

**MINISTRY OF DEFENCE & MILITARY VETERANS**

**NATIONAL ASSEMBLY**

**QUESTION FOR WRITTEN REPLY**

**1243. Mr S Esau (DA) to ask the Minister of Defence and Military Veterans:**

(1) With reference to external fees, (a) which service providers does Armscor make use of and (b) how are these service providers selected and then contracted;

(2) (a) what are the details of the total legal fees related to dismissals and/or suspensions of employees for the past five years and (b) what is the name of each employee who was dismissed in the past five years;

(3) have all the cases of dismissal and/or suspension been concluded; if not, (a) why not, (b) which cases have not been finalised, (c) on what date was each of the cases instated and (d) what are the reasons that each case has not been concluded? NW1342E

**REPLY:**

**QUESTION 1**

With reference to external fees,

**Service providers that Armscor make use**

There is a standing panel of legal firms that is utilised by Legal Services department as well the Employee Relations department. The panel was approved by EXCO and is reviewed every three years

**How service providers are selected and contracted**;

When the nature and the complexity of the dispute at hand warrants the appointment of a Labour Legal Expert, Employee Relations department would then recommend a service provider from the panel of approved service providers, for the approval of two Group Executives and the Chief Executive Officer. The recommendations of a service provider from the Employee Relations Department would be based on the availability, cost, experience, track record in disputes of the same nature. One of the cornerstones of fair labour practice as enshrined in both the Labour Relations Act and the Constitution is procedural fairness. Whilst each matter would be judged on its own merits Consistent application of the rule and precedence set in similar disputes is key in ensuring fairness when handling Employee Relations Disputes as result prior knowledge of the matter is some cases critical in appointing a service provider .

The Employee Relations Department is a small unit that is manned by one Specialist that specialises in labour law and looks after all the aspects of employee relations. Armscor legal department only has three commercial lawyers who focus mostly on projects and commercial contracts.

Whilst it is evident based on the summary below that majority of labour disputes are ruled in Armscor’s favour however some employees still chose to refer the matters to the labour court. Armscor would then exercise their right and oppose the matter, for example the below listed matters of employees who were dismissed for tender irregularities and the cases were ruled in Armscor’s favour by the CCMA however the employees still referred their cases to the Labour Court and Armscor opposed the matters.

Due to the nature of Armscor’s business there are cases which demand that we seek the intervention of external labour law experts .These matters involve intense investigations which deal with sensitive and secret information, they are lengthy due the evidence and voluminous documentation, for example the matter of the employee who was dismissed for being involved in espionage activities.

**QUESTION 2**

**Details of the total legal fees related to dismissals and/or suspensions of employees for the past five years**

|  |  |
| --- | --- |
| **Nature of Process** | **Legal Fees 2013-2018** |
| Disciplinary Enquiry  | R 1 299 932.99 |
| CCMA | R 1 179 156.75 |
| Labour Court  | R 9  565 097 .10 |
| Labour Appeal Court  | R 770 000.65 |
|  TOTAL  | R 10 214 321.51 |

 **Dismissal cases for the past five years**

In the past five years Armscor has had an average of 5.8 dismissal cases per annum based on the following categories of misconduct**.** It is worth noting however that some employees resigned before their cases could be concluded and are thus not part of the below statistics. The Occupational Categories of the dismissed employees are as follows

 Semi-skilled 8

Professionally Qualified 5

Unskilled 11

Skilled and Technical 2

Senior Management 1

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Area** | **Number of Cases** | **Nature of the offence** | **CCMA Outcome** | **Labour Court Outcome** |
|  **Armscor Head Office** **( Pretoria)** | 1 | Gross Misconduct -Theft  |  No referral | No referral |
|  | 1 | Gross Misconduct - Attempting to solicit a bribe from a supplier | CCMA ruled in favour of Armscor | No Referral |
|  | 1 | Poor work performance | No referral | No referral |
|  | 1 | Misconduct -Unauthorised use of Company Property  | No referral  | No referral |
|  | 3 | Gross Misconduct -Tender Irregularities | In one matter the CCMA ruled in favour of employee. | Armscor has applied for review and the matter at Labour Court  |
| The second matter the CCMA ruled in favour of Armscor | No referral |
| Third matter CCMA ruled in favour of Armscor  | Labour Court ruled in favour of Armscor |
|  | 1 | Misconduct -Misuse of Company Vehicle | CCMA ruled in favour of Armscor | No Referral |
|  | 1 | Gross Misconduct – Breach of Security | CCMA ruled in favour of Armscor | Labour Court ruled in favour of Armscor |
|  | 1 | Misconduct – Loss of Security Clearance  | CCMA had no Jurisdiction | Labour Court ruled in favour of Armscor |
| **Dockyard -Capetown** | 1 | Gross Misconduct -Fraud | No referral | No referral |
|  | 7 | Misconduct – Desertion  | No referral | No referral |
|  | 4 | Theft  | No referral | No referral |
|  | 1 | Misconduct – Failure to Maintain Security Clearance due to a Criminal Record | No referral | No referral |
|  | 1 | Constructive Dismissal | Matter is with CCMA | No referral |
| **Alkantpan** | 4 | Misconduct -Theft | No referral | No referral |
|  | 1 | Misconduct -Misuse of Company Vehicle | CCMA ruled in favour of employee | Parties Reached Settlement |
|  | 2 | Misconduct -Desertion | No referral | No referral |
| **IMT - Capetown** | 1 | Gross Misconduct –Insolence, using foul language and verbally abusing his manager | CCMA referral was withdrawn by applicant | No Referral |

**QUESTION 3**

**Cases of dismissal and/or suspension that have not been concluded**

There are two cases that are pending. One employee resigned in 2018 October and then proceeded to file a constructive dismissal dispute. The second matter is that of an employee who is on suspension since March 2018 and the disciplinary enquiry is scheduled for the 9 March 2018

 **Date when the disputes arose**

The employee was placed on precautionary suspension on the 7 March 2018

The employee resigned on the 28 October 2018

**Reasons that each case has not been concluded**

In respect of the employee that resigned in October the case is part heard by the CCMA and the next arbitration date is the 15 May 2018. In respect of the employee who is on suspension the disciplinary enquiry is scheduled to resume on 9 May 2018.