- 3.2.3 The supervisor or person in authority must complete the relevant disciplinary warning form supplied by the Employer and ask the employee and the shop steward or employee representative to sign the form to acknowledge receipt of the written warning, even though the employee may not necessarily agree with the disciplinary action applied. Should the employee refuse to sign the warning, the supervisor or person in authority should note that fact on the form.
- 3.2.4 The disciplinary warning form should then be placed in the employee's employment file and a copy of the warning should be given to the employee. A written warning shall remain valid for a period of six months from the date of issue. In the event that a written warning has already been issued to the employee which is still valid, the Employer may, if the nature and circumstances of the offence do not warrant a final written warning, issue a further written warning, which shall remain valid for a period of nine months.
- 3.2.5 If during the 6- or 9-month period (as the case may be) the employee commits a further transgression of a similar nature, the written warning may be taken into account in deciding an appropriate sanction.

#### **3.3 Final Written Warning**

- 3.3.1 If the employee has one or more previous written warnings, which is/are still valid, or the nature of the offence is such that it is appropriate for a final written warning to be given without previous written warnings, the person in authority to exercise discipline may give the employee a final written warning for any further incident.
- 3.3.2 The same procedure as set out in 3.2.2 and 3.2.3 shall be followed when issuing the final written warning. The disciplinary final written warning form should then

be placed in the employee's employment file and a copy of the final written warning should be given to the employee.

3.3.3 The final written warning shall remain valid for a period of 12 months from the date of issue.

### 3.4 **Dismissal**

Dismissal may be effected when:

3.4.1 repeated warnings have been issued to the employee, in line with this Code, without improvement in the conduct of the employee concerned; or

3.4.2 a final written warning has been issued and a similar offence is committed within 12 months thereof; or

3.4.3 serious misconduct warranting dismissal as a first offence has been committed as envisaged in Annexure A.

## 4. **DISCIPLINARY PROCEDURE**

### 4.1 **Notice of hearing**

4.1.1 The employee shall be given notice of a disciplinary hearing, at least 48 hours before the hearing unless there are exceptional circumstances that warrant a shorter notice period. The period of notice given must be sufficient to allow the employee a reasonable opportunity to prepare for the hearing.

4.1.2 The notice envisaged in 4.1.1 shall set out:

4.1.2.1 The reason for the enquiry.

4.1.2.2 The date, time and venue of the enquiry.

4.1.2.3 The rights of the employee at the enquiry, namely:

4.1.2.3.1 the right to timeous notification of the intention to convene the disciplinary enquiry and the grounds for the enquiry;

4.1.2.3.2 the right to be represented by a shop steward or employee representative;

4.1.2.3.3 the right to translation if required;

4.1.2.3.4 the right to call and cross examine witnesses;

4.1.2.3.5 the right to a fair and proper hearing.

4.1.2.3.6 that should the employee or the employee's representative not attend the hearing, the procedure may continue in their absence.

4.1.3 The employee must sign receipt of the notice. If the employee refuses to sign receipt of the notice, it must be given to the employee in the presence of a fellow employee, who must sign as a witness. The notice may also be sent to the employee via WhatsApp or SMS, upon receipt of which the employee shall send a return message acknowledging receipt.

4.1.4 An employee is entitled to be represented by a fellow employee or a trade union representative (shop steward) of the employee's registered trade union that has a recognition agreement with the Employer or has organisational rights to trade union representation in the workplace. Regardless, if the employee is a national office bearer of the registered trade union, the employee may be represented by an official from that registered trade union. If the employee is a shop steward of a recognised registered trade union, the Employer will consult with that trade union before instituting disciplinary action against the employee. The employee shall not be entitled to legal representation at a disciplinary hearing.

## 4.2 Suspension

4.2.1 An employee may be suspended by the Employer on full pay when an investigation into alleged serious misconduct is to be instituted prior to a disciplinary hearing or when the Employer believes that the presence of the employee at the workplace may jeopardize or interfere with any investigation into the alleged misconduct or endanger the well-being or safety of the Employer or any other person.

4.2.2 A suspension is a measure which does not constitute a judgment or penalty. It is aimed at protecting the disciplinary process and not compromising the investigation into the alleged misconduct.

4.2.3 The notice of suspension shall be in writing and shall be delivered to the employee in the same manner as set out in 4.1.3. The Employer shall furnish brief reasons for the suspension and the employee shall be entitled to make written representations as to why the employee should not be suspended, no later than 72 hours after receipt of the suspension notice. The Employer shall consider such representations and notify the employee of the outcome thereof.

## 4.3 The Disciplinary Hearing

4.3.1 The disciplinary hearing shall be held as soon as is reasonably and practicably possible after the Employer becomes aware of the commission of the alleged offence, allowing for reasonable notice as set out in 4.1.

4.3.2 The hearing may be attended by:

4.3.2.1 The chairperson.

4.3.2.2 The person who will initiate the complaint on behalf of the Employer.

4.3.2.3 The employee concerned.

4.3.2.4 The employee representative, if the employee has appointed one in terms of 4.1.4.

4.3.2.5 A person who can act as an interpreter, if required.

4.3.2.6 Witnesses when required to testify.

4.3.2.7 A representative from human resources, if available.

4.3.3 The Employer shall appoint the initiator of the disciplinary hearing, who shall either be the person who investigated the allegations against the employee or the

employee's supervisor or manager. The initiator shall represent the Employer at the hearing.

- 4.3.4 The chairperson of the disciplinary hearing shall be appointed by the Employer from within its management team who, if possible, shall hold a more senior position to the employee charged. The Employer has the right to appoint an external chairperson in its sole discretion.
- 4.3.5 The Employer will make information reasonably required by the employee in order to state a case, available to the employee or the employee's representative upon request, within a reasonable period of time.
- 4.3.6 The Employer shall present the case against the employee and lead the necessary witnesses in support of such case. The employee may cross examine such witnesses.
- 4.3.7 At the completion of the Employer's evidence, the employee shall be given an opportunity to lead any evidence in support of the employee's case, including the calling of any witnesses.
- 4.3.8 The chairperson shall decide on a balance of probabilities whether the alleged misconduct was committed and must inform the employee as soon as possible of such decision.
- 4.3.9 The employee, if found guilty, may present further evidence in mitigation of sanction and the Employer may present evidence in aggravation of sanction.
- 4.3.10 The chairperson shall thereafter determine a sanction against the employee in respect of the charges on which the employee was found guilty. The hearing may be recorded, or, if not, minutes thereof must be kept.

#### **4.4 Sanction**

- 4.4.1 The chairperson may impose the sanctions listed below depending on the nature of the offence, the employee's previous record, any mitigating or aggravating circumstances and past practice (precedent):
  - 4.4.1.1 A written warning
  - 4.4.1.2 A final written warning
  - 4.4.1.3 Suspension without pay
  - 4.4.1.4 Demotion, and/or
  - 4.4.1.5 Dismissal.
- 4.4.2 The chairperson may only impose the sanctions of suspension without pay or demotion as an alternative to dismissal if the employee agrees to this. If the employee does not agree to the alternative sanction the chairperson may impose the sanction of dismissal.
- 4.4.3 Annexure A provides a guideline on sanctions that may be issued for various acts of misconduct. The guideline must be considered within the context of the merits of each case and thus not applied rigidly. The chairperson has the discretion to find the employee guilty of a lesser charge than that set out in the notice of disciplinary hearing, if the evidence justifies such lesser charge.

5. **RIGHT TO REFER TO CCMA OR RELEVANT BARGAINING COUNCIL**

If an employee is not satisfied with the outcome of a disciplinary hearing, the employee may refer a dispute to the CCMA or Bargaining Council (with jurisdiction over the Employer), within 30 days of the date of dismissal in terms of the Labour Relations Act. There is no right of appeal to the Employer.

## ANNEXURE A

## SCHEDULE OF OFFENCES AND DISCIPLINARY ACTION

NATURE OF OFFENCE	FIRST OFFENCE	SECOND OFFENCE	THIRD OFFENCE	FOURTH OFFENCE
<p><b><u>Timekeeping Offences:</u></b></p> <p>Late for work or leaving work early without good reason</p>	Verbal Warning	Written Warning	Final Written Warning	Dismissal
Unwarranted absence during working hours without good reason or any other unauthorized absence less than 4 days	Verbal Warning	Written Warning	Final Written Warning	Dismissal
Absence from work for four working days or more without permission, or without good reason or without notifying management during the period of absence	Dismissal			
Extended lunch breaks or rest periods without permission	Verbal Warning	Written Warning	Final Written Warning	Dismissal
Fraudulent timekeeping including clocking in of other employees' clock cards and allowing another to clock in one's clock card	Dismissal			

<b>NATURE OF OFFENCE</b>	<b>FIRST OFFENCE</b>	<b>SECOND OFFENCE</b>	<b>THIRD OFFENCE</b>	<b>FOURTH OFFENCE</b>
<u><b>Work Output Offences:</b></u>  Sleeping on duty	Written Warning	Final Written Warning	Dismissal	
Refusal or failure to work, or refusal/failure to obey a reasonable instruction	Dismissal			
Low productivity / loafing	Verbal Warning	Written Warning	Final Written Warning	Dismissal
<u><b>Quality of Work Offences:</b></u>  Poor maintenance of vehicle or machine for which employee is responsible	Verbal Warning	Written Warning	Final Written Warning	Dismissal
Loss of protective clothing / company property	Verbal Warning	Written Warning	Final Written Warning	Dismissal
Wastage of material	Verbal Warning	Written Warning	Final Written Warning	Dismissal
Damage to equipment or property of Employer or fellow employee	Written Warning	Final Written Warning	Dismissal	

NATURE OF OFFENCE	FIRST OFFENCE	SECOND OFFENCE	THIRD OFFENCE	FOURTH OFFENCE
Injury to another through negligence or dangerous horseplay	Final Written Warning	Dismissal		
<p><b><u>Social Offences:</u></b></p> Under the influence of alcohol or intoxicating drugs at work	Dismissal			
Unauthorized consumption of alcohol and of the administration of drugs for non-medicinal purposes during normal working hours	Final Written Warning	Dismissal		
Alcoholism or drug abuse	Counseling Rehabilitation / Written Warning	Counseling Rehabilitation / Final Written Warning	Dismissal	
Assault on the Employer, fellow employee or client	Dismissal			
Threat of assault in respect of Employer, fellow employee or client	Final Written Warning	Dismissal		

NATURE OF OFFENCE	FIRST OFFENCE	SECOND OFFENCE	THIRD OFFENCE	FOURTH OFFENCE
Dealing in drugs or liquor on company premises or property or being in unauthorized possession thereof	Dismissal			
Possession of unauthorized dangerous weapons or use thereof at work or on company premises	Dismissal			
Deliberate failure to observe security and safety regulations that may result in serious damage to property or injury to person	Final Written Warning	Dismissal		
Swearing or use of abusive and/or derogatory and/or offensive language and signs that result in the deterioration of discipline	Written Warning	Final Written Warning	Dismissal	
Gross insubordination, serious disrespect, impudence or insolence	Dismissal			

NATURE OF OFFENCE	FIRST OFFENCE	SECOND OFFENCE	THIRD OFFENCE	FOURTH OFFENCE
Gross negligence	Dismissal			
Obscene, abusive and derogatory language or action directed from one race group to another that causes interracial friction	Dismissal			
<p><b><u>Other Offences:</u></b></p> <p>Willful damage to material, equipment, possessions or property of the Employer or fellow employees</p>	Dismissal			
Theft	Dismissal			
Unlawful and unauthorized possession of company or employee property	Dismissal			
Driving company vehicle or operating any machine without authority	Final Written Warning	Dismissal		
Divulgence of confidential information in breach of a contract, agreement or in transgression of law	Dismissal			

NATURE OF OFFENCE	FIRST OFFENCE	SECOND OFFENCE	THIRD OFFENCE	FOURTH OFFENCE
<p><b><u>Other offences (Continued)</u></b></p> <p>Fraud, forgery , bribery and other serious dishonest practices</p>	Dismissal			
Deliberately supplying incorrect or falsified information	Dismissal			
Sexual Harassment	Dismissal			
Industrial Action in contravention with Chapter IV of the Labour Relations Act, 1995 (Unprotected Strikes)	Dismissal			
Intimidation or incitement to violence, victimisation, racial discrimination	Dismissal			