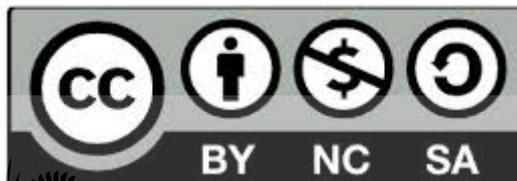




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Defining incompatible behaviour in an employer/employee relationship

by

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For those wanting to embark on a similar journey I leave you with the following food for thought:

“It always seems impossible until it’s done”. –**Nelson Mandela**

Charlene Grant

ABSTRACT

Orientation: If the employer fails to promote harmony and an employee to behave in harmony with the culture, values and relations of the organisation, has the employer, on the grounds of “incompatibility”, the right to terminate the services of that employee? How does one define “incompatibility”? The current legislation in South Africa is vague when it comes to answering the above questions in relation to incompatibility which leads to mismanagement of the situation which subsequently has adverse consequences for the employer.

Research purpose: This study describes the current state of knowledge of the concept of “incompatibility” and how it is managed in the workplace. This study defines incompatibility as well as outlines how it should be managed.

Motivation for the study: The definition of an incompatible employee needs to be established. In aid of the above, it is imperative that reasons for the current poor success rate of such cases are researched and analysed. Once established, guidelines in terms of a specific procedure for dealing with incompatibility need to be identified. This would reduce the re-instatement, re-employment and compensation of an employee.

Research design: For the present study, a non-empirical (theoretical) research design was used. In particular a descriptive theoretical research design was used. Descriptive theories are needed when very little is known about the phenomenon in question. This included statements that aimed at clarifying or defining different views or meanings of phenomenon, incompatibility, and legal practitioners views thereof. This kind of research is conducted in a theoretical context, such as in a study or in a library.

Main findings: Key findings suggested that incompatibility is characterised by behaviours such as disrespect and a negative attitude. The incompatibility needs to be the fault of the employee, with no contribution by the employer. There should also be evidence of an irretrievable breakdown of the employment relationship for there to be justifiable grounds for dismissal. Finally a fair procedure with regards to thorough investigation, counselling, and remedial action needs to be followed.

Practical implications: The findings provide guidelines to corporate leaders and their human resource functionaries on how to properly categorise an employee's behaviour as that of incompatibility. Once a proper categorisation of incompatibility has been made it then goes on to provide guidelines for a fair procedure to be implemented when managing such behaviours.

Contributions: This study adds to the small base of research available on the nebulous concept of incompatibility by identifying specific characteristics that encompass this concept. This in turn will reduce the poor success rates at external dispute resolution bodies for the employers.

Key words: Dismissal due to incompatibility; unfair dismissal; harmonious relationships; organisational culture; transformation; personality in the workplace; dismissal due to misconduct; dismissal due to incapacity; procedural requirements for dismissals; substantive requirements for dismissals; fair dismissal; unfair dismissal; incompatibility; organisational misfit; incompatibility procedure; diverse workplace; case law regarding dismissal due to incompatibility.

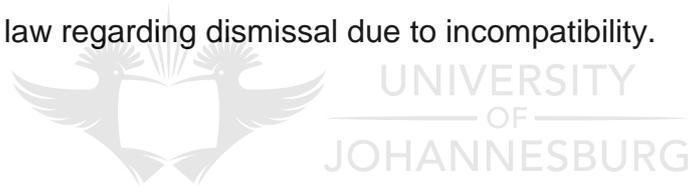


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Chapter 1

Introduction

1.1 Introduction

The employer has an obligation to promote harmonious relations between colleagues, and to explain to every employee how he/she can fit in with the corporate culture. If the employer fails to promote harmony and an employee to behave in harmony with the culture, values and relations of the organisation, has the employer, on the grounds of “incompatibility”, the right to terminate the services of that employee?

The concept of incompatibility arose within our labour relations legal system as far back as 1987. Incompatibility is thought to be the inability of an employee to maintain harmonious relationships within an organisation and between colleagues (Grogan, 2005). The existence of incompatibility in the workplace can have a crippling effect, often leading to lost production, poor morale, and the erosion of productive management time (Christianson, 2004). For these reasons the employer may want to dismiss an employee who does not, at times, have harmonious relationships within the workplace and organisation, thereby being labelled “incompatible”. However, once the incompatibility has been established, how does an employer go about dismissing the employee? What processes do they follow to ensure that fairness in terms of substance and procedure prevails?

The process of dismissing an employee with reasons relating to incompatibility has become a contentious issue in South Africa, due to the limitations in the Labour Relations Act 66 of 1995, which categorises grounds for dismissals as misconduct, incapacity, or operational requirements (Labour Relations Act 66 of 1995 see South Africa 1995). Each of these categories has different guidelines regarding the procedures to follow to ensure that such dismissals are fair. A further thorny issue arises regarding the substance of the matter in terms of whether the incompatibility relates to the incapacity of an employee or to the operational requirements of the organisation. The complex question that then arises is whether incompatibility can be attributed

to something related to the employee and his/her ability to do the work, or whether it is related to the employer's right to relatively peaceful and harmonious relationships within the workplace, that would justify the ultimate sanction of dismissal (Mischke, 2005).

1.2 Background to the problem

In any organisation, but especially in South Africa, employees vary greatly in terms of race, culture, ethnicity, gender, and age (Louw & Mayer, 2009). The integration of all these differences in the organisation can sometimes lead to a situation where an employer wrongfully categorises an employee as incompatible with the organisation and/or his/her fellow employees. What could be viewed as incompatible by one employer could, of course, signify compatibility for another, for example, regarding age, a manager may be from an older generation and oversee a young subordinate who is vocal and challenges certain management practices. This could also be seen as a manager who is incompetent in the performance of his management functions, and is challenged by his subordinate. Because the manager is in a position of power, and due to the lack of clarity in terms of incompatibility, the incompetent manager has the power to get rid of an employee who is perceived to be incompatible, when, in actual fact, the manager could be the incompatible one (Oosthuizen & Naidoo, 2010).

Dismissal guidelines in South Africa entrenched in Section 188 of the Labour Relations Act 66 of 1995 (hereinafter referred to as the LRA), which clearly indicates three reasons for the dismissal of employees: incapacity, misconduct, and the employer's operational requirements. Misconduct relates to an employee who has contravened the code of conduct of the employer. Incapacity is seen as a no-fault dismissal, and is effected when an employee is incapable due to illness, injury, or lack of capability in terms of producing agreed-upon outputs (Grogan, 2005). Dismissals related to operational requirements are also referred to as no-fault dismissals, and are effected due to restructuring, reorganisation, redundancy of work or a position, and the employee can no longer be accommodated and his/her services are then

terminated in terms of Section 189 and Section 189A of the LRA (Grogan, 2005).

Schedule 8 of the LRA, which contains the Code of Good Practice: Dismissal provides specific guidelines with regard to procedural requirements for each category of dismissal. These need to be adhered to by an employer when dismissing an employee, in order to ensure a fair dismissal.

The LRA does not provide any guidance on dealing with incompatibility in an organisation (Israelstam, 2012). There is no Code of Good Practice in this regard that can guide an employer in properly dealing with incompatibility. The effect thereof is that employers often use their own discretion and, in so doing, often miscategorise the issue and subsequently follow the incorrect procedure when dismissing employees. No specific mention is made in the LRA of a category under which incompatibility resorts or whether incompatibility is indeed grounds for dismissal. Section 188 of the LRA clearly indicates that, for a dismissal to be fair, it must be effected for a fair reason, and by following a fair procedure. It is therefore imperative to correctly categorise the reason for dismissal, as this will dictate the procedure that needs to be followed in carrying out the dismissal (Grogan, 2005). However, the problem with categorisation of *incompatibility* lies in the precise definition thereof. Incompatibility is vaguely defined, which results in employers simply labelling employees who might be difficult to manage as incompatible, whereas they might not be incompatible, they just require a different style of management (Israelstam, 2012).

Where a dispute arises due to the dismissal of an employee, the LRA provides for institutions to resolve conflict in the workplace (Du Toit, 2009). The Council for Conciliation, Mediation and Arbitration (hereinafter referred to as the CCMA), as well as bargaining councils for specific industries are such institutions that employees who have been dismissed may consult if they believe that they have been dismissed in an unfair manner or for unfair reasons. The CCMA and bargaining councils have the power to hear these matters and to order reinstatement or compensation in the event that an employer has dealt with the dismissal of employees in an unfair manner or for

an unfair reason. These institutions are, however, bound by the guidelines in the LRA when determining whether a dismissal was in any way unfair. The Labour Court was also established as a specialist institution to set precedents and supervise the awards by the CCMA and bargaining councils. It is therefore of paramount importance that an employer complies with the basic guidelines with regards to procedures followed and reasons for the dismissal of employees.

1.3 Problem statement

The result of the above problem is that employers often fall foul at the CCMA when dismissing an employee for incompatibility. The rate of dismissal cases for incompatibility being upheld by the CCMA is very low (Israelstam, 2005). Very little, if any, research into the reasons for this low rate has been conducted. This leaves many questions unanswered with regards to why employers are often ordered by the CCMA to re-instate, re-employ or compensate the 'incompatible' employees, due to perceived unfairness with regards to substance or procedure.

The present research into these questions and problems will produce findings that employers can use when faced with such cases, and will guide employers to properly categorise incompatible employees and not simply label all eccentric behaviour as incompatible. Once an employee has been correctly identified as being incompatible, align the incompatibility as misconduct or incapacity so that the correct procedure in terminating services of incompatible employees can be followed.

This research wants to find answers to the following questions:

- What is the definition of an incompatible employee?
- Are the current reasons (and procedures) described in Section 188 of the LRA sufficient in dealing with incompatible behaviour?
- How should incompatibility be defined to facilitate a fair treatment of an incompatible employee?

1.4 Objectives

The main objective of the study will be to identify what defines an incompatible employee, and how clearer guidelines to identify such employees can improve fairness in employment practices.

Theoretical objective:

The views of leading scholars and/or legal practitioners on the subject will be reviewed. As there are limited articles on the problem, the primary source will be arbitration awards by the CCMA, dealing specifically with dismissals due to incompatibility.

Practical objective:

Once the study has been completed, the findings can provide building blocks to implement basic, practical guidelines for fair procedures and means of identifying incompatibility. Organisations will then have improved chances of being successful in matters of dismissal due to incompatibility at the CCMA or bargaining councils.



1.5 Motivation for the study

The concept of incompatibility in the workplace is a nebulous, undefined concept within the labour statutes (Israelstam, 2012). Furthermore, there are no specific guidelines for dealing with an incompatible employee in the workplace (Watkins, 2004). This often leads to the wrong procedures being followed in dealing with incompatibility. The effect of the above situation is that an employer has the discretion to label any employee as incompatible, and to use any procedure, i.e. disciplinary, due to incapacity, or for operational requirements, when terminating the services of an incompatible employee.

Therefore, the definition of an incompatible employee needs to be established. In aid of the above, it is imperative that reasons for the current poor success rate of such cases are researched and analysed. Once established, guidelines in terms of a specific procedure for dealing with

incompatibility need to be identified. This would reduce the re-instatement, re-employment and compensation of an employee.

1.6 Current level of knowledge

What guidelines, if any, are there that could, on a balance of probability, establish the employee as incompatible? Currently, in South Africa, there are no definite tests in place to identify an incompatible person. The lack of a precise definition and tests leaves the concept free to be used and adjusted to identify any employee who may not share the views or work culture of fellow colleagues. This ambiguity could be one of the reasons for so many such cases being unsuccessful at the CCMA or bargaining councils (Israelstam, 2005). It also has the effect of little or no protection for employees who may differ from their colleagues or who may have interpersonal problems with their immediate managers, with the consequence of such employees being labelled incompatible.

Incompatibility can be viewed as a subjective rather than objective construct, as, what may be perceived by one as incompatible could be viewed differently by another. For this reason, the courts have been urged to consider each case on its own merits to determine if incompatibility is the true reason for the dismissal (Israelstam, 2012). Incompatibility as a reason for dismissal cannot be attributed to an isolated incident; it must be a behaviour or conduct that has occurred over a period of time that has led to the irretrievable breakdown in the employment relationship. The golden rule when deciding on the final step of dismissal of an employee for incompatibility is that the employer must make some “sensible, practical and genuine efforts to effect an improvement in interpersonal relations when dealing with a manager or employee whose work is otherwise perfectly satisfactory” (*Lubke v Protective Packaging (Pty) Ltd*, 1993). It is strongly recommended that the offending employee be advised through counselling what conduct is creating the disharmony, which parties are being upset by the conduct, and the remedial actions required to remove the cause of the disharmony. A reasonable period should be allowed for the offender to correct the conduct (Watkins, 2004).

Due to the fact that incompatibility is a nebulous concept, it is of utmost importance that a precise definition or test be developed that would assist employers in properly identifying incompatibility. This will strengthen employers' cases before the CCMA, and ensure a higher success rate than what is presently the case (Subrumuny and Amalgamated Beverages Ltd, 2000).

If South Africa wishes to act fairly towards employers and employees, in line with Section 23(1) of the Constitution of South Africa, especially when it comes to incompatibility, a Code of Good Practice dealing with incompatibility will need to be developed to assist employers in correctly categorising an incompatible employee and following the correct procedure.

In conclusion, incompatibility is a justifiable reason for dismissal in South African labour legislation; however, there seems to be a lack of a proper definition of an incompatible employee (Mogale, 2007).

1.7 High-level research design



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In the field of research, there are two main classes of propositions or statements: statements of meaning (definitions) and statements of facts (empirical statements). Empirical statements can be divided into descriptive (factual) statements and explanatory (theoretical) statements (Mouton, 1990). There are also two broad categories of definitions: theoretical definitions and operational definitions (Mouton, 1990). In light of the above, it would be safe to say that there are two types of research methodology in science, i.e. non-empirical and empirical research.

For the present study, a non-empirical (theoretical) research design will be used. This will include statements that will aim to clarify or define different views or meanings of phenomena or concepts. This kind of research is conducted in a theoretical context, such as in a study or in a library

A non-empirical (theoretical) research design could make a contribution to science at various levels. The present dissertation's main value-add to the

body of scientific knowledge will be the integration of knowledge into a larger theoretical or empirical framework.

A literature study will be used to compare and investigate methodological approaches used in similar studies, to investigate the most recent, credible scholarly contributions on the topic of incompatibility in the workplace, and will ultimately define a statement of hypothesis. The main purpose of the literature review in this study will be to present a non-empirical theoretical perspective of trends or debates with regard to a phenomenon in the real world, that of the management of incompatibility in the workplace.

1.8 Anticipated contribution

The current study into this field and problem can contribute to the development of a Code of Good Practice or, at least, good policy guidelines for employers on how to deal with incompatibility in the work place.

Furthermore, it will assist employers in properly identifying an incompatible employee and not simply labelling any employee as such to justify termination of their services.

A proper definition and guideline will assist in a more equitable outcome in the management of incompatibility.

1.9 Conclusion

This chapter provided an overview of the background, the variables, the trends in the literature, and the current knowledge, the problem to be investigated, and the anticipated contributions of the study. In the next chapter, the research design will be discussed.

Chapter 2

Research Design

2.1 Introduction

Research can be seen as the vehicle for theory development. It is also seen as a method to gather information needed for theory building (Fawcett, 1986). This is true whether the purpose of the research is to generate theory or to test it. When the purpose of the research is theory generation, as in the present study, the research approach is a combination of theoretical concepts, practical considerations, personal convictions and interests, and practical research methodologies (Fawcett, 1986).

By looking at the specific research designs that are used to develop theories, it can further explain the relationship between theory and research. A theoretical study can be classified as descriptive research or explanatory research. Descriptive theories are the most basic of theories. They describe or classify specific dimensions or characteristics of individuals, groups, situations, or events by summarising the commonalities found in discrete observations. Descriptive research is used to test descriptive theories. The type of research that will be used in the present study is that of descriptive theoretical research. Descriptive theories are needed when very little is known about the phenomenon in question. In the present study it is the current research topic dealing with dismissals relating to incompatibility (Fawcett, 1986).

Descriptive theory has two main categories: naming and classification. Naming refers to a theory that describes the dimensions and characteristics of a specific phenomenon. Classification, on the other hand, is more elaborate, in that it states that the dimensions or characteristics of a given phenomenon are structurally interrelated (Fawcett, 1986). A naming descriptive theory will be used in the present study. The gist of this theoretical study will be to develop an approach that will aim to describe the dimensions or characteristics that would manifest in an incompatible employee, in an attempt to properly define such an employee, and would further lead to the eventual

development of basic guidelines for employers to follow when dealing with incompatible employees.

Descriptive research may be done using an empirical or a non-empirical research method. In the present study, a non-empirical study will be used. A non-empirical research method includes statements that aim to clarify or define different views or meanings of phenomena or concepts. Non-empirical research methods would include one of the following: philosophical analysis, a literature review, conceptual analysis, and theory or model building. The specific type of non-empirical research method that will be used in the present study will be that of a systematic review (Fawcet, 1986). The use of this particular method will assist in integrating knowledge with regards to the dismissal of incompatible employees into a larger theoretical framework, which could contribute to further empirical study.

2.2 Research approach

2.2.1 Ontology

Ontology refers to the study of being or reality (Mouton, 1990). When it comes to research in the social sciences, the ontological dimension refers to the reality that is being investigated. The reality is referred to as the research domain. In a less complicated sense, ontology is described as the part of research that is concerned with beliefs about what there is to know about the world (Ritchie, 2003). Ontology can also be explained as the way in which people interpret reality. People's beliefs about reality filter their interpretation of what they observe.

Generally, the research domain would be regarded as humankind in all its diversity, which would include human activities, characteristics, institutions, behaviour, and products, to mention a few. The diversity of the research domain leads to different perspectives on the nature of the research domain, and emphasises the ontological challenge of remaining objective.

One of the key ontological questions is whether or not social reality exists independently of human conceptions and interpretations, whether there is a common, shared, social reality or just multiple context-specific realities, and whether or not social behaviour is governed by laws that can be seen as generalizable (Ritchie, 2003).

Within ontology, there are three broad yet distinct positions. They are: realism, materialism, and idealism. Realism indicates that there is a distinction between the way the world is and the meaning and interpretation of that world held by individuals. Materialism has a similar perspective as realism, except that material features like economic relations or physical features hold reality. Finally, idealism asserts that reality is only known through the human mind and through socially constructed meanings (Ritchie, 2003).

In the present study the researcher, having had experience in this particular field and in dealing with cases of this nature, approached the ontological dimension of the research with an idealism perspective, specifically working through current case law on the particular topic and identifying trends, with the aim of producing a realistic account of the research.

The researcher interacted with the documentation before her, and knowledge will was discovered through the use of different methodological approaches when analysing the data. The most ideal method of analysing and interpreting the data in this study was through the use of a meta-/ethnography approach, (Ritchie, 2003) where findings were interpreted and translated from one study to another.

2.2.2 Epistemology

Ritchie (2003) stated that epistemology can be defined as ways of knowing and learning about the social world, and focuses on questions such as: *How can we know about reality? and What is the basis of our knowledge?* More simply defined, the study of the grounds for our beliefs in something to be true is known as epistemology (Oliver, 2010).

Three main issues around social research are debatable. Firstly is concern regarding the relationship between the researcher and the researched? Some

qualitative researchers believe that, in the social world, people are affected by the process of being studied, and that the relationship between the researcher and the social phenomenon is interactive. Ultimately, the belief is that the researcher is unable to remain objective, and can therefore not produce an objective account with regards to the research. There is a perception that the findings are either mediated through the researcher, or they are negotiated and agreed between the researcher and the research participants (Oliver, 2010).

Secondly is the issue surrounding the theories of truth? This is directly linked to the views about similarities and differences between the natural and the social worlds. The dominant theory of truth with regards to the natural sciences is one of a match between observations or readings of the natural world and an independent reality. The social world, on the other hand, is more likely to have an intersubjective or coherence theory of truth, which suggests that this independent reality can only be gauged in a consensual rather than an absolute way. An example would be that if several reports confirm a statement, it can be considered as a true representation of a socially constructed reality (Ritchie, 2003).

The way in which knowledge is acquired during the research is another problem. Knowledge is usually acquired through induction, by looking at patterns and associations derived from observations of the world, or through deduction whereby propositions and hypotheses are reached theoretically. Inductive processes and reasoning are often used at this stage (Ritchie, 2003).

Different epistemologies exist, and the one most suited to the present study is a qualitative epistemology. The literature review indicates that not much research has been carried out into the field of incompatibility and the fair dismissal of such employees. There is clearly a lack of testable hypotheses, and certainly not a hypothesis related to the research question. The best strategy from an epistemological perspective is to follow a qualitative strategy, in order to:

- (i) Understand the problem from the subjects' perspective;

- (ii) Develop propositions to be tested;
- (iii) Develop fundamental theory that relates to the situation and that explains the data collected;
- (iv) Sacrifice validity and reliability at the specific stage of the research in exchange for meaning and understanding.

2.3 Research questions

Cases of incompatible employees being dismissed which are referred to external dispute resolution bodies show a trend of very poor success rates for the employer (Israelstam, 2005). This is because employers make use of the incorrect procedures and reasons for dismissals. The present research wants to find answers to the following questions:

- What defines an incompatible employee?
- Are the current reasons (and procedures) described in Section 188 of the LRA sufficient in dealing with incompatible behaviour?
- Will a clearly defined terminology of incompatibility contribute to the fair treatment of employees classified as incompatible?

The main objective of the study was to identify what defines an incompatible employee, and how clearer guidelines in identifying an incompatible employee may improve fairness in employment practices.

2.4 Sampling of the data

As the research does not deal with specific individuals, but rather specific cases, the researcher primarily obtained data from recent case law dealing with dismissals due to incompatibility.

The primary location of this type of data was electronic sources that can be accessed via the Internet, such as the following websites:

- Caselaw.co.za;

- Lexnexus; and
- Juta stats.

Additional to the above electronic sources, the CCMA in Johannesburg was approached through their research department to provide a few such cases that had been finalised.

The approach was to identify key words that would filter the information sourced in such a way as to extract information relevant to the research questions. The following outlines a list of the key words that were used in the data sampling and selection processes:

Table 2.1 Keyword/Phrases

KEYWORD/PHRASES
<ul style="list-style-type: none"> • Dismissal due to incompatibility; • Unfair dismissal; • Harmonious relationships; • Organisational culture; • Transformation; • Personality in the workplace; • Dismissal due to misconduct; • Dismissal due to incapacity; • Procedural requirements for dismissals; • Substantive requirements for dismissals; • Fair dismissal; • Unfair dismissal; • Incompatibility; • Organisational misfit; • Incompatibility procedure; • Diverse workplace;

- Case law regarding dismissal due to incompatibility

Using the above keywords, various sources of information were narrowed down, extracted, and used in the research study, in an attempt to answer the main research questions.

The data was restricted to specific cases from 2000-2013, due to the large amount of case law that had been finalised through CCMA arbitration, which indicated that there was an increase in cases of this nature. The reason for the selection of cases from this time period was to obtain the most recent information regarding ways of dealing with these dismissals from the CCMA arbitration commissioner's viewpoints.

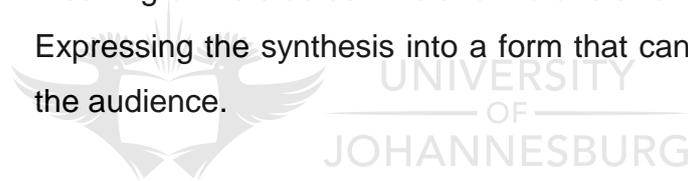
2.5 Data collection

In this study, a systematic review methodology was used. Systematic review can be described as a replicable, scientific, and transparent process that aims to minimise bias through exhaustive literature searches of published and unpublished studies (Hemmingway & Brereton 2009). Systematic reviews are most needed when there are many primary studies with disparate findings and substantial uncertainty. According to Hemmingway (2009), systematic review's main focus is to do the following:

- Identify relevant published and unpublished literature;
- Select studies and reports that should be included;
- Assess the quality of each report;
- Synthesise, in an unbiased manner, the findings from individual studies or reports;
- Interpret the findings and present an impartial summary of the findings, taking into consideration the flaws in the evidence.

The type of systematic review that was used for this study is a meta-ethnography. A meta-ethnography is a method that is used to achieve interpretative synthesis of qualitative research and other secondary sources (Schlosser, 2007). Meta-ethnography, however, does not develop overarching generalisations, but rather aims to translate qualitative studies into one another. Meta-ethnography consists of a set of processes that overlap from time to time during the study, and include the following (Schlosser, 2007):

- Identifying an intellectual interest;
- Elimination of any studies that are irrelevant;
- Detailed, repeated reading of the studies that have been identified as relevant;
- Identifying the relationship between the studies and how they relate, and grouping the different studies;
- Translation of the studies entails the researcher interpreting the meaning of the studies in relation to one another;
- Expressing the synthesis into a form that can be understood by the audience.



The reason for the choice of the systematic review methodology for the present study was the nature of the research, in that solicited and unsolicited literature in the form of cases were studied and analysed. Only cases relevant to the particular topic were analysed. Systematic review minimised bias in locating, selecting, coding, and aggregating studies (Schlosser, 2007), and was therefore the most suited research methodology for the study.

2.6 Data analysis

When using systematic review to research a phenomenon, the data collection and analysis take place at the same time (Hemmingway & Brereton, 2009). Analysis takes place using the meta-ethnography, where detailed reading and rereading is done and grouping of similarities in findings is carried out. Accordingly, in the present study, while the cases were being collected, analysis was taking place in the form of identifying trends and cross-case

synthesis, thereby generating new theory. When analysing the different cases, the following categories were identified: dismissals due to incompatibility that were successful and those that were unsuccessful. Within these categories, it was determined which procedures for dismissing the employees were followed when the cases were successful and unsuccessful. Finally, the different reasons for the cases being unsuccessful or successful were categorised. These categories provided an overall trend, and aided the construction of an appropriate method for dismissing employees who were incompatible, which assisted in a higher success rate for employers when cases were referred to the external dispute resolution bodies.

2.7 Validity of data

The concepts of reliability and validity have relevance in qualitative research, as they help to define the the relevance of the data to the research study (Mouton, 1990). This is of particular importance in generalisation of the findings, where the ability to transfer findings to other contexts or to the wider theory would be determined by the soundness of the evidence.

In a qualitative research context, reliability can be defined as the replicability of research findings and whether or not they would be repeated if another study, using the same or similar methods, is undertaken (Ritchie, 2003). However, the extent to which a qualitative research study's findings can be replicated has been called into question, and, for this reason, seeking reliability in a qualitative research is often avoided. Terms such as *confirmability of findings*, *trustworthiness*, *consistency*, and *dependability* are used interchangeably to describe reliability in a qualitative study (Ritchie, 2003). In order to ensure reliability in the research study so that replicability could occur, an exact account of the procedures and processes that were followed which led to a particular set of conclusions were shown, so that further, similar studies could be carried out using the same processes or procedures. In so doing, the replicability and reliability of the study was ensured.

The validity of the findings or data of the research study referred to *correctness* or *precision* of the research findings. There are two dimensions to validity; these are the internal validity, referring to whether you investigated what you claimed to investigate, and external validity, which refers to whether the abstract constructs that were tested are applicable to other groups within the population or contexts. There has been a shift in the qualitative literature to move towards the use of *credibility* and *transferability* in place of *reliability* (Ritchie, 2003). In the present research study, to ensure that validity was maintained, the researcher constantly checked and compared the cases to see if the same findings led to the outcome. Together with this constant checking and comparison, theory triangulation was performed, where the researcher looked at the data extracted to ensure that there was consistency in the theoretical perspectives. The above established the principles that could be used to guide future decisions related to incompatible behaviour.

2.8 Ethical issues

In any research study, ethical considerations need to be taken into consideration (Mouton, 1990). However, due to the nature of the research, with specific reference to the research being primarily systematic research, the ethical issues that could be present are very limited and controlled. However, to ensure overall trustworthiness and quality, the following was done:

- The case study question were properly stated and substantiated;
- The systematic review approach, which is appropriate for the research question, was followed;
- Purposeful case study sampling was done;
- Data was collected and arranged systematically;
- Data was analysed correctly, which was accomplished through a series of analysis and re-analysis phases.

Technical research standards were maintained primarily through objectivity. The integrity of the study was founded on full disclosure of results, theories, and research methods employed in the interpretation of key findings.

Any reference made to data made throughout the study was factual and extrapolated from relevant literature sources; no data was made up or modified. A further contribution to the ethical standards of the study was that copyright infringement and plagiarism was avoided by giving due recognition to the sources consulted.

2.9 Conclusion

The purpose of this chapter was to discuss the research philosophy, the epistemology, the ontology, and the selected approach to locating data in the present study. In the next chapter, the results of the study will be reported.



Chapter 3

Results

3.1 Introduction

In Chapter 2 the methodology was discussed. The preferred methodology for this study was a systematic review of all cases of dismissal due to incompatibility.

3.2 Assigning codes

The purpose of this study was to identify characteristics of incompatible behaviour in an organisation, and, once identified, to use this information to correctly manage the process of terminating services of such an individual. In order to identify characteristics of incompatible behaviour in an organisation the researcher collected and analysed 100 concluded CCMA cases, as well as cases from various Bargaining Councils (herein after referred to as BCs). Utilising the systematic review and the meta-ethnography 30 repetitive codes were identified. Having established these codes the researcher then grouped similar codes into overarching categories. In total, six categories were established that encompass all the codes that displayed similar characteristics.

Once the cases were collected, the researcher went about detailing the reasons for the dismissal, as well as the procedure followed in dismissing the employee. The success of each case (from the employer's perspective) was also recorded, and the characteristics of incompatible behaviour were exposed. The procedure followed when dismissing incompatible employees was also recorded and analysed. From this analysis, the codes and categories were identified. The results of the data analysis provided the rationale and a description for each of the following research questions:

- What defines an incompatible employee?
- Are the current reasons (and procedures) described in Section 188 of the LRA sufficient in dealing with incompatible behaviour?
- Will a clearly defined terminology of incompatibility contribute to the fair treatment of employees classified as incompatible?

Although the extraction of case law did not pose a problem, the extraction of literature resources in the form of articles was limited, even though an extensive research attempt on various databases and within the library catalogue was made. Below is a table which is indicative of this:

Table 3.1

KEYWORD/PHRASES	DATABASES	HITS	RELEVANCE
• Dismissal due to incompatibility	• EBSCOHOST: Academic search;	• 7	• 4
• Unfair dismissal	Business Source	• 28	• 8
• Harmonious relationships	complete; E-Journals;	• 8	• 2
• Organisational culture	Index to legal periodicals and books;	• 38	• 2
• Transformation	Newspaper sources; Psychological articles	• 12	• 0
• Personality in the workplace		• 13	• 4
• Dismissal due to misconduct	• Emerald • Heinonline	• 7	• 4
• Dismissal due to incapacity	• EBSCO: Academic Search;	• 6	• 4
• Procedural requirements for dismissal	Business Source complete; E-Journals;	• 9	• 3
• Substantive requirements for dismissal	Newspaper Source; Psychological articles	• 2	• 1
• Fair dismissal	• UJoogle;	• 33	• 2
• Unfair dismissal	• Google scholarly;	• 38	• 11
• Incompatibility	• Caselaw website;	• 5	• 3
• Organisational		• 0	• 0

misfit	<ul style="list-style-type: none"> • SABINET; • SAFFI; • UJ Library Catalogue 		
<ul style="list-style-type: none"> • Incompatibility procedure 		<ul style="list-style-type: none"> • 0 	<ul style="list-style-type: none"> • 0
<ul style="list-style-type: none"> • Diverse workplace 		<ul style="list-style-type: none"> • 23 	<ul style="list-style-type: none"> • 4
<ul style="list-style-type: none"> • Case law regarding dismissal due to incompatibility 		<ul style="list-style-type: none"> • 122 	<ul style="list-style-type: none"> • 100

What follows is a description of the codes that were identified during the analysis phase, followed by an outline of the categories that were identified and which codes form part of each category, as well as the definition of each of these codes.

3.3 Description of codes

3.3.1 **Informal procedure:** A meeting called outside of a formal process to allow a response to allegations.

This code relates to the procedure followed when confronting the employee regarding his/her behaviour and the effect of the behaviour on the organisation and staff. The behaviours included problems in dealing with clients, complaints lodged by fellow employees, insolence, intimidation, and aggressive behaviour. The main focus is on the *informality* of the meeting but providing the employee with the opportunity to respond to the allegations. A total of 12% of the cases concluded at external dispute resolution bodies that were analysed were instances where an employee was alleged to have displayed behaviours that were labelled as incompatible. These employees were summonsed to an informal meeting where the behaviour being displayed was discussed with them and they were given an opportunity to respond to the the allegations of such behaviour. A very interesting finding was that 67% of the cases studied did not follow a formal process such as a disciplinary hearing or an incapacity investigation when implementing action against an employee for their alleged incompatibility. Employers were successful in 25% of all the cases that were dealt with in an informal way

by the external dispute resolution bodies. It was noted by the commissioners in their rulings that, although an informal process was followed, the accused employees were provided with an opportunity to respond to the allegations levelled against them, and that a formal procedure was not required. This indicates that the most important procedural requirement is to allow the employee to provide reasons or to state their case in relation to the allegations of incompatibility. The results therefore indicate that a formal disciplinary process or incapacity management process is not necessary to protect this right of the employee.

3.3.2 **Irretrievable breakdown of the relationship of trust** between the employer and the employee.

The relationship of trust is fundamental to the longevity of any employment relationship. If the conduct of the employee leads to a break in the trust relationship, the employer usually has no other alternative but to dismiss the employee (Grogan, 2005). A total of 22% of the concluded cases from external dispute resolution bodies that were analysed fell within this code. The focus in these cases was related to behaviours such as arguments, aggression, and civil actions being lodged against one another. Of the above cases, 59% resulted in the employer being successful at the stage of dispute resolution. What was also interesting to observe was that, in 68% of these cases, the employer cited irretrievable breakdown in the trust relationship as a reason for the dismissal of the employee. This indicates that the irretrievable breakdown of the relationship, when proven, is a valid reason for the termination of employment.

3.3.3 **Counselling:** Sessions provided to employees to make them aware of their incompatibility.

This code relates very strongly to the procedural requirements that the employer should follow in order to prove fairness when having dealt with employees who have been identified as displaying behaviours that could be seen as incompatible with the employer or the employees. In order for a dismissal to be fair, one of the requirements is the provision of counselling. Analysis showed that 20% of the cases fell within this code. 75% of the cases

resulted where employers were unsuccessful when the matters were referred to dispute resolution bodies. This is an indication that, when dealing with incompatibility cases, employers mostly do not offer counselling sessions in an attempt to inform the employee of the unwanted behaviours and give thereby providing employees with an opportunity to remedy their behaviours before being dismissed. The high percentage (75%) of unsuccessful cases due to a lack of such counselling indicates the importance to offer counselling as part of the procedure prior to dismissing the employee.

3.3.4 **Investigation:** carried out to determine whether incompatibility is present

Very similar to the previous code, this code deals with matters dealing with the procedural requirements expected of an employer when dealing with incompatibility. Before an employer can with certainty allege that an employee is incompatible, an employer is expected to conduct a thorough investigation to determine if there is any existence of behaviours that could be seen to fall under the definition of incompatibility. A total of 4% of the cases that were analysed fell under this code, which was a surprising figure, considering that one of the key elements in proving fairness of dismissal is having adhered to procedural requirements. Of these cases, employers were unsuccessful in 100% when the matters were referred to dispute resolution bodies. This clearly indicates that most employers do not ensure that a thorough investigation is carried out to determine incompatibility, and act prematurely in identifying incompatibility as the reason for dismissal.

3.3.5 **Odd or eccentric behaviour** displayed by the employee towards fellow employees and management.

This code relates to behaviours displayed by employees who are deemed eccentric or not within the norm of the company. This eccentric behaviour ranges from incidents where employees have dressed peculiarly, to taking cameras to work, to an employee carrying more than 50 pens in his shirt pocket. A total of 2% of the cases studied dealt with the category of eccentric behaviour. Of these cases, 100% resulted in the employer being unsuccessful at the CCMA when the matters were referred for dispute

resolution. It is therefore clear that eccentricity has no substance as grounds for dismissal, and was found to be an unfair reason for dismissals.

3.3.6 **Disruption** in the workplace as a result of the incompatible behaviour.

This code deals with the impact of the perceived incompatible behaviour of an employee on the workplace, with specific reference to the fellow colleagues and management. Disruption in the cases analysed, was caused by behaviours that included severe conflict with staff members and overtly aggressive and confrontational personalities. These led to a decrease in staff morale, to the extent that staff was not able to work together. A total of 16% of the concluded cases from external dispute resolution bodies that were analysed dealt with gross disruption as the substance for the dismissal of employees. Employers were successful in 56% of the cases when the matters were referred to the external dispute resolution bodies for arbitration. The main reasons for 44% of the employers falling foul at the external dispute resolution bodies was due to the absence of progressive disciplinary action being carried out for previous actions of the same nature, there was no counselling that took place to sensitise the employee of the unwanted conduct, and employees were not provided with an opportunity to respond to allegations against them. This is an indication that gross disruption by an employee, if proven, is a fair reason for the dismissal of the incompatible employee, provided previous remedial steps have been taken in an attempt to improve the conduct.

3.3.7 **Opportunity to adapt behaviour** subsequent to counselling sessions.

This code deals with one of the procedural requirements when an employer is contemplating dismissal of an employee for incompatibility. The rationale is that the employer needs to counsel the employee regarding incompatibility through unacceptable behaviour, and then afford the employee the opportunity to remedy such behaviour. A total of 18% of the cases dealt with this code, and 77% of these instances, the employers did not succeed in proving their cases at the CCMA. This is an indication that employers are either not aware of this procedural requirement, or they do not see the need to

prolong the employment relationship by affording employees an opportunity to remedy their behaviour.

3.3.8 **Attempts** made by the employer to improve strain in the employment relationship.

This code deals with informal steps the employer could have taken prior to initiating dismissal procedures. These steps could include identifying the cause of the strain in the employment relationship and implementing appropriate interventions. Only 3% of the cases studied were related to this code. Of these cases, employers were unsuccessful in 100% of the cases. The reason for the lack of success in these cases was that employers did not make a genuine attempt to identify the root causes of the conflict that resulted in a strain in the interpersonal relationships. This resulted in the interventions in an attempt to resolve the conflict that was not identified or implemented. In the cases investigated, the employers were reluctant to resort to informal processes in an attempt to improve relationships and initiate formal processes in an attempt to speed up the process of terminating services.

3.3.9 **Defiance of authority** by employees, result in their being labelled *incompatible*.

Defiance of authority refers to the persistent, irrelevant, destructive questioning management styles and decisions, being argumentative towards management, not adhering to instructions, and lacking respect for authority in the organisation. A total of 7% of the cases studied fell within this category. Of the cases studied, 57% of employers were successful when the matters were referred to the external dispute resolution bodies. This shows that these types of behaviour can constitute incompatibility with the organisation and can be a fair reason to terminate the services of employees.

3.3.10 **Absence of progressive disciplinary** action when dismissing an incompatible employee.

This code deals with one of the procedural requirements that must be adhered to before an employee can be dismissed. Progressive discipline should be implemented to prove that the measures taken were not

punitive, but merely corrective. Only 8% of the cases studied fell within this category. Of these cases, 100% of employers were unsuccessful when the matters were referred to external dispute resolution bodies. This is an indication that employers who do not comply with the prescribed procedures will not be successful in matters regarding termination of services. Employers should take corrective action rather than viewing the process as punitive and seeking the most severe sanction when dealing with these cases. This notion relates to the principle of fairness as enshrined in labour legislation.

3.3.11 **Progressive disciplinary action** taken prior to dismissal.

This code deals with whether progressive disciplinary action was taken before dismissing an employee and the effect thereof on the success rate of these matters when referred to dispute resolution bodies. A total of 7% of the cases studied fell within this category, and in 71% of these cases the employers were successful upon conclusion of the matters by the CCMA. This success rate is due to the correct procedures being followed when contemplating and effecting dismissal. Specifically, dismissal was not a first resort in dealing with the behaviour displayed by these employees; they were afforded an opportunity to rectify their behaviour. Dismissals in these matters were the last resort, which indicated that the employers had gone to great lengths to change these employees' behaviours.

3.3.12 **Lack of evidence** in proving incompatibility.

This category deals with the reasons cited by employers for dismissing employees whom they deem to be incompatible with their organisation or fellow colleagues. For dismissals to be fair, the reasons for the dismissal of the employee need to be fair. A total of 34% of the cases studied fell within this category. Employers in 100% of these cases were unsuccessful when these matters were referred for dispute resolution. This is an indication that employers may not cite any excuse as a reason for dismissing employees whom they consider incompatible.

3.3.13 Apportioning blame for the disharmonious situation

The core of this code is that disharmony experienced within employment relationships should be investigated to determine whether or not the employee is solely responsible for the disharmony. A total of 10% of the cases studied fell within this category. At the conclusion of the arbitration proceedings, it was found in 100% of the cases that the disharmony could not be blamed on the employee alone, but that the managers were equally responsible for causing the disharmony. It is therefore clear that the reasons for the disharmony have to be investigated to determine whether the employer is also at fault.

3.3.14 The effect of incompatible behaviour on staff morale

This code deals with the effect of incompatible employees on staff morale. A total of 8% of the cases studied fell within this code. When dismissing these employees, employers cited the employees' behaviour as reasons for dismissal, which was considered incompatible, leading to strain in work relationships, as the reason for dismissal. Of all the cases studied under this code, employers were unsuccessful in 50% of the cases. This is an indication that, if an employee's behaviour is so disruptive that it has an adverse effect on the morale of fellow staff members; it could be deemed a fair reason for the dismissal of the employee. However, proper investigation must be carried out, as can be seen from the 50% of the cases that were unsuccessful. Employers must firmly establish that the behaviour of one employee is, in fact, having an adverse impact on other staff members to such a degree that their morale is impacted.

3.3.15 Procedural requirements not met when dismissing incompatible employees.

This code deals with the employer following correct procedures when dismissing employees who are deemed to be incompatible. These procedural requirements should be in line with the Code of Good Practice: Dismissals, contained in the Labour Relations Act 66 of 1995. A total of 47%

of the cases studied fell within this category. Of this 47%, employers in 91% of the cases did not follow the correct procedures when dismissing incompatible employees. A staggering 87% of the *employers did not follow any procedure* at all when dismissing the employees, and simply issued termination letters to the employees without affording them any opportunity to state their side of the case. In 2% of the cases, employees were dismissed verbally, without a letter terminating their services. From the results, it is clear that employers who do not follow the required procedures to ensure fairness when dismissing employees will be unsuccessful when the matters are referred for arbitration.

3.3.16 **Disrespectful behaviour** as a reason for incompatibility

This code relates to behaviour like arrogance, abrasiveness, insulting others, antagonism, and the use of foul language, which resulted in the employer taking action and ultimately dismissing employees who displayed such behaviour. A total of 12% of the cases in the study were categorised under this code. Of these cases there was a 69% success rate for the employers when the matters were referred to the dispute resolution bodies. This indicates that derogatory behaviour could be a fair reason for dismissal. In the 31% of cases where employers were unsuccessful, the derogatory behaviour was not sufficiently severe to warrant dismissal. Severity which would ultimately result in dismissal, would be persistent behaviour that is of such a disrespectful manner that it impacts on the employment relationship. The effect of this impact would be where it becomes intolerable to work with the employee due to his/her persistent disrespect. It would also be gross and warrant dismissal in instances where the company's name has been brought into disrepute due to the disrespect.

3.3.17 Poor **performance** as substance for dismissal

This code relates to the employer using poor performance by an employee as a reason to label the employee as incompatible, and to dismiss the employee. Only 4% of the cases that were studied resorted under this code, in which 75% of the employers were unsuccessful when the cases came before a dispute resolution body. The main reason for the low rate of success was that it could not be proven that any performance-related issues were present. It is

therefore imperative that poor performance be proven before using it as the substance in dismissing an employee.

3.3.18 **Attitude problems** as a characteristic of incompatible behaviour

This code encompasses attitudinal behaviours displayed by employees that are so offensive that the employment relationship breaks down, resulting in the employer terminating the services of the employee. Of the cases that were studied, 11% fell within this code. These cases were related to employees who had displayed behaviours such as aggression and rudeness to managers, clients, and fellow colleagues. Of the cases studied, 73% concluded with a successful result for the employer. This is an indication that a negative attitude, when proven, can serve as a fair reason for dismissal.

3.3.19 **Misfit in terms of corporate culture and values** of the organisation.

This code relates to behaviours displayed by employees that are not aligned to the corporate culture and values of the organisation. A total of 18% of the cases studied fell within this code. Of the cases studied, 55% resulted in success for the employer when referred to external dispute resolution bodies. When an employee displays behaviours that are not aligned to the corporate culture and the values of the organisation, this could be used as a fair reason for dismissing an employee. This behaviour is also deemed a characteristic of incompatibility as a reason for dismissal.

3.3.20 **Incompatibility cited in instances of personal differences** between employer and employee.

This code relates to employers using incompatibility as a reason for dismissal when, in fact, the reason for dismissal is personal disagreements. Of the cases studied, 35% were categorised under this code. Of these, 57 % of employers were unsuccessful when presenting their cases before external dispute resolution bodies. The reason for this high failure rate is due to these employers having used incompatibility as reason for the dismissal when, in fact, the real reasons for dismissal were related to conflicts in interpersonal relationships, due to, e.g., workplace affairs, and loans not being repaid. In

the above cases, incompatibility was either misinterpreted or purposefully misapplied as the substance for the dismissal.

3.3.21 **Seniority used to effect dismissal** in the absence of sufficient evidence

This code relates to the status and power of managers in an organisation and their use of this power to effect unjustified dismissals. Of the cases studied, only 1% of the cases fell within this code. In this case, an altercation led to the employer citing incompatibility and dismissing the employee, without justifiable grounds or following a fair procedure.

3.3.22 **Premature referral of dispute**, prior to internal processes being completed

This code relates to employees lodging a dispute with an external dispute resolution body prior to pursuing the matter internally, through the formal channels. Only 1% of the cases studied related to this code. The employee was unsuccessful in this case, which was related to the employee being deemed incompatible, because the employee had prematurely referred the matter to the dispute resolution body prior to finalisation of the internal hearing. From this case, it can be seen that formal internal processes, provided through dedicated channel, have to be followed before a matter is referred to external bodies for dispute resolution.

3.3.23 **Management style** as a source of incompatibility

This code relates to management styles that cause strain in the relationship between employee and manager. Only 2% of the cases studied dealt with incidents where the management style of superiors was unacceptable to subordinates, which led to grievances being raised with senior management. These employees were labelled as incompatible and dismissed. In both cases, the employer was unsuccessful when the matters were referred to a dispute resolution body. These cases again show incompatibility must be proved, and the incompatibility has to be the result of the employee's behaviour alone.

3.3.24 Incompatibility used as a reason to dismiss employees at the end of their probationary period.

This code deals with probationary employees who are dismissed at the conclusion of their probationary period for reasons relating to incompatibility with the organisation's culture, values, employees and/or management. Of the cases studied, 4% were categorised under this code. The employers failed to win 50% when the disputes were referred to external dispute resolution bodies. The reason for the failure of these cases was that the employers did not have valid grounds that justified the incompatibility; the employer did not want to permanently employ the employee for reasons known to them and thus used incompatibility as a reason for the termination of the employee's services. On the other hand, in the 50% in which the employers were successful there were valid grounds for considering the employees incompatible. In these cases, their behaviour included displaying attitudes towards management and fellow employees which led to tension in the organisation, even after they had been counselled.

3.3.25 Incompatibility as an excuse for disciplinary measures against the employee.

This code relates to employers using incompatibility as a reason for disciplining employees when no punishable misconduct is present. A total of 9% of the cases studied resorted under this code. In all these cases (100%) of these cases the dispute resolution body found for the employee. The high failure rate of these cases under this code is a clear indication that employers may not use incompatibility without fair substance for the purpose of dismissing employees.

3.3.26 Lack of evidence to prove irretrievable breakdown of the employment relationship.

This code deals with an employer citing the irretrievable breakdown of the employment relationship as a reason for dismissal, while there is no evidence to substantiate the claim. Of the cases studied, 2% fell under this code. One case related to an employee who failed to build close relationships with

clients. Employers were unsuccessful in 50% of these cases. The dispute resolution body found that there was no evidence to support the claim of irretrievable breakdown of the employment relationship. They further indicated that this should have been a case of a performance-related issue or, alternatively, a matter of incompatibility. This indicates that employers have to clearly identify the reason for wanting to dismiss an employee and have substantive evidence of the related behaviours.

3.3.27 Consultation to inform employee of possible dismissal prior to dismissal not done by employer.

This code deals with the procedural requirement of consulting with the employee regarding concerns about their behaviour that could lead to dismissal, prior to implementing formal procedures that could ultimately lead to dismissal. Only 1% of the cases fell within this code. The employer in this instance, a farmer, was ordered to reinstate the worker. The farmer used incompatibility due to relationship problems experienced between his domestic worker and his wife as substance in the dismissal of the employee. This is a clear indication of the importance of adhering to the procedural requirement of informing an employee accused of incompatibility that if their behaviour does not change it could result in their dismissal. The absence of this consultation with the employee would be deemed a procedural flaw, which would lead to the employer being unsuccessful despite there being substance to the claim of incompatibility.

3.3.28 The employee showed no remorse for the actions that caused disharmony.

This code deals with the demeanour of employees during and after consultation regarding their incompatible behaviour. Only 1% of the cases fell within this category. The matter was referred to a dispute settling body, which found in favour of the employer. The employee in question displayed behaviours such as spreading malicious rumours, displaying negative attitudes towards fellow colleagues and management, and being rude to seniors. When called in to address the issue, the employee showed no remorse for her behaviour, and blamed others, and refused to

acknowledged that her behaviour was unacceptable. This shows that when an employee who is deemed incompatible and receives counselling but refuses to acknowledge or change such behaviour, it contributes to the substance of the allegation of incompatibility.

3.3.29 Behaviour that brought the **company into disrepute**.

This code deals with the effect of the incompatible behaviour of an employee on the reputation of the organisation with external clients or stakeholders. The behaviour must have been such that it caused external clients to have reservations about dealing with the organisation after having experienced contact with the employee. Only 1% of the cases fell within this code. The dispute resolution body found for the employer, who proved that the incompatible behaviour of the employee caused the company to be brought into disrepute, and that it was a fair reason for the dismissal of the employee. It is therefore clear incompatibility that manifests in actions harmful to the company's image is fair grounds for dismissing an employee. The incompatible behaviour would have to have been such that it damaged relationships with clients and stakeholders. This would have had an impact on the profits of the organisation.

3.3.30 **Insubordination as a characteristic of incompatibility**

This code deals with the concept of insubordination as a subcategory of incompatibility. Insubordination is when an employee refuses to accept the authority of his/her employer or person in a position of authority over the employee. Insubordination in circumstances of dismissal must be gross (Grogan, 2005). Gross insubordination would include the manner in which it is expressed, the position of the person whose authority has been repudiated, the reason for the employee's defiance and the number of times it has occurred (Grogan, 2005). A total of 2% of the cases that were studied fell under this code. Of this 2%, 100% of cases were concluded in favour of the employer by the dispute resolution body. It is therefore clear that insubordination lends substance to the allegation of incompatibility.

What follows below is a list of the categories that emerged from the categorisation of the codes according to similar characteristics.

3.4 Categories

The aim of Grounded Theory is to develop substantive theory that is grounded in data (Schram, 2006). Grounded theory is not an actual theory, it however focuses on generating theory based on the study of social sciences. Schwandt (2007) indicates that in the development of theory, grounded theory simultaneously employs techniques of induction, deduction and verification. This would mean that grounded theory has an element of constant comparison in order to generate theory. The constant comparison of data is to identify similarities and differences in the data. From this comparison uniformities in the cases studied are identified which leads to a coded category. These categories are then compared with one another and with new definitions to sharpen the definition and concept and to look for possible new categories (Schram, 2006). These categories are then grouped together to form themes. Theories are then formed by proposing plausible relationships between the themes. When no new categories emerge from the data the researcher has reached what is termed theoretical saturation (Schurink, 2009).

The table below is indicative of what transpired during the data collection and analysis of the cases studied. It emphasises the abstraction from the identification of codes, based on their similarities and differences into the resultant categories in the first column. What follows from this table is the emergence of themes based on the similarities and differences of the categories. The two themes that emerged from the data analysis are that of substance and procedure.

Table 3.2: Categories derived from the codes

Categories	Codes
Disruptive behaviour	Odd or eccentric behaviour
	Gross disruption of the workplace
	Defiance of authority
	A negative effect on staff morale;
	A misfit in terms of the corporate culture and values of the organisation and the employee;
	Bringing the company into disrepute; and
	Insubordination.
Disrespect	The employees displayed disrespectful behaviour towards their colleagues and/or management;
	The employee displayed a negative attitude when dealing with colleagues, customers, or management;
	Employee showed no remorse for actions that caused disharmony.
Substance used to dismiss employees	There was no evidence of disharmony;
	There was no evidence that one party's conduct alone was to blame for the disharmony;
	Poor performance;
	Personal issues;
	Seniority used to effect a dismissal;
	Employees complain about a management style;
	Incompatibility cited to dismiss an employee at the end of their probationary period;
	Incompatibility used as a reason for

	dismissal when no other substance is present.
Remedial action	Genuine attempts made by employer to improve interpersonal relationships prior to embarking on formal processes;
	Progressive disciplinary action prior to dismissal.
Employment Relationship	Irretrievable breakdown in the relationship of trust between employer and employee;
	No evidence of irretrievable breakdown of the employment relationship.
Procedure	Meeting called outside of the formal process to allow a response to the allegations;
	Counselling sessions provided to employees to make them aware of their incompatibility;
	Thorough investigation to determine whether incompatibility is present;
	Opportunity given to employee to alter incompatible behaviour subsequent to counselling session;
	The absence of progressive disciplinary action;
	Required disciplinary procedures were not followed correctly or not followed at all;
	Dispute referred for dispute resolution body prior to the matter being addressed internally;
	Incompatibility is incorrectly used as a reason for dismissal when no other

	substance can be found.
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3.4.1 Disruptive behaviour

This category came about by grouping together all the codes related to disruptive behaviour as a means of identifying incompatibility. It refers to behaviour that is disruptive and has a direct or indirect impact on fellow colleagues' morale and interpersonal relations in the worksituation. Disruptive behaviour renders the relationship between the employee and the employer intolerable. Disruptive behaviour should be severe enough to impact the performance of the organisation and result in the employment relationship being irreparably broken to justified grounds to terminate the employment relationship.

The following codes were grouped together under this category:

- **Odd or eccentric behaviour** displayed by the employee towards fellow employees and management;
- **Gross disruption** of the workplace;
- **Defiance of authority**;
- **A negative effect on staff morale**;
- **A misfit in terms of the corporate culture and values** of the organisation and the employee;
- Bringing the **company into disrepute**; and
- **Insubordination**.

Of all the cases studied, 53% fell within this category indicating its widespread occurrence. Disruptive behaviour, if proven, would serve as evidence of incompatibility. It would be a fair reason to dismiss an employee displaying severe disrupt behaviour provided that a fair procedure was followed to allow the employee to respond to the allegations. For disruptive behaviour to be classified as incompatible behaviour there should be an absence of a single incident that warrant immediate disciplinary action. Instead it will be behaviour

that affects the morale and performance over a period of time without single incidences that could be disciplined.

3.4.2 Disrespect

Disrespectful behaviour is when employees display behaviours that are derogatory in nature. It includes attitudinal problems which had a negative impact or effect on colleagues and work outputs. To dismiss an employee fairly for reasons of disrespect, they would need to prove that the employee was continuously disrespectful in their dealings with the manager, fellow employees or with clients. Incompatible behaviour could relate to a single incident or a continuous disrespectful behaviour where the employee failed to correct behaviour when the disrespectful behaviour was pointed out.

The effect of disrespectful behaviour includes an irreparable breakdown in the trust relationship of the employer and employee. The relationship with the employee relationship should be a continuous trial and tribulation, caused by the behaviour of the employee. Disrespect displayed to colleagues and clients must lead to a negative vibe in the office and between colleagues. Cooperation between employees should suffer because of the disrespect. To dismiss an employee fairly, the employer should prove these facets of the behaviour.

24% of all the cases studied fall into the category of disrespect, indicating that it is a fairly common occurrence. The following codes relating to disrespect by the employee were grouped together:

- The employees **displayed disrespectful behaviour towards their colleagues and/or management;**
- The employee displayed a negative **attitude when dealing with colleagues, customers, or management; and**
- Employee showed no **remorse for actions that caused disharmony.**

3.4.3 Substance used to dismiss employees

This category refers to situations where the employer does not provide sufficient reason to dismiss an employee for reasons of incompatibility. Lack of substance includes decisions where employers use their seniority to dismiss employees, and cite unsubstantiated reasons as evidence of incompatibility. If during the dispute resolution proceedings no evidence of incompatibility could be offered, this category applies. Unsubstantiated evidence includes cases where employers are equally responsible for the breakdown of the employment relationship.

The following codes were grouped into this category:

- There was **no evidence of disharmony**;
- There was no evidence that **one party's conduct alone was to blame for the disharmony**;
- **Poor performance**;
- **Personal issues**;
- **Seniority** used to effect a dismissal;
- Employees **complain about a management style**;
- Incompatibility cited to dismiss an employee at the end of their **probationary period**; and
- Incompatibility used as a reason for dismissal when **no other substance is present**.

3.4.4 Remedial action

This category refers to the process where an employer needs to consider certain remedial actions before ultimately dismissing the employee. Remedial actions could include counselling sessions with an employee who is displaying behaviours deemed as inappropriate by the organisation. Should these counselling sessions fail, the employer should take disciplinary action against the employee. Progressive disciplinary measures compared to dismissing employees for first offences, is important in dealing with

incompatible behaviour, unless the offence is significant enough and leads to a breakdown in the employment relationship.

The category contains the following codes:

- **Genuine attempts made by employer to improve interpersonal relationships** prior to embarking on formal processes; and
- **Progressive disciplinary action prior** to dismissal.

3.4.5 Employment Relationship

This category deals with circumstances where the employer has sufficient evidence that the employment relationship has irretrievably broken down. Providing evidence that the employment relationship has irretrievably broken down is a justifiable reason to dismiss an employee.

The following codes were grouped together in this category:

- Irretrievable breakdown in the **relationship of trust between employer and employee; and**
- **No evidence of irretrievable breakdown of the employment relationship.**

3.4.6 Procedure

This category incorporates all the codes that are relevant to the procedural requirements for dismissing employees. To be procedurally accurate, the employer should put the allegations to the employee and allow them an opportunity to respond to these allegations. The employee displaying incompatible behaviour should be provided with counselling in order to remedy their behaviour. The employer is obliged to thoroughly investigate the matter prior to any type of action being instituted, to determine if incompatibility truly exists. In the absence of a thorough investigation, counselling sessions, progressive disciplinary action, and an opportunity to respond to the allegations levelled against the employee, the procedural

requirements will not have been met, and the employer will be found to have unfairly dismissed the employee.

The following codes were incorporated in this category:

- Meeting called **outside of the formal process to allow a response to the allegations;**
- **Counselling sessions provided to employees to make them aware of their incompatibility;**
- **Thorough investigation** to determine whether incompatibility is present;
- **Opportunity given** to employee to alter incompatible behaviour subsequent to counselling session;
- The **absence of progressive disciplinary** action;
- Required disciplinary **procedures were not followed correctly or not followed at all;**
- Dispute **referred for dispute resolution body** prior to the matter being addressed internally; and
- **Incompatibility is incorrectly used as a reason** for dismissal when no other substance can be found.

3.5 Themes

With the method of grounded theory, every piece of data is constantly compared with every other piece until a point of saturation of information occurs (Fawcet, 1986). The above categories were compared and then placed within two themes. At the stage where the themes emerged saturation of information occurred (Laws, 2006). Saturation occurred when the two resulting themes from the comparison of the categories reached a point where no new information was available that indicated new categories or the may extension of existing categories.

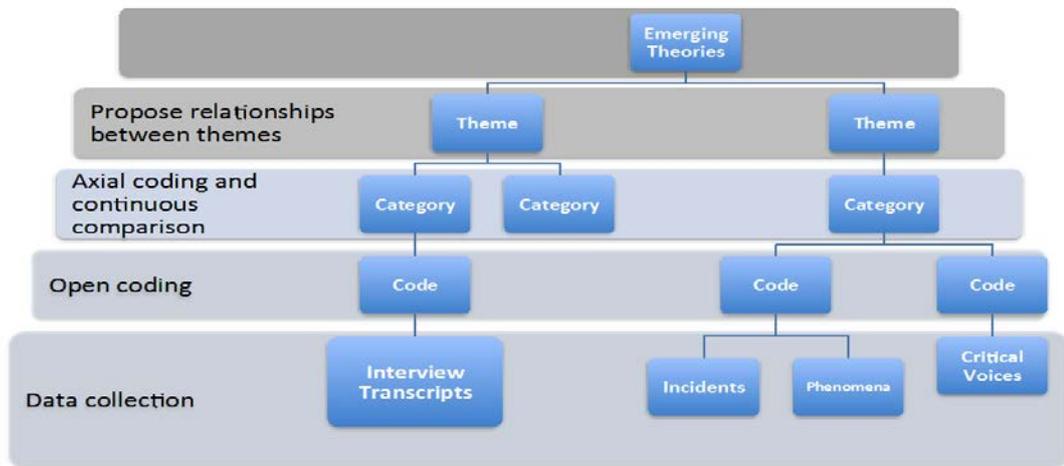
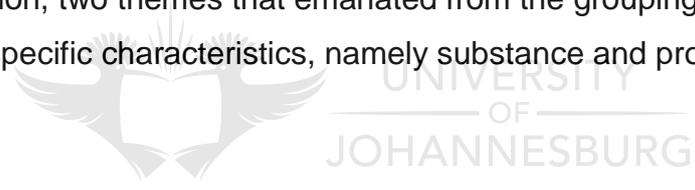


Figure 3.1. A schematical depiction of the data analysis

In this section, two themes that emanated from the grouping of the categories based on specific characteristics, namely substance and procedure will be discussed.



3.5.1 Substance

This theme relates to the reasons cited for taking any type of action against an employee for incompatibility. The following categories formed part of this theme:

- Disruptive behaviour;
- Disrespect;
- Substance in charges; and
- Breakdown in the employment relationship.

The categories that had been identified from the constant comparison of the codes were used as a means of further comparison for similarities and differences. The above four categories were similar in that they dealt with how incompatibility is characterised due to the nature of the behaviour

displayed by the employee. All the above categories deal with the actual behaviour of the employee who is being labelled as incompatible and were thus grouped together to form the above theme.

The significance of this theme is that in order to prove that incompatibility is present, it is imperative to prove that one or a combination of the above categories is present.

3.5.2 Procedure

The second theme relates to the procedural requirements expected of an employer when dismissing an employee. The following categories form part of this theme:

- Remedial action; and
- Proper procedure

This theme provides guidelines in terms of what procedures need to be implemented when disciplinary action against an incompatible employee prior to formal processes being implemented. These entail counselling, an opportunity to remedy the behaviour, and progressive disciplinary action. These processes ensure procedural fairness in dismissing an incompatible employee.

3.6 Section 188 of the Labour Relations Act 66 of 1995

Section 188 of the LRA indicates the following:

“1) A dismissal that is not automatically unfair, is unfair if the employer fails to prove-

(a) that the reason for dismissal is a fair reason-

(i) related to the employee's conduct or capacity; or

(ii) based on the employer's operational requirements; and

(b) that the dismissal was effected in accordance with a fair procedure.

(2) Any person considering whether or not the reason for dismissal is a fair reason or whether or not the dismissal was effected in accordance with a fair procedure must take into account any relevant code of good practice issued in terms of this Act.”

In Schedule 8, the Code of Good Practice: Dismissals contained in the LRA, there is no specific outline of the definition of incompatibility and no where in the Code does it provide any set of guidelines on how incompatibility should be managed. The Code explicitly highlights processes on how to manage dismissals relating to misconduct, incapacity and operational requirements (Schedule 8: Code of Good Practice: Dismissals, 1996).

3.7 Conclusion

The purpose of this chapter was to discuss the research results that emanated from the study. In the next chapter, the literature review will be elaborated on, including the theory that emanated from the review.

Chapter 4

Literature Review

4.1 Introduction

In Chapter 3, the findings of the research study were provided; and the six categories that emanated from the study were identified. Based on the findings, some development of the definition of incompatibility was achieved, with specific reference to the characteristics thereof and how it may be used as a valid reason to dismiss an employee, as well as the procedure that has to be adhered to. In this chapter, we will be elaborating on the current literature on incompatibility, and to elaborate on this current literature with the findings from the research study.

4.2 Incompatibility from a disciplinary perspective

Employers frequently wish to terminate the services of employees who are seen to be eccentric, difficult, non-compliant, disruptive, trouble makers, disagreeable, pushy, or who are misfits in the organisation. The *term incompatibility* is often associated with such behaviours (Van Jaarsveld, 2007). One of the earliest cases where the employer was found to have unfairly dismissed an employee for incompatibility in South Africa was *Wright v St Mary's Hospital* (1992). In this particular matter, the applicant was appointed as a Medical Superintendent for St Mary's Hospital. The gist of the matter was that the hospital was poorly managed, and Wright was tasked to improve the hospital. Wright's plans were not agreeable to his superiors, which led to various altercations between himself and his superiors, which ultimately led to his dismissal, with incompatibility cited as the reason therefor. The Industrial Court (IC) held that incompatibility can only be proven if the employer can show that the employment relationship has irreparably broken down due to the employee's conduct (*Wright v St Mary's Hospital*, 1992).

In the following year, in the matter of *Joslin v Olivetti Systems and Networks Africa Pty (Ltd)* (1993), the IC held that the employee had to be reinstated after being unfairly dismissed for incompatibility. The court held that dismissal for incompatibility is only justified if the conduct is of such a nature that it

causes consternation and disruption in the workplace and only after counselling has been afforded the employee and failed. In this matter, the employee, a manager, displayed eccentric behaviour in the form of carrying about 36 pens in his pocket, wearing a floppy cricket hat, and behaving in an odd manner. The employer contended that the performance was so dire as to constitute lack of performance. In this example, it was clear that due to the perceived eccentric behaviour displayed by the employee, who was a manager and was expected to behave in a specific manner, the employer dismissed him due to perceived incompatibility. The Court, however, found against the employer. The IC indicated that, although non-performance by a manager would justify dismissal, eccentric behaviour is not a justifiable reason for dismissal, unless the employer can prove that the eccentric behaviour has led to the irreparable breakdown of the employment relationship. Clearly, in the above case the employee was not incompatible with the organisation.

In the matter of *Lubke v Protective Packaging Pty (Ltd)* (1993), the IC reinstated a senior manager after he had been dismissed for incompatibility. In this matter, the applicant, once appointed as Managing Director for the respondent, started implementing new strategies and ways of running the organisation that were not acceptable to her subordinates and colleagues. This led to her being called in by the chairperson and dismissed for incompatibility, as she had attempted to change the organisational culture. The court held that the golden rule when dismissing an employee for incompatibility is to make sensible, practical and genuine efforts to improve interpersonal relationships prior to dismissing employees. Dismissal should be the last resort. In the case of *Jardine v TongaatHulett Sugar Ltd* (2002), the CCMA found the dismissal for incompatibility to be unfair, and indicated that "...there must at least be some other evidence besides the opinion of the employer to establish incompatibility." The evidence required to prove incompatibility was not made clear.

Despite the concept of incompatibility being recognised by the Labour Relations Act 66 of 1995, Schedule 8: Code of Good Practice: Dismissals, few such cases succeed when referred to the CCMA or Labour Tribunals (Israelstram, 2005). The ILO Convention 158 of 1982, Article 4 sets out three

broad categories of fair dismissal: “The employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service.” Incompatibility is not categorised as one of the above, and is therefore left to the employer to decide under which category a specific incident of incompatibility resorts. Despite the fact that it is not categorised under a specific category in Schedule 8: Code of Good Practice: Dismissals, does not mean that a separate category is required for the concept of incompatibility to be dealt under. Incompatibility, if correctly defined, will have the effect of falling under one of the above categories which would then lead to the correct procedure being followed when managing incompatibility in the workplace.

Misconduct is the most common reason for dismissal in South Africa (Grogan, 2005). Misconduct can be defined as any conduct that is in contravention of the rules or standards that are expected by the employer (Grogan, 2005). Larger employers have disciplinary codes that list behaviours that are not condoned in the workplace, and if an employee contravenes one of these, they may face disciplinary action. Schedule 8 of the Labour Relations Act 66 of 1995 provides a guide in terms of code of conduct. The premise in dismissal for misconduct is that the employees who committed the misconduct committed a material breach of their contracts, or they destroyed the relationship of trust between the employer and employee, which then justifies the termination of the employment relationship (Grogan, 2005). Dismissal for misconduct differs from dismissal due to incapacity or operational requirements, in that dismissal for misconduct is seen as emanating from the conduct of the employee and not the employer. An employer will need to justify a dismissal for misconduct by proving that there was a workplace rule in place, that it was known by the employee, the rule was reasonable and valid, and that dismissal was the appropriate sanction (Van Niekerk, Christianson & Van Eck, 2008).

Some debate surrounds dismissal for incompatibility as manifested in misconduct. Employees who either display eccentric behaviour in the workplace, or who are unable to fit in with the organisational culture, or who

continuously cause disharmony between colleagues are often disciplined for such acts. The question is whether such behaviour can be correctly categorised as that of misconduct? Is the categorisation of incompatible behaviour as mischievous fair and is disciplinary procedures the correct procedure to deal with these behaviours? For misconduct to be proven there must be the existence of a rule (Van Niekerk et al., 2008). The question would then arise as to "Is being incompatible with the organisation based on a rule of the organisation?" Unless it can be proven that a rule had been contravened by the employee, categorising incompatible behaviour as that of misconduct places a significant burden of proof on the employer if a disciplinary procedure is followed.

According to Grogan (2005), there is a thin line between incompatibility and misconduct. Employees are labelled incompatible when their co-workers are unable to tolerate their behaviour, leading to a breakdown in interpersonal relationships. It therefore stands to reason that incompatibility seldom arises from an isolated incident, unless the employee's conduct on that occasion was so offensive that it permanently damaged the working relationship. In cases such as these the employer may treat the case as one of misconduct. Incompatibility has been described as a "nebulous concept" in *Subrumuny and Amalgamated Beverages Ltd (2000)*; however, in essence, incompatibility relates to an irreconcilable breakdown of the employment relationship due to personality differences, resulting in the employee's inability to work with others. If the situation results in a situation where the continued employment of the employee concerned would cause disharmony in the workplace, the employer is entitled to address the problem, and, if it does not improve, the employer is entitled to remove the cause of the disharmony by dismissing the employee.

4.3. Incompatibility from a capacity perspective

The capacity of employees is their ability to perform the work that they are contracted to perform (Christianson, 2004). This ability may relate to the performance or the health of the worker, but the bottom line is that the employee must be unable to carry out the duties contained in his/her specific

job. According to Van Niekerk (2008), a fair reason for a dismissal related to the incapacity of an individual would be the employer's loss of confidence in the employee to perform to the expected standards. Landman (1995, p.49) reasoned that "The concept of incapacity is a broad one. It embraces just about any inability arising from any cause...which gives rise to the performance of work which is below the appropriate or expected standard." The incapacity of an employee is deemed a *no fault* dismissal, and is thus treated very similarly to a dismissal related to the operational requirements of the business (Israelstam, 2012). It is important when an employer is dealing with an employee with regards to poor performance that the employer establishes whether the employee is unwilling or unable to perform. Once it is established that the employee is unable to perform, it becomes a capacity issue. When the reason for the incompetence is wilful, it will have bearing on misconduct. If the employee is not to blame for his/her incompatibility, they should be dealt with it using an incapacity process (Christianson; 2004). However, if an employee is to blame for the incompatibility, then the matter should be dealt with using a misconduct process. Due to the fact that the capacity concept embraces any inability arising from any cause, often the employer attempts to categorise incompatibility under incapacity management as a means to terminate services of the employee (Christianson, 2004).

Not all employees who are incompatible due to incapacity are poor performers. In many cases, employees who are labelled as incompatible are good performers. However, some of their behaviours may adversely affect the performance of the group or cause conflict, leading to the matter being categorised as a capacity issue (Van Jaarsveld, 2007).

4.4. Incompatibility from an operational requirements perspective

Dismissals due to the employer's operational requirements are also no fault dismissals. These dismissals are necessitated by economic, structural, technological, or similar reasons (Labour Relations Act; 1995). The IC's ruling in *Wright v St Mary's Hospital* set out a number of important principles when dealing with incompatibility from an operational requirements perspective (Mischke, 2005). The Court, in this landmark judgement viewed incompatibility

as falling within the operational requirements category. A further emphasis in respect to the judgement was on employers having the right to insist on reasonably harmonious interpersonal relationships in the organisation. This confirmed the earlier view expressed by the Court in *Erasmus v BB Bread Ltd*, where the court held that the employer is entitled to remove an employee from the workplace if the employee's presence or actions gave rise to disharmony. This was also the main emphasis in *Wright v St Mary's Hospital*. In *Wright vs. St Mary's Hospital*, the Court found that dismissal for incompatibility would only be justified if there was an irremediable breakdown in the working relationships. From a procedural perspective, the IC emphasised that the employer has to attempt remedial action with regard to the perceived incompatibility. It was also further noted that if the employee is found to be responsible for the incompatible behaviour, he/she must be provided with an opportunity to remedy the cause of the disharmony. Only after these attempts have failed is it fair to implement a dismissal process.

Due to the nature of the dismissal due to operational requirements, the legislature is more prescriptive in terms of substance and procedural issues in dismissals of this nature (Van Niekerk, et al., 2008). Section 189 and Section 189A of the Labour Relations Act 66 of 1995 deal with the dismissals for operational requirements and the process to follow when effecting such dismissals. The definition of *operational requirements* is too narrow to include incompatibility as a reason for dismissal (Grogan, 2005). On the other hand, if the incompatibility is not the fault of the employee, it can be categorised as incapacity or due to operational requirements (Christianson, 2004). If the behaviour that leads to the incompatibility is the fault of the employee, dismissal for misconduct would apply. These distinctions may seem semantic; however, the correct categorisation of the dismissal is important, as it dictates the procedure that should be followed in dealing with an incompatible employee (Grogan, 2005). Not only is the procedure important when justifying dismissal related to incompatibility, the reason is equally important.

4.5. Incompatibility as a form of workplace diversity

The vague definition of incompatibility as unacceptable employment behaviour leaves a loophole for employers to find reasons to categorise employees as incompatible simply for reasons that they deem justifiable (Israelstam, 2012). It is too easy for an employer to categorise a new, younger, more vocal employee who is not afraid to voice dissatisfaction as being an incompatible employee. Often, when an employee finds himself/herself experiencing interpersonal conflict with his/her manager, due to personality clashes, it's all too easy for the employer to retaliate and conclude that the employee is incompatible (Weeks, 2010). Conflict can be defined as "...a feeling, a disagreement, and a real or perceived incompatibility of interests, inconsistent worldviews, or a set of behaviours" experienced between two parties (Mayer, 2009, p.3). In a country such as South Africa, where organisations are filled with diverse people from different cultural backgrounds, age groups, and genders, conflict is inherent, and can have dire consequences if not managed correctly. It is imperative that, when determining whether an employee is incompatible, employers do not incorrectly perceive normal conflict as incompatibility (Mayer, 2009).

Often, the introduction of a new management team or manager leads to an increase in conflict (Mayer, 2009). An example worth mentioning is *Lubke v Protective Packaging Pty (Ltd) (1993)*, where the employer appointed a new managing director in an attempt to reinvigorate the company. It was not the changes she made, but the manner in which she implemented the changes that caused annoyance amongst the subordinates, who then complained that the new managing director was trying to change the culture of the organisation.

One case illustrating that conflict may manifest in ways that disguise the true nature of the problem was *Nathan v The Reclamation Group (Pty) Ltd (2002)*. In this case, the applicant sold his scrap metal business to the respondent's company, and took over as director of the company. After the appointment of an operations director, problems began to emerge. The new operations director stripped the director of his authority, humiliated him, and degraded his

status in the company. He further employed his son-in-law to take over some of the duties of the director. Eventually, the director was dismissed and the reason cited for the dismissal was incapacity and poor work performance. When the matter was referred for arbitration, the arbitrator indicated that there was no evidence of poor performance or incapacity, and that the real reason for the dismissal was due to the incompatibility between the new operations director and the director of the company (Israelstam, 2012). The employer was ordered to compensate the employee for unfair dismissal. This case illustrates that insubordination, lack of respect, and poor performance are characteristics of incompatibility. The above characteristics could constitute incompatibility, but only if the conduct is so offensive as to cause a total, irremediable breakdown in the employment relationship. Important to note, too, is that the behaviours should be solely by the employee in order to justify dismissal of that employee (Nathan v The Reclamation Group (Pty) Ltd, 2002).

Group diversity within organisations can be explained as the combination of different people who work within an organisation; they have different genders, are from different age groups, races, and cultures (Weeks, 2010). The diversity itself could become a source of the friction that may arise between employer and employee. This does not necessarily mean that the employee is incompatible it merely is an indication that other factors could be the cause for the friction between the two which could and does often come from diversity issues (Weeks, 2010). This is once again another indication that often employees could be labelled as incompatible due to sources that are beyond their control.

Managers often raise incompatibility with the corporate culture when dealing with the perceived incompatibility of an employee (Weeks, 2010). Corporate culture can be defined as the unwritten rules governing relationships, interactions, work-flow and approaches to work, but also to various 'softer' issues, such as forms of address, respect, and conduct before clients, and even codes of dress (Mischke, 2005). A new employee may take a considerable period of time to discover the unspoken rules of the corporate culture (Mischke; 2005). A decision by the IC is worth mentioning here.

In *Lubke v Protective Packaging (Pty) Ltd*, the court was not in agreement with the employer's reason of incompatibility with corporate culture in dismissing the employee. The court held that corporate culture is an amorphous concept, and that it is inappropriate to use it in the context of the working environment and working relationships.

One of the pivotal aspects of incompatibility, as illustrated in the cases that formed part of the study, is that it often has group or structural implications and effects. Incompatibility refers to an employee's interaction with others or with a group of employees (Mischke, 2005). Perceived slights, occasional rudeness, or even failure to greet a colleague may be blown out of proportion by sensitive employees, leading to the perception of incompatibility. Personality differences between employees which lead to clashes can easily lead to the conclusion of the existence of incompatibility. Personality can be defined as those traits, tics, reactions, and beliefs that distinguish one person's projected self from another's; it is the wildcard of the workplace (Sills, 2006). Most stressors in the office can be delegated, avoided or re-imbursed, however, the only uncontrolled variable is the personalities of one's co-workers. It is inevitable that wherever people work together there will be misunderstandings or disagreements (Ramsey, 2003). Mostly, parties involved are able to work out their differences without the involvement of a third party or adversely affecting workplace harmony. On the contrary, the manifestations of serious personality clashes can disrupt team performance, productivity and effectiveness (Ramsey, 2003). In situations such as these management can't ignore it. Intervention from management is required when actions related to interpersonal conflict attract attention, impede performance or bother co-workers.

From the cases studied, it is clear that employers, when dismissing employees for perceived incompatibility, often cite irretrievable breakdown of the employment relationship. What was found was that it is too easy and convenient to state that the relationship has irretrievably broken down and that dismissal of the employee is the only viable option to restore peace in the workplace. Managers and employees involved in the conflict are usually hard pressed to analyse the conflict and to prove that a specific employee caused

the breakdown of the employment relationship. Disruptive behaviours that could lead to the irretrievable breakdown in the employment relationship include shouting matches, namecalling and other disrespectful verbal exchanges to nasty tricks involving sabotage, or destruction of property and/or actual outbreaks of a violent nature (Ramsey, 2003). Dismissal for incompatibility should not be an option and should be treated as a last resort. Case law has shown that there is usually a very high threshold before an employee can be dismissed because of incompatibility in the workplace. For dismissal to be considered, it must be shown that the employee's actions or words, and not the employers, caused the breakdown in the relationship (Douglas, 2008).

4.6 Guidelines for correctly categorising incompatibility as a means of dismissing an employee.

As previously mentioned, it is imperative that incompatibility be correctly categorised according to Section 188 of the LRA, i.e. misconduct, incapacity, or operational requirements. The correct categorisation of the dismissal is important because it dictates the dismissal procedure that has to be followed (Grogan, 2005). From the results, it is clear employers often wrongly categorise the incident, and therefore follow an inappropriate procedure.

In *Wright v St Mary's Hospital*, the IC found that the incompatibility was due to operational requirements (Mischke, 2005). However, Section 213 of the LRA defines operational requirements as the employer's technological, economic, and structural or "similar" needs. When dealing with incompatibility the question now arises to whether incompatibility would fit within the scope of employers' "similar" needs, or whether it should be seen as a form of incapacity on the part of the employee.

Currently, the view is that incompatibility is somewhere between incapacity and operational requirements (Mishke, 2005). It should also be noted that incompatibility is viewed as relating to the employee's inability to meet the employer's performance standards, namely to work, in relative harmony, with other employees. In *Subrumuny v Amalgamated Beverages Industries Ltd*, the

arbitrator had the following to say with regards to the right by the employer to lay down standards regarding a peaceful workplace:

“An employer is entitled to insist on reasonably harmonious interpersonal relationships within its business...Inasmuch as incompatibility is an imponderable and nebulous concept; there must at least be some other evidence besides the ipse dixit or opinion of the employer. Assessing incompatibility of managerial interaction necessarily involves the exercise of a subjective judgement.

The effect of the incompatibility cannot always be explained and articulated in clear and objective terms. There is much to be said for the formulation that the levels of incompatibility must for business and economic reasons be left for the employer to decide...It is not for a court to second guess these decisions to decide upon the appropriate course of action de novo. Nevertheless an adjudicator should at least ensure that the employer's standards are attainable. Provided that the employer acts in good faith and has reasonable and supportable grounds for concluding that the employment relationship cannot be continued, interference is unwarranted. It is axiomatic that in determining whether a dismissal is unfair one must be guided by the principle that reasonable people may differ as to what is appropriate under the circumstances. In the final analysis it is not for me to decide whether the employer's decision was the best decision (2789-2790)”.

Further to the above, in determining whether incompatibility is grounds for dismissal, an arbitrator had the following to say:

“In determining the fairness of a dismissal, one is enjoined to take into account any relevant code of good practice issued in terms of the Labour Relations Act 66 of 1995, (S188(2)). The code of good practice does not expressly deal with incompatibility as a ground of dismissal. If one accepts that the incompatibility complained of manifests in a failure to maintain the standard of relationship with peers, subordinates and supervisors set by the employer, then such a failing is more akin to

“incapacity” as used in a loose and non-technical sense. The incapacity does not arise from poor work performance but from an inability to conform to the standards set by the employer to achieve harmony in the workplace. Adapting items 8 and 9 of Schedule 8 to the exigencies of a case of incompatibility, important principles can be extrapolated which by and large conform to sound industrial relations practices and norms. Particular relevant factors to be taken into account include that the employee should be counselled, afforded an opportunity to meet the required standard, have alternatives considered short of dismissal; dismissal should be preceded by an opportunity to state a case in response and to be assisted by a trade union representative or fellow employee (2790)”.

When an employer has to decide which dismissal process to follow, it is imperative to note that much depends on the specific circumstances of each case. However, from the cases studied, it is clear that the incapacity process is the most appropriate route to follow. The incapacity process will entail the following:

- An appropriate standard of expected behaviour must be set by the employer;
- The employer must offer assistance to the employee to meet these standards;
- The employer should to provide the employee with feedback and the opportunity to improve;
- Where the incompatibility continues, an alternative job should be considered;
- An employee should be dismissed only if the relationship has irretrievably broken down; and if substantial fault for the breakdown lies with the employee.

4.7 Incompatibility and common law

There are four sources of law that regulate the termination of employment relationships in South Africa. These four sources include the Constitution, legislation, common law, and collective agreements concluded between the employer and employees (Dhlamini, 2007). Common law can be simply explained as the body of case law.

In South Africa, common law views a contract of employment as a type of lease. All employment contracts are seen as contracts of good faith and the parties to the contract are bound to everything that good faith reasonably demands. This would include the duty to maintain harmonious relationships in the workplace. In common law the employee is expected to be loyal to the employer and to act in the best interests of the employer (Van Jaarsveld, 2006).

An alternative approach to the traditional dismissal in line with the legislation of South Africa, and more in line with the common law principles, could be to deal with incompatibility as a repudiation of the employee's fiduciary duty to maintain harmonious relations in the work place, which would be in line with what is expected as per the contract of employment (Van Jaarsveld, 2006). Incompatible behaviour could be viewed as a breach of contract with the employer. The result would be to terminate the employment contract without having to follow strict procedures, as outlined in labour legislation of South Africa. In this regard, in *Council for Scientific & Industrial Research v Fijen (1995)* the Court held that in common law the employee has a fiduciary duty in terms of trust and confidence, and that conduct contrary to this duty would entitle the employee to cancel the contract of employment without having to adhere to formal dismissal procedures. Dismissal is then regarded as repudiation of the employment contract by the employee, which would then be grounds for the cancellation of the contract of employment by the employer. This method is not commonly used in South Africa when dealing with incompatibility dismissals but could be an answer to the lengthy process prescribed by the Labour Relations Act 66 of 1995.

4.8 International trends

The Constitution of South Africa encourages the reliance on international law and standards in the absence of clear guidelines to dealing with local matters. For this reason, consideration of international law is included here. In the United Kingdom, incompatibility is dealt with as an “other” form of dismissal and treated in a different manner. Within the European Union, the duty to maintain harmony in the workplace is governed by common law and is considered a contractual duty. Contravention thereof is viewed as a breach of contract and treated as such. In a case in New Zealand, *Reid v New Zealand Fire Services Commission* (1998), the Court of Appeal accepted that only in unusual and rare cases can an employer cite irreconcilable breakdown of trust and confidence in the employment relationship. The onus will be on the employer to prove the irreconcilable breakdown of trust and confidence of the employment relationship (Majhi, 2005). Other cases of a similar nature decided by the Employment Court of New Zealand have made it clear that there is an obligation on management to “nip the unpleasantness in the bud,” which would require the employer to provide counselling or a conference for the parties (Majhi, 2005). Should this fail, there may be a need for a disciplinary process involving warnings, together with a reasonable opportunity to improve. Another option, as indicated by the Employment Court of New Zealand, would be to redeploy employees involved.

In an Australian case, *Mabry v West Auckland Living Skills Home Trust Board* (2001), the Employment Court ruled that, when an employment relationship comes to an end due to incompatibility, the employer must justify the dismissal by showing that the necessary level of incompatibility existed. Once this burden has been discharged, the substantive and procedural elements of the dismissal must be considered. The *Mabry v West Auckland Living Skills Home Trust Board* (2011) case involved a community service worker employed by the Trust Board. After a few months of employment, the employee was called in and some concerns were raised by her supervisor. The employee became very upset, which resulted in the relationship deteriorating. Her behaviour became insolent and insubordinate towards her supervisor. Various warnings were issued and opportunities were provided to

the employee to improve. Over many weeks, the employee showed little improvement, despite the warnings and meetings, and was dismissed. The Employment Tribunal had indicated in their ruling that the incompatibility between the parties was mutual becoming worse as each week passed by. The incompatibility was driven entirely by Ms Mabry and the dismissal was thus justified. When taken on appeal the Employment Court upheld the findings (Beech, 2007). The Employment Court highlighted the importance of the employer proving that the employee was largely responsible for the incompatibility.

Interesting to note is that in certain circumstances an employer may be justified in dismissing an employee for incompatibility prior to a negative impact on the working environment being realised, provided that such an effect is inevitable (Beech,2007). This was established in the New Zealand Court of appeal ruling in Smith v Christchurch Press Company Ltd (Beech, 2007). In this matter, a sales consultant, Mr Smith, asked a female colleague to have lunch with him, to which she agreed. Instead of going for lunch, Mr Smith drove the colleague to his house and committed an act of sexual harassment. The female colleague lodged a formal complaint against Mr Smith, who, after investigation and disciplinary action was dismissed. Mr Smith referred his matter to external dispute settling body for wrongful dismissal. The Employment Court rejected the claim. The New Zealand Court of Appeal held that Mr Smith's conduct was incompatible with the discharge of his duties and had the "potential to adversely affect the working environment" (Beech, 2007). The judge indicated that "the employer does not have to wait for a negative impact on the working environment before dismissing an employee when such impact is inevitable."

Beech (2007) stresses the importance of not allowing incompatibility to be mismanaged. With the changes in 2003 to the Health and Safety in Employment Act 1993 of New Zealand, the act now recognises stress as a potential workplace hazard and employers are required to take all practical steps to identify, eliminate, isolate, or minimize hazards. The definition of "hazard" in the Health and Safety in Employment Act 1993 of New Zealand includes a situation where a person may be an actual or potential cause or

source of harm to the person or another person, so allowing incompatibility in the workplace unchecked, which could expose the employer to further claims by a grievant (Beech, 2007).

In a more recent case, *Walker v ProCare Health Limited* (as quoted by Doaks&Maxfield, 2012), the Employment Court of New Zealand held that dismissal for incompatibility based on an employee's confrontational and belittling behaviour was justified. The legal requirements to dismiss an employee for incompatibility are onerous. The Court laid down guidelines in a bid to assist employers in dealing with matters of incompatibility. The Court held that, in order to justify a dismissal for incompatibility, the onus would be on the employer to establish the following:

- There is irreconcilable incompatibility;
- The irreconcilable breakdown in the employment relationship can be attributed wholly or substantially to the employee; and
- The employer effected the dismissal in a procedurally fair manner.

Procedural guidelines that were highlighted by the Courts were that employers have to:

- Offer assistance, support, and training to alleviate workplace stress;
- Offer counselling and/or mediation; and
- Engage an independent consultant, such as a workplace psychologist, to assess the disharmony and provide recommendations for resolving it.

The Court concluded that if these remedial steps fail, the employer should then inform the employee that the employer is considering terminating the services of the employee, and provide the employee with an opportunity to respond to the intention to terminate his/her services. The employer is required to consider the employee's response before deciding the matter. The employee has the right to be represented by a trade union representative or a fellow employee (Doak, 2012).

4.9 Summary of the literature on incompatibility

Currently, in South Africa there are no definite tests in place to establish the characteristics that define an incompatible employee. The lack of a precise definition and tests leaves the concept open to use for any employee who may not share the views of colleagues. This could be one of the reasons why, in many cases, lose cases are being referred to the CCMA or bargaining councils (Isaeltam, 2005).

Incompatibility can be viewed as a subjective rather than an objective construct. For this reason the courts have been urged by both employers and employees to consider each case on its own merits to determine if incompatibility is the true reason for the dismissal. Incompatibility as a reason for dismissal cannot be attributed to an isolated incident; it must be a behaviour or conduct that has occurred over a period of time that has led to the irretrievable and irreconcilable breakdown in the employment relationship. This however, does not preclude dismissal for a single incident. The seriousness of the behaviour will be taken into consideration when determining the justifiability of dismissal in such circumstances. Before deciding on the final step of dismissal of an employee for incompatibility, the employer must make some “sensible, practical and genuine efforts to effect an improvement in interpersonal relations when dealing with a manager or employee whose work is otherwise perfectly satisfactory” (*Lubke v Protective Packaging (Pty) Ltd*, 1993). It is strongly advised that the offending employee be afforded a counselling session regarding the conduct that is creating the disharmony, which parties are being upset by the conduct, and the remedial actions required to remove the cause of the disharmony. A reasonable period should be allowed for the offender to correct the conduct (Watkins, 2004).

As incompatibility is a very under-researched and an extremely vague concept (Israelstam, 2012), it is of utmost importance for a precise definition or test to be developed that would assist employers in properly identifying incompatibility and, in so doing, be able to properly manage dismissals.

A Code of Good Practice in dealing with incompatibility will need to be developed, which will assist employers in correctly categorising an incompatible employee and following the correct procedure.

In conclusion, incompatibility is a justifiable ground for dismissal in South African labour legislation; however there seems to be problems regarding the definition of an incompatible employee (Mogale, 2007). Conflict and diversity are often mistaken for incompatibility. In South Africa, there are three legitimate reasons for dismissal: misconduct, incapacity, and operational requirements. Incompatibility has not yet been categorised into one of these categories; depending on the circumstances of each case, it can have bearing in any one of the categories (Watkins, 2004).



Chapter 5

Discussion and Interpretation

5.1 Introduction

In Chapter 4, an overview of the current literature on incompatibility was discussed. The aim of this chapter is to integrate the findings from the research with the literature review in the previous chapter, to ultimately present a model that will assist employers in dealing with incompatibility.

5.2 Incompatibility defined

At the outset of the research study, it was established that there is currently no set definition of incompatibility or of the related behaviours. It was further established that the absence of a definition leads to management using their discretion in determining incompatibility, in turn leading to poor success rates when the matters are referred to external dispute resolution bodies (Israelstam, 2012). The study, however, has identified certain behaviours as being characteristic of incompatibility. What follows is a short discussion outlining these behaviours, per the findings of the research study.

Important to note at the outset of the discussion is that a single incident of incompatible behaviour would not necessarily render an employee incompatible with the organisation or colleagues. In all the cases studied, it was highlighted that, for the behaviours to be characteristic of incompatibility, they had to have been significant, and have led to the breakdown of the employment relationship (Lotter v South African Red Cross Society, 2006).

The following behaviours have been identified as characteristic of incompatibility:

- Aggressive behaviour, including intimidation of fellow colleagues and clients;
- Severe insolence, such as continuous use of foul language, and/or disrespect, such as being argumentative towards management;

- Continuous disrespectful behaviour towards fellow colleagues and management;
- Disruptive behaviour – there is a thin line between eccentric behaviour and disruptive behaviour. For the behaviour to be deemed incompatible, it would need to have a severe and negative effect on the workplace;
- A negative attitude, including the spreading of malicious rumours about management and fellow colleagues which are not true;
- Any behaviour that leads to the company being brought into disrepute, which directly or indirectly led to a loss of business or confidence in the organisation.

5.3 Procedural Requirements

The study would not be complete without a discussion regarding the procedural requirements that were identified. What follows is a set of guidelines that were recurring in the findings of the research study, dealing with the process to follow when incompatibility has been properly identified.

- Once an employee has been identified as displaying behaviours characteristic of an incompatible employee the employer should carry out a thorough investigation to determine if the employee is incompatible;
- The employer then needs to call the employee in to a meeting and outline the behaviours and caution the employee. It should also be explained how the behaviours are impacting on colleagues;
- Should the behaviour persist, the employer should provide the employee with counselling, in an attempt to remedy the behaviour;
- If the counselling sessions fail, the employee must be warned that the behaviour could lead to dismissal;
- If the behaviour persists, the employee should be dealt with in terms of the incapacity management procedure or a disciplinary process;
- The employee should be informed of the allegations of incompatibility;
- The employee should be provided with an opportunity to respond to the allegations;

- The employee may be represented by a colleague or trade union representative of their choice.

An interesting finding from the study was that a formal process such as a disciplinary hearing or incapacity management hearing or investigation is not required for the procedure to be deemed fair. It was found that an informal process, where the employee is notified of the intention to terminate his/her services and given an opportunity to respond to the allegations, is satisfactory.

In the case of senior employees, the requirements are somewhat less exact, which does not imply a lesser right to a fair hearing. The argument here is that an experienced executive who needs to be counselled on fundamental job skills is probably not fit to be an executive in the first place. The counselling sessions would not be required over the same period of time that a junior staff member would require.

What was noted is that, overall, the employer should make a genuine effort to effect an improvement in interpersonal relations when dealing with an employee whose work is satisfactory but his/her behaviour bespeaks incompatibility.

5.4 Proving substance in incompatibility cases

For a dismissal to be fair in the South African employment relations area, there must be a fair reason for the dismissal (Grogan, 2005). The reason for the dismissal is referred to as the substance the employer used in proving that the dismissal was fair. The same applies in dismissals due to incompatibility. According to the findings of the study, there are certain criteria for the fairness of the substance. The following are guidelines for identifying whether the incompatibility has sufficient substance:

- The incompatible employee's behaviour must be caused solely by the employee, and there should be no evidence that the employer has at all contributed to the incompatibility;

- The employer must be in a position to prove that the incompatible behaviour of the employee has negatively influenced the work environment, evident in, e.g., resignations;

The employment relationship must have irretrievably broken down in the sense that the employer no longer trusts the employee.

5.5 Classification of incompatibility

Before implementing the guidelines outlined above, which emanated from the study, it is imperative for the employer to properly establish under which category as per the Labour Relations Act 66 of 1995 the incompatibility will be dealt with. As outlined in the study, this is paramount, as it will outline what procedure is required to be followed.

The research findings indicate that it would be wise for employers to deal with incompatibility under incapacity management. The findings have shown that the phenomenon of incompatibility is such that it could be seen as an employee not being able to meet a specific standard required by the organisation. Every employer has a right to set specific performance standards required of the employee. These standards could be extended to include behavioural standards, as these affect the work environment and dealings with external clients or stakeholders. Should these behavioural standards not be met, and an employee is classified as incompatible, the incompatibility should be classified as incapacity.

A further thought when classifying incompatibility into one of the categories prescribed by legislation would be to firstly identify the wilfulness of the behaviour. Should the behaviour be wilful and offensive, such as bringing the organisation into disrepute, leading to the loss of clientele, it would be advisable to deal with such behaviour with a misconduct-related process. Each case would need to be judged on its own merits. It is important to identify whether the trust relationship has been damaged by a single incident or if the behaviour is such that remedial action could assist in a change of behaviour. In the latter case, incapacity management would be followed, while, in the former, a misconduct process would be followed.

5.6 Summary

The purpose of this chapter was to integrate the research results from the study which with the literature review, in an effort to provide a set of guidelines to the employers when classifying and defining incompatibility, together with the correct procedures to follow. In the next chapter, a conclusion on the study will be given.



Chapter 6

Conclusion and Recommendations

6.1 Introduction

In Chapter 5, the findings of the research study were combined with the literature review. A set of guidelines for establishing incompatibility was provided. Guidelines regarding fairness of substance and procedures regarding incompatibility were also provided. Classification of incompatibility into the most appropriate category according to the Labour Relations Act 66 of 1995 was also elaborated on. In this final chapter, an overview of the study is provided, as well as the strengths and weaknesses of the study, for future work to be conducted on this topic.

6.2 Overview of the research

6.2.1 Problem Statement

The purpose of this research study was to answer the following questions:

- What defines an incompatible employee?
- Are the current reasons (and procedures) described in Section 188 of the LRA sufficient to deal with incompatible behaviour?
- Will a clear definition of incompatibility contribute to the fair treatment of employees who are perceived to be incompatible”?

6.2.2 Research Design

In order to answer the questions above, a systematic review research design was used. Systematic review can be described as a replicable, scientific, and transparent process that aims to minimise bias through exhaustive literature searches of published and unpublished studies. Systematic reviews are most needed in cases of large numbers of primary studies with disparate findings and substantial uncertainty (Hemmingway and Brereton, 2009).

The purpose of the conducting the research using the systematic review is to:

- Identify relevant published and unpublished literature;

- Select studies and reports that should be included;
- Assess the quality of each report;
- Synthesise, in an unbiased manner, the findings from individual studies or reports; and
- Interpret the findings and present an impartial summary of the findings, taking into consideration the flaws in the evidence.

Through the process of systematic review, 100 cases were extracted from legal databases, including Juta, Lexnexis and Caselaw. Key words such as dismissal, incompatibility, unfair dismissal, harmonious relationships, organisational culture, transformation, personality in the workplace, dismissal misconduct, dismissal incapacity, procedural requirements dismissal, substantive requirements dismissal, fair dismissal, unfair dismissal, incompatibility, organisational misfit, incompatibility procedure, diverse workplace, were used to extract these cases.

Once extracted, these cases were then scrutinised, and 30 codes were identified. The 30 codes were:

- Meeting called outside of the formal process to allow a response to allegations.
- Irretrievable breakdown in the relationship of trust between the employer and employee.
- Counselling sessions provided to employees to make them aware of their incompatibility.
- Thorough investigation to determine whether incompatibility is present.
- Odd or eccentric behaviour displayed by the employee towards fellow employees management.
- Gross disruption of the workplace caused by incompatible behaviour.
- Opportunity given to employee to adapt incompatible behaviour subsequent to counselling session.
- Genuine attempts made by employer to improve interpersonal relationships prior to embarking on formal processes.
- Do not accept authority and instructions.

- The absence of progressive disciplinary action.
- Progressive disciplinary action prior to dismissal
- There was no evidence of disharmony.
- There was no evidence that one party's conduct was fully responsible for the disharmony.
- Staff morale was severely affected by the incompatible behaviour displayed by the employee.
- The procedure was not followed correctly or not followed at all.
- The employee displayed disrespectful behaviour towards colleagues and/or management.
- Performance problem used as substance in dismissal.
- The employee displayed serious attitude problems when dealing with colleagues, customers, or management.
- The behaviour of the employee is in direct conflict with the corporate culture and values of the organisation.
- Incompatibility cited as substance in cases of personal issues.
- Seniority used to effect a dismissal, even though there is no substance.
- Dispute referred for dispute resolution prior to the matter being addressed internally.
- Employees complain about management style.
- Incompatibility used as a reason to dismiss an employee at the end of their probationary period.
- Incompatibility used as a reason for dismissal when no other substance can be found.
- No evidence of an irretrievable breakdown of the employment relationship.
- There was no prior consultation informing the employee that behaviour could lead to dismissal.
- Employee showed no remorse for actions that caused harmony.
- Behaviour of employee has caused company to be brought into disrepute.
- Behaviour of employee is grossly insubordinate.

Once these 30 codes had emerged, similarities in the codes were identified, which resulted in the establishment of six categories. The six categories were:

- Disruptive behaviour;
- Disrespect;
- Procedure;
- Remedial actions;
- Employment relationship; and
- Reason for dismissal.

These six categories were divided into two overriding themes dealing with incompatibility: substance and procedure.

6.3 Findings and their implications

6.3.1 Review of literature

Incompatibility, as defined by Grogan, arises when an employee or employees are unable to work in harmony with their colleagues, or are unable to adapt to the corporate culture of their companies (Grogan, 2005).

Currently, in South Africa, there are no tests in place to establish whether an employee is incompatible. The lack of a formal definition of incompatibility results in the concept is used to describe any employee who may not share the views of fellow colleagues, leading to employers experiencing a poor success rate when matters are referred to external dispute resolution bodies (Isaelstam, 2005).

A Code of Good Practice dealing with incompatibility will need to be developed, which will assist employers in correctly defining what constitutes incompatibility and then in following a correct procedure.

6.3.2 Findings of research study

The research findings in response to the research questions were as follows:

6.3.2.1 What defines an incompatible employee?

The present study found the following characteristics that define incompatibility:

- Intimidating behaviours, including aggression towards fellow employees, management, and clients;
- Severe insolence, such as the use of foul language and disrespectful behaviour;
- Being argumentative and abrasive when dealing with fellow employees, management and/or clients;
- Disruptive behaviours that negatively affect staff morale and functioning;
- A negative attitudinal, such as spreading of malicious rumours;
- Behaviour that brings the company into disrepute and ultimately leads to the loss of clientele.

6.4 Integration and implications

6.4.1 Implications for the organisation

The implications of the research findings are quite significant in terms of the guidelines that emerged. If these guidelines are incorporated in an organisation's policies and procedures, employers will experience greater success when matters are heard by external dispute resolution bodies. On the other hand, the employee concerned would be treated fairly, as a proper process would be followed whereby the employee would have an opportunity to remedy such behaviour.

6.4.2 Theoretical Contributions

From the research findings, certain theoretical guidelines have emerged that contribute to theory regarding incompatibility.

6.5 Limitations of the study and recommendations for future research

Two main limitations of the study were identified, each of which provides opportunities for further research in this area.

Firstly, many of the cases used in the study were not published.

Secondly, a selective approach to data location could have limited data gathering.

As stated previously, there is relatively little research material available on the identification and management of incompatibility in the workplace. This necessitates further research.

6.5.1 Recommendations

The study confirms that incompatibility should be managed within the guidelines of existing dismissal procedures. Depending on the facts of the situation, the dismissal could either follow the procedures prescribed for discipline or incapacity. However, in the study it was found that the following unique considerations apply to cases of incompatibility:

- There should be consultations with the individual during which the implication of the incompatible behaviour is discussed and the person given an opportunity to correct it;
- Typical incompatible behaviour is small doses of borderline behaviour that do not justify immediate discipline or or immediate dismissal for incapacity. Typically, one may argue that there is inconsistency because the behaviour was tolerated up to a point. It

therefore requires a specific event or consultation to spell out that it is unacceptable and that the behaviour should change;

- The above implies that for discipline or capacity procedures to be instituted successfully, the behaviour should be gross enough. In the case of incompatibility, employer's deals with a process to "claw back" on prolonged unacceptable behaviour.

Therefore, the study recommends that employers, who want to take action based on incompatible behaviour, change their internal procedures to accommodate the lack of consistency prior to dismissal. This would require specific steps to be taken that will make the person aware of the unacceptable behaviour and process to allow the employee to correct the behaviour according to the agreed standards. Failing the previous steps, the employer may with more success revert to standard disciplinary and capacity procedures.

6.6 Conclusion

The purpose of this research study was to look into current case law regarding the management and identification of incompatibility. It was found that incompatible is characterised by behaviours such as disrespect and a negative attitude. The incompatibility needs to be the fault of the employee, with no contribution by the employer. There should also be evidence of an irretrievable breakdown of the employment relationship for there to be justifiable grounds for dismissal. Finally a fair procedure with regards to thorough investigation, counselling, and remedial action needs to be followed.

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