FEEDBACK TUTORIAL LETTER

1st SEMESTER 2019

TEST 1

ADVANCED INDUSTRIAL AND LABOUR RELATIONS

ILR811S
DIFFERENTIATE BETWEEN THE PLURALIST AND UNITARIST APPROACHES TO INDUSTRIAL AND LABOUR RELATIONS AS AN ACADEMIC DISCIPLINE. (10)

**Unitarist Approach:**
- Maintains that the organisation is cohesive
- The organisation is a unified unit
- The organisation has a common set of values and goals that all members subscribe to.
- Authoritative management styles are accepted as legitimate (The repressive regime, and authoritarian Chamber of Mines).
- Managerial prerogative is rarely challenged (All decisions made by management and go unchallenged).
- Conflict seen as irrational and most cases causes friction between employer and employee, because they do not see things in the same light and chase different objectives.
- Managers say conflict is a result of a clash of personalities but blame the employee for it because he/she does not understand decisions that management take.
- Or conflict could a result of in managerial communication.
- To management, trade unions are subversive and provide a direct insult/challenge to the power and authority that management possess. Managers know what is best for the employees and can decide what is best for them without having unnecessary interference from the trade union.

**Pluralist Approach:**
- Almost the opposite of the Unitarist approach.
- Assumes that organisations have many aspects and features (multifaceted).
- Organisations are complex groupings of individuals.
- Individuals in the organisation align or take sides with members who share same values, similar perspectives, and objectives.
- Due to the above power and authority is not centred on none individual, the manager.
- Power is spread among a variety of stakeholders.
✓ To this end, trade unions are accepted as a legitimate forum for co-ordinating various interests and for expressing them.
✓ Because of this diversity and contact between a variety of groupings, conflict is inevitable
✓ Conflict, as a result of the above is accepted as rational and inevitable.
✓ Conflict that arise is managed through a system of negotiated trade-offs and settlements
✓ In the employment relationship there is a constant shifting balance of power that ultimately needs to be maintained through compromise and collaboration, pluralists argue. (20/2 for articulating the two approaches = 10)

QUESTION 2
In the employment relationship, each of the parties has duties or obligations to the other. Articulate the duties of each of the parties to the employment relationship (10).

Employer's role:
✓ Setting the course and direction of the company: establish missions, goals, visions and objectives
✓ Responsible for the day to day running of the organisation
✓ Providing a safe working environment
✓ Giving orders on what has to be done in terms of work
✓ Ensuring that employees are paid on time (Any relevant answers are acceptable).

Employee’s role:
✓ To exchange his/her labour for a wage
✓ To do an honest day’s work
✓ To honest and not still from the employer
✓ To be loyal and respectful of the employer (Any relevant answers are acceptable. Venter and Levy, 2014).

QUESTION 3
Discuss the notion of substantive fairness with examples (10)

Substantive fairness:
✓ Substantive fairness allude to the fact that when one is terminated, there should be sufficient reason for the employer to terminate the contract of employment.
✓ For termination to be procedurally fair, even if there is sufficient reason to terminate the contract, a process must be followed to ensure the existence of fairness who essence is enshrined in the audi alteram partem rule, or that there should be proper counselling, or proper consultation. Something must have been done to try to correct te situation before termination of contract.
✓ To this end, dismissal must procedurally and substantively fair. Therefore; Fair termination = substantive fairness + procedural fairness.
✓ Procedures for above happenings must be set and must be followed for there to be substantive fairness and procedural fairness.
✓ Although substantive fairness may be difficult to explain, the punishment meted out must fit the crime committed
✓ In order to justify a dismissal, employer has to show on a balance of probabilities that the employee committed the act, and that such an warranted a dismissal, and the procedures were followed.
✓ In determining whether to dismiss, all facts surrounding the case must be considered as well as the fact that the employee knew the rules before they were infringed
✓ Substantive fairness may also consider common practice in an industry when considering a case of dismissal (Note cases of substantive unfairness in such as the sanction being excessively severe for the offence committed; and the sanction imposed on employee being inconsistent with the treatment of other employees who committed a similar offence (Venter and Levy, 2014, p.337).

QUESTION 4

There are instances where dismissal would be automatically unfair. Identify and articulate these instances (10).

Automatically unfair dismissal:

✓ Describes a dismissal that would be never fair because it takes place because of a reason not allowed by the law
✓ If the law does not allow you to dismiss anyone because of such a reason, then the dismissal is automatically unfair
✓ Dismissal is automatically unfair if an employee is dismissed for:
  - Taking part in a protected strike or industrial action
  - Refusing to work on a job of an employee taking part in a protected strike or was locked out
  - Being compelled to accept any matter of mutual interest between the employer and the employee
  - For taking action or intending to act against an employer by exercising any right conferred by the Act, or participating in any proceedings in terms of the Act
  - The employee is pregnant or intends to be pregnant or for any reason related to her pregnancy
  - The employer unfairly discriminated against an employee, directly or indirectly, on any arbitrary ground, including but not limited to race, gender, sexual orientation, ethnic or social origin, colour, age, disability, religion, conscience, belief, political opinion, culture, language, marital status, or family responsibility

QUESTION 5

There are two fundamental types of disputes which the Labour Act, 11 of 2007 distinguishes. The dispute of right and dispute of interest. Differentiate these two types of disputes (10).

There is disputes of right and disputes of interest.

Disputes of right:

✓ It is about existing rules regulating the issue in question
✓ Could be what the Act says on an issue
✓ It could be what a collective agreement says on an issue
✓ In disputes of this nature, if there is a dispute, facts surrounding the issue are gathered and then using the existing rules a determination is made a court or arbitrator who will make a binding decision.
✓ In disputes of this nature, might does not equal right with the stronger of the two parties to a dispute bulldozing their way through, appropriate rules have to be applied and a determination made.

Disputes of interest:

✓ The question in dispute is not the subject of any existing agreement, law or well established
✓ It is a wish for the employee the issue be corrected for the welfare or benefit of the employee
✓ This issue may later become a dispute of right when it has been ratified into an agreement or a contract
✓ Typical disputes of interests are claims of Trade Union for an increase in wages or improvement in health and safety issues.

[END OF TUTORIAL FEEDBACK LETTER]