

DISCUSSION PAPER #2006-06

Title: Stop Pushing the Punishment
Default Button: A Decision Tree
for Separating Personal Problems,
Mistakes and Errors from True
Discipline and Performance
Issues

Author: Mark Alexander
MARK@macbgroup.com

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INTRODUCTION

As any experienced human resource practitioner knows, dealing with disciplinary situations is never an easy task — particularly when an employee's personal issues are involved, or it appears the employee has simply made an error or mistake. Traditional disciplinary approaches in these circumstances invariably seem insensitive and inappropriate; and too often result in bitterness, recrimination and an overall deterioration of employee relations and labour relations where there is a bargaining agent.

Too often, the determination of just cause and application of discipline is not straightforward. This discussion paper explores why managers have such difficulty dealing with these kinds of situations, and provides a decision-making tool that can significantly reduce the need for discipline, while increasing the opportunity for positive, development-focused approaches for corrective action.

It also reviews some of the very persuasive arguments that have been brought forward in recent years regarding why a new understanding - dare I say paradigm? - and new resolution strategies are needed. Further, the paper builds a case for organizations and unions working together to adopt these new approaches.

WHY PERSONAL PROBLEMS, MISTAKES AND ERRORS?

It is important to emphasize that we are dealing with personal problems that have given rise to unacceptable workplace behaviour, and mistakes or errors – as opposed to true disciplinary issues and performance issues. True disciplinary issues are those where intent and wilfulness to violate a known and reasonable workplace rule can clearly be established.

Obvious examples are theft of company property, falsification of records, breach of trust and blatant disregard for safety regulations. These kinds of issues are clearly disciplinable offences and should be dealt with in a way that prevents recurrence and upholds agreed-upon standards in the workplace.

Furthermore, we are not talking about performance issues where the employee's quantity and/or quality of work are unsatisfactory. These require a different diagnosis, and although their resolution may sometimes involve similar strategies to those discussed later in this article, they should not be confused with personal problems, mistakes and errors.¹

Personal problems, although they may be a cause or significant contributor to a performance issue and a disciplinable offence, are distinct from performance shortcomings or wilful violation of rules or the law. Personal problems can vary from the dissolution of a marriage to issues of mental health and addiction. The research demonstrates that these problems are becoming more significant and more prevalent within our society and workplaces.²

Mistakes and errors, our second consideration, may result in a performance shortcoming, but we also know that no one is perfect and no one is immune to making an unintended mistake or error. With both personal problems and mistakes and errors, it does not require much imagination for us to realize that the individuals involved are suffering either from the burden of personal circumstances; or the self-recrimination of knowing the error or mistake has resulted in damage, loss or injury to the organization, customers, society or other individuals.

One does not need to be a card-carrying bleeding heart to appreciate that disciplinary action in these circumstances has the potential to appear unfair and unjust, and can seriously impact employee morale and erode employee commitment. As illustrations, consider the following examples.

PERSONAL PROBLEMS: A SCENARIO

Suzanne is a unionized public sector employee working in an accounting and clerical function in a post-secondary education institution. Normally an active, athletic individual, she suffers a back injury in an automobile accident and has to

¹ For a detailed discussion of this distinction read *Employee Performance and Discipline Problems: A New Approach*, Queen's IRC Press, 2000.

² http://www.mentalhealthroundtable.ca/april_2002_pdfs/iapa%20_handout_april2002_si.pdf

go on short-term disability. While away from work she is under the care of her family physician and undergoes remedial physiotherapy.

Following an absence of a week, she returns to work, but finds that the physical strain of her job — which involves spending considerable time bending over filing cabinet drawers and working at her computer — makes it too difficult for her to put in a full and productive day. Due to continuing pain from her back injury she is frequently absent from work or has to leave early. She continues to seek medical assistance for her problem and tries a number of therapies, including acupuncture, all with limited success.

She becomes increasingly frustrated with her lack of progress in finding a cure for her medical condition and quite depressed at not being able to resume her active lifestyle, and at not being as competent and productive an employee as previously. She exhausts her eligibility for short-term disability coverage under the institution's plan, but finds that she is not eligible for long-term disability coverage when she reluctantly applies to take leave from work to try and resolve her pain issue.

Financially unable to take an unpaid leave, she continues to come to work but due to frequent absences and having to leave early her reduced performance begins to impact on the whole department. As a result, relationships with co-workers and her manager become strained to the point where her supervisor feels compelled to give her a formal disciplinary warning about her attendance and attitude. Angry at being disciplined she contacts her shop steward and files a grievance. At the grievance hearing, management reluctantly agrees to remove the warning from her file but says that further absences or poor attitude will not be excused.

We can continue the scenario, but as experienced HR practitioners know, the prospects for successfully resolving this situation are not good. In contrast, the prospects for consuming endless hours in establishing just cause, taking further disciplinary action, ensuring documentation is in place, writing last-chance letters, going to stressful and acrimonious meetings, etc., are very good — with the likely outcome of a third-party decision that satisfies no one.

MISTAKES AND ERRORS: A SCENARIO

Fulbright and Day are two continuous process control operators working in a petrochemical facility. They work shifts, and are on the evening shift without supervision. Both are fully trained and competent at their jobs, and have satisfactory records of employment. One evening while carrying out a routine procedure, they leave a valve open, and toxic waste escapes into the municipal sewage system. As a result, the facility is fined \$25,000 and warned that a similar excursion in the next six months will mean an order to close operations for a complete review of operating procedures by an independent auditor – at an estimated cost of several hundred thousand dollars in lost production and auditing fees.

When asked how they could have left the valve open, both individuals said they thought the other had looked after it. A review of the operating manual showed there was no specific provision in the procedures for this particular valve. Notwithstanding, all members of the workforce knew that the valve needed to be closed as part of the routine procedure. Day and Fulbright were extremely upset and disturbed by what had happened and apologized profusely for their mistake. Neither blamed the other, as they realized they had simply made a mistake.

Management was clearly distressed and extremely apprehensive about the next six months and the risk of another excursion. They knew that not taking disciplinary action could send the wrong message to the two employees involved, and to the rest of the workforce. However, taking disciplinary action might send a message that mistakes are not allowed. They knew this was not only unrealistic, but would be seen as unfair. They also knew that it could lead to the undesirable consequence of employees hiding mistakes for fear of being disciplined — a prospect that was in many ways far more concerning, particularly when it came to environmental, product quality, service and safety situation.

A DECISION TREE: DISCIPLINE, PERSONAL ISSUES, MISTAKES AND ERRORS

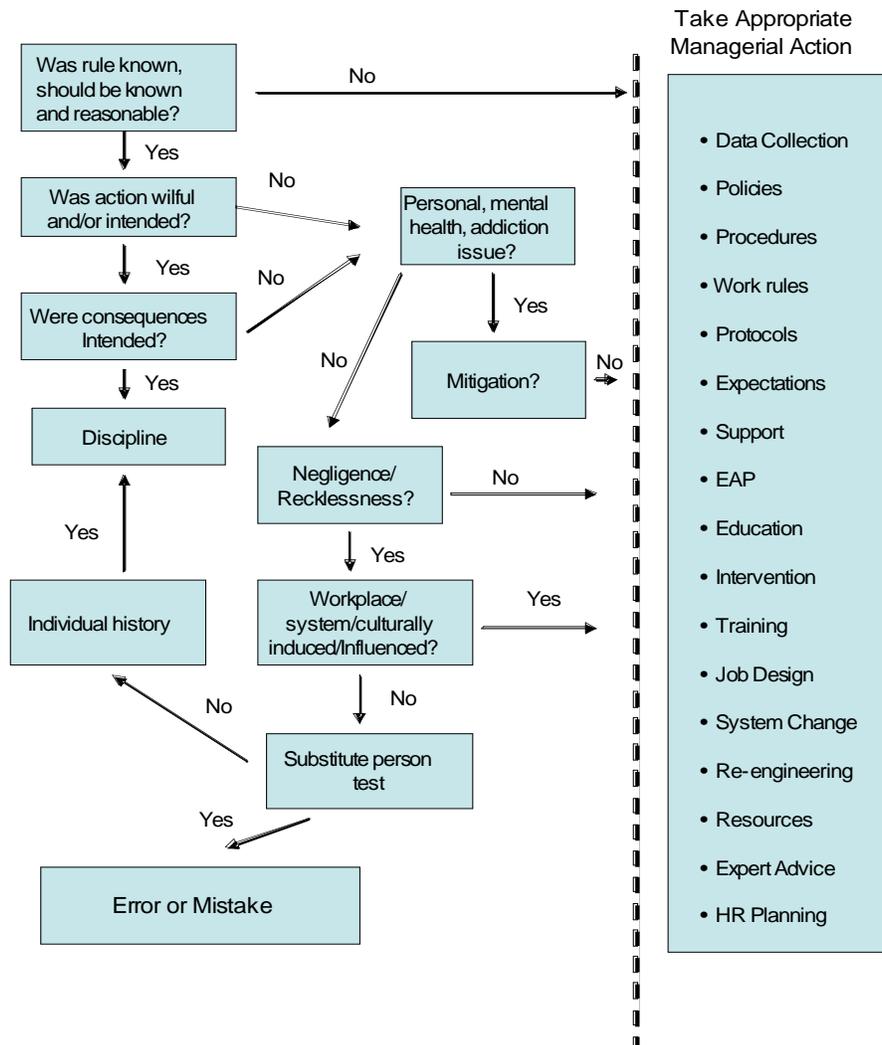
In order to make the “right” decision about what to do in these two cases — and others associated with personal issues, mistakes and errors — managers have to ask a number of questions. The decision tool in Exhibit 1 organizes these questions in a logical order with subsequent actions determined by whether the answer to the question is, “yes” or “no.”

The first of the questions is very familiar to HR practitioners and is fundamental to the determination of just cause for disciplinary action: was the rule known, should have been known and reasonable? If the answer is “no” then clearly management has a responsibility to make the rule known and to make sure that it is reasonable. If the answer is “yes” then the next question is whether the violation of the rule or action was intended and wilful.

Certainly in the case of Day and Fulbright there was no intention to cause a toxic excursion. In Suzanne’s situation, there may be some doubt as to whether her absences are wilful and a case of malingering and abuse of sick leave privileges. Using the tool, if the answer to this question in Suzanne’s case is “yes” then the next question is whether the consequences were intended.

Exhibit 1: Decision Tree

Discipline, Personal Issues Mistakes and Errors Decision Tool



Clearly, the consequences for Suzanne are not very pleasant —worsening workplace relations, poor performance, increased surveillance by management — and it is therefore hard to imagine that she is being wilful. Correspondingly, the tool leads us back to the box where we ask whether there is a personal, mental, health or addiction issue. For Suzanne the root of her problem is her health issue, and the question is whether appropriate action is being taken to mitigate it. The answer to this question is “no” because if appropriate action were being taken then there would not be an issue. Therefore appropriate action in the form of accommodation and medical assistance needs to be taken by management to assist Suzanne in resolving her health issue.

If we look at the case of Day and Fulbright, there is nothing to indicate that the cause is personal, mental, health or addiction issues, and so the question is whether their leaving the valve open was a matter of recklessness or negligence. Certainly negligence cannot be ruled out in this instance. But then the issue arises as to whether the origin of the negligence might be something in the workplace. Then it needs to be asked whether vigilance is a norm in the workplace, or environmental awareness and stewardship are not seen as a high priority; and whether the jobs that Day and Fulbright are doing are so stultifyingly boring that it is impossible to imagine that at some point the person doing the job is not going to lose attention and make a mistake.

However, even if the answer to this question is “no,” there is one final question, relating to the *substitute person test*³. If the answer to this question is “no” then we are led to a consideration that is part of traditional disciplinary analysis: the individual’s history with the organization, and based upon that analysis, the degree of discipline is determined, and action is taken. If, however, the substitute person test results in a “yes,” then what we have is a *bona fides* error or mistake that although regrettable and unfortunate, is not deserving of punishment in the form of discipline.

A ROSE BY ANY OTHER NAME

At this point, some might say that what is being discussed here is simply a rose by another name and that this is really just a system of *discipline without punishment*. Certainly the use of the Decision Tool is an enhancement and aid to the use of non-punitive discipline procedures. However, no matter how you dress it up, discipline is discipline; and the principles of establishing just cause, use of progressive steps leading to termination and determining culpability and wrongdoing are very much a part of the process.

³ Developed by James Reason, *Managing The Risks of Organizational Accidents*. Aldershot, Ashgate Publishing Group, 2003 – this test asks that the individual concerned be substituted by someone else coming from the same domain of activity and possessing comparable qualifications and experience. The question is then asked, “In the light of how events unfolded and were perceived by those involved in real time, is it likely that this new individual would have behaved any differently [or could have acted in the same manner]?”

The process suggested here to deal with potential personal problem and mistake and error situations is not discipline. Discipline under this process is not even a last resort; it is an outcome of logical deduction. What the Decision Tool does is it keeps pushing the user to examining what appropriate managerial action other than discipline might be taken. Or to put it another way, the “default” in the Decision Tool is managerial action, whereas in the traditional disciplinary process, even a non-punitive one, the “default” is disciplinary action.

BLAMING THE VICTIM

By having a process where the analysis moves back to looking at what managerial action should be taken when it is determined that action beyond the individual employee is needed, we are effectively moving away from *blaming the victim*. In the example of Suzanne, the employee is a victim and disciplining her for her absences and poor attitude (a result of her frustration with her medical condition) only makes her more of a victim.

This is an important point because personal problem situations like Suzanne’s are not uncommon in organizations. It is estimated that as much as 15 percent of an organization’s workforce can, at any point in time, be suffering from personal problems that are significant enough to affect their work performance.

Given the significance of this number, recognizing that disciplinary action is not the appropriate “default” approach for dealing with these issues is important not only for the individuals involved, but for the organization. It is important for two reasons: firstly because employees are valuable assets that should not be discarded because there is a problem; and secondly because the way organizations are seen to treat employees is a major contributor to creating a culture of justice — something that has been identified as vital to building employee engagement and commitment.

LEARNING ORGANIZATIONS AND THE BROADER IMPACT

However, the greatest gain organizations will achieve by using the Decision Tool approach is the contribution it will make to organizational learning. Sometimes called a “virtuous cycle” it can be seen that migrating from trying to assign blame and trying to correct situations through intelligent managerial action creates tremendous potential for individual and organizational growth. As we all know from experience, we learn from our mistakes.⁴ If because of fear of discipline mistakes and errors are being covered up or go unreported, then learning opportunities are being lost. These lost learning opportunities can have

⁴ Peter Senge in his landmark book *The Fifth Discipline* (Doubleday, 1990), introduced the notion of “the learning organization” and the concept of “unintentional” learning as being an important part of the organizational learning process – something which certainly encompasses mistakes and errors.

significant ramifications, particularly in industries such as nuclear power generation, aviation and healthcare.⁵

Removing the threat of discipline is a first step in getting employees to share their mistakes and errors and for the organization to use that knowledge in designing jobs, developing procedures/ protocols/policies and training that reduces the potential for re-occurrence.

But the impact does not end there. The use of a process that results in non-punitive outcomes for dealing with personal problems and mistakes and errors can have a significant effect on employee relations and labour-management relations - where there is a union representing employees. Beyond these benefits, it has been identified that the existence of a “just culture” is a significant antecedent to the development of organizational citizenship behaviour (OCB) by employees and that OCB in turn results in a range of beneficial outcomes for organizations including improved performance quality and quantity, operating efficiency and customer satisfaction.⁶

IS THERE A ROLE FOR RESTORATIVE JUSTICE?

Notwithstanding the benefits to be derived from dealing these issues in a non-punitive manner, many managers are going to be reluctant to allow mistakes and errors to occur without some form of consequences. Similarly, most employees, having made a mistake, will want to make amends. In these circumstances, there are lessons to be learned from the emerging field of restorative justice whereby employees are given the opportunity to repair the damage they have caused or to make amends, thus allowing them to assuage their sense of guilt and for other members of the organization to feel that justice has been served. Within this context it does not take a great stretch of imagination to see where there is ample opportunity for convergence between the notion of the learning from mistakes and an employee doing “restorative time” as an educator, communicator or coach.

⁵ Two very interesting studies in healthcare and aviation are: the U.K. National Health Service/National Patient Safety Agency report: *Creating the Virtuous Cycle: Patient Safety, Accountability and an Open and Fair Culture*, 2002; and the Global Aviation Information Network Flight Operations/Air Traffic Control Safety Information Sharing Working Group report: *A Roadmap to a Just Culture: Enhancing the Safety Environment*, 2004.

⁶ Defined as “individual behaviour that is discretionary, not directly or explicitly recognized by the formal rewards system and that in the aggregate promotes the effective functioning of the organization,” OCBs are extra-role behaviours such as *helping, sportsmanship, conscientiousness, civic virtue and courtesy*. For a comprehensive discussion of OCB read: *Organization Citizenship Behaviour – Its Nature, Antecedents and Consequences* by Organ, Podsakoff and MacKenzie, Sage Publications, 2006.

CONCLUSION

The requirement to deal with personal problems, mistakes and errors is a reality within every organization. Too often managers use disciplinary measures because they believe they have no other alternative, or avoid taking action when confronted with these situations. Neither of these approaches is appropriate. The use of the Decision Tree analysis outlined in this paper provides an alternative that can significantly enhance the probability of a more beneficial outcome in terms of organizational effectiveness, enhanced learning and building a just culture.

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