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tennant human capital solutions

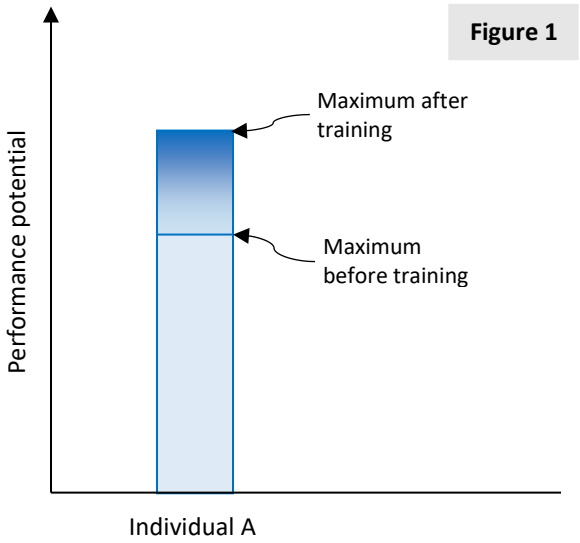
Human Resources Notes

"*The aim of* Human Resources Notes *is to provide concise information on topical human resource management issues to guide effective people management practices*." Peter Fisher, Executive HR Consultant (THCS)

In this issue

Five more tips to get the most out of training

Figure 1



Training employees is an effective way to improve organisation performance. Employees equipped with sharpened or new skills can contribute more to an organisation's success. However, reaping the benefits of training it is not simply a numbers game. It is about optimising the quality of training and the application of competencies by the training recipients. As figure 1 shows, training raises the performance potential of an employee. It is up to managers in organisations to select training which creates the biggest possible boost to an employee's performance potential and then to create a work environment conducive to converting the potential into actual performance gains.

Here are five more tips (see also HR Notes 11) to get the most out of training and development spend:

1. *Assign people to the right delegate group*

Putting people from different organisation hierarchy layers together on an inhouse course could be problematic. For example, we recently encountered a group of training participants who were unusually quiet given the interactive nature of the learning material. During one of the breaks, a junior employee confided that people on her level were not at ease sharing ideas in the presence of an outspoken and opinionated general manager. The point is not that mixing hierarchy layers is always to be avoided. Rather, the organiser of training should actively consider the composition of training groups to get a productive mix of delegates.

2. *Ensure quality training*

Rigorously assess courses to check they meet the identified training needs. The process should include involvement of line managers to vet course content as well as confirming that the training facilitators are both subject matter experts and skilled in training methods appropriate for adult learning.

3. *Follow-up five weeks later*

An employee's line manager should diarise a meeting on some date five weeks after a training course for a follow-up meeting to check on implementation of the new skills by an employee. A meeting scheduled five weeks after training will generally give an employee enough time to apply and practice the new skills. The 'five weeks' period is a guideline only, and circumstances may warrant a longer or shorter time before the follow-up meeting is held.

4. *Provide coaching*

Coaching is an effective stand-alone training method. Training course linked coaching by a specialist, which is offered on a one-to-one or team coaching basis after and in support of class based skills programmes can help employees take their performance to new heights. Skills are honed through practice and coaches can guide employees in maximising the quality of skills practice and skills application.

5. *Provide access to post course resources*

Giving training participants access to post course resources such as case studies, articles, peer interest groups, exercises and relevant information in the work environment will help to enrich and reinforce the course content. ■

Restraints of trade agreements

Restraints of trade (or non-compete agreements as they are referred to in some countries) are enforceable in South Africa unless they are proved to be unreasonable.

A court considering the reasonableness of a restraint of trade must make a value judgment with two principal policy considerations in mind. The first is that the public interest requires that parties should comply with their contractual obligations. The second is that all persons should in the interests of society be productive and be permitted to engage in trade and commerce or professions. Both considerations reflect not only common-law but also constitutional values. [1]

A restraint is only reasonable and enforceable if it serves to protect an interest, which, in terms of the law, requires and deserves protection. To seek to enforce a restraint merely to prevent an employee from competing with an employer is not reasonable.

A dispute between a labour consultant and his former employer Labournet over the enforcement of a restraint of trade was ultimately determined by the Labour Appeal Court (LAC). [2] The employee resigned from Labournet to join SEESA a competitor to Labournet. The interests which Labournet sought to protect for three years were firstly, that the employee had access to confidential information, which he could apply to the detriment of Labournet. And, secondly, because of his trade and client connections built up during his employment at Labournet, the employee could easily influence and convince clients to do business with him and SEESA rather than Labournet.

The employee disputed Labournet's claims. He stated that the confidential information claimed by Labournet is readily available on the internet; his job was at the lowest rung of Labournet's structure; he had no special connection with any of Labournet's clients; and he argued that because of the limitations of his training and experience, he was hardly in a position to induce clients to follow him.

The LAC found that the facts disclosed and assessed did not establish that Labournet had a protectable interest and accordingly found against enforcement of the restraint.

An additional finding worthy of note was that even if an employer spent time and effort and money to train or "skill" an employee in a particular area of work the employer has no proprietary hold on the employee, or his, or her, knowledge, skills and

experience, even if those were acquired at that employer.

Restraints of trade are a challenging branch of employment law. Employers should be slow to adopt a blanket approach and to get even junior employees to sign restraints of trade as a 'standard term of employment'.

In addition to enforceability risks and costs, there are other reasons why an employer should be slow to get employees to sign restraints of trade: [3]

- Restraints of trade can stifle innovation by limiting the free flow of ideas around an industry. Typically, industry high-fliers are mobile. As much as they can use elsewhere ideas they developed in your company they also bring with them the knowledge and competence accumulated in other companies. This fuels company growth.

- If you insist that new hires sign restraints, you risk not attracting the best and brightest talent who will simply look for opportunities where they are not shackled by restraints.

Three organisation change traps

In their column *Winning*, Jack and Suzy Welch identified three traps to avoid, which have the potential to undermine successful implementation of an organisation change initiative: [4]

1. Launching another big initiative while your first big initiative is under way. Initiatives, they explain, are transformative like 'globalisation'. An organisation can only handle one initiative at a time.

2. Not putting the company's best people on the initiative. Assigning the best people to implement an initiative signals its importance and the star performers will make the initiative succeed.

3. Not publicly promoting and rewarding the people who embrace the initiative. These people must be held up as role models and heroes and be treated accordingly.

The balance of probabilities

At the very least, the evidence presented in a disciplinary hearing should be sufficient to prove on a balance of probabilities that the employee committed the misconduct alleged by the employer. [5]

This standard of proof is the test applied in civil proceedings. In contrast to the test applied in criminal proceedings, the presiding officer does not have to exclude every reasonable doubt.

Applying the balance of probabilities standard can be challenging, particularly when it is a case of one person's word against another's.

A CCMA commissioner arbitrating an unfair dismissal dispute got it wrong when he prematurely decided that an employer had not discharged its onus to prove misconduct. The case which was the subject of the dispute, happened on a chrome mine. The employer alleged that the employee failed to make an underground work area safe and left a bag of explosives open which was very dangerous. The employee testified that the employer's version was not correct and that he had in fact checked the work area and declared it safe. The commissioner decided that there was no basis on which to discredit either of the two versions and found that where evidence of both sides is evenly balanced the employer cannot be deemed to have succeeded to discharge its onus to prove the misconduct. The commissioner went on to find that the dismissal was substantively unfair and reinstated the employee. The employer took the matter on review to the Labour Court. [6]

The Court said that the commissioner's finding that the evidence of both sides was evenly balanced and therefore, he had to decide the dispute purely

on the question of onus was wrong. More so because the evidence of both sides was diametrically opposed.

The Court said that the commissioner should have applied a technique espoused by the Supreme Court of Appeal to resolve the factual disputes. The commissioner should have assessed three factors, (a) credibility of the witnesses, (b) their reliability, and (c) the 'probabilities'. The last of these considerations was explained as meaning '…an analysis and evaluation of the probabilities or improbabilities of each party's version on each of the disputed issues'.

If handled correctly, the commissioner would only have decided whether the onus of proof has been discharged after assessing the three factors. In the circumstances, the Court set aside the commissioner's award and referred the dispute back to the CCMA for arbitration *de novo* before a different commissioner.

The learning for disciplinary hearing chairpersons is that when faced with conflicting versions from the employer and employee, it not acceptable to throw in the towel and declare that the employer has failed to discharge its onus of proof. Rather, as per the Labour Court's findings, there are two pivotal aspects to which a chairperson must apply his or her mind. The first is that there must be a balancing of the probabilities. The second is that there must be a consideration of the credibility of the witnesses. It is only when these two undertakings do not offer any assistance that a chairperson could conclude that the employer had failed to discharge the onus of proof. ■

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We implement **professional** and
cost-effective solutions for all people challenges in business.

We help build the bridge between employees’ performance and **business performance**.

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