

## **LETTER TO CHAIR OF UKZN COUNCIL from NEHAWU, NTEU & UKSU**

**16 December 2016**

Dear Dr Ntsaluba

The staff of the University, our members, are becoming very disillusioned with the slow action regarding the outcome of the Board of Enquiry (BoE) and this is being perceived as a lack of resolve to deal with the issue of the false allegations against the University's Vice Chancellor.

The article that resulted in the BoE, entitled 'Toxic Race Row Rocks KwaZulu University', appeared in the Sunday Times of 22 November 2015. We are about to enter 2017 and the matter has not yet been brought to conclusion. At the time you advised staff that this matter would be dealt with as a priority.

The vast majority of staff are of the opinion that the Executive members who made these unfounded allegations, should not remain at the University. If they cannot do the honourable thing and resign then disciplinary action must follow and urgently. Their allegations, shown to have no basis by the BoE, included that Dr van Jaarsveld 1) was racist 2) incompetent 3) dishonest 4) falsely claimed he solicits complaints against members of the Executive.

The University has a Disciplinary Code, which is Council approved and must, therefore, be applicable to these members of the Executive. Whilst not a closed list, the following are listed as dismissal for a first offence: dishonesty, gross insubordination, gross negligence, intimidation, racism – all of which are their actions in terms of their allegations. They did not follow the approved grievance procedure but rather placed their grievances in the public domain of the media, bringing the University into disrepute.

It is critical for any employer to apply disciplinary action consistently. There are staff who have been dismissed for all of these offences, as well as for bringing the University into disrepute by contacting the media. It is thus imperative that the charges be levelled against those remaining members of the Executive and that they face disciplinary action. There are staff who have been dismissed for lesser offences.

It is clear that the criteria for Suspension in the code are applicable, especially the last two bullet points: a) operational reasons, e.g. rendering the working environment intolerable and likely to be disruptive to the working environment; b) good administration and corporate governance. These are senior members of management, who should have known their actions were unacceptable and that they should have followed the grievance procedure. The University has been rendered dysfunctional since at least that article and probably even before, given that the article reported they had walked out of an EMC meeting. We are sure they are likely to deny this but it is clear to staff at all levels that the dysfunctionality we refer to, is only as a result of their actions. If they remain, they will continue to render the institution dysfunctional. Having made these false claims against the Vice Chancellor, how can they now suddenly act as though it all did not happen and work with him? It is simply just not possible. It is obvious to staff that there is no remorse on their part, they continue to deride the Vice Chancellor in the presence of lower level staff and from what most have said to staff, they appear to seriously believe they have done no wrong. They showed no respect for the institution and staff, when not one attended the relaunch of the REACH principles.

The actions of these Executive members cannot be characterised as Minor Misconduct and can only be categorised as Very Serious Misconduct (Disciplinary Code section 6). In terms of the Council approved Disciplinary Code, the only options available to the employer are the CCMA conducted process or an internal hearing.

This message was drafted earlier this week and was about to be sent to you but this paragraph has been added in light of an article in The Mercury today 16 December 2016. The article refers to recommendations by an attorney regarding action the Council should take. If this article reflects the recommendations by this attorney correctly, then the unions are even more concerned. The article states that the “second – and recommended – option was to allow each of the complainants the opportunity to engage in reconciliation efforts with the vice-chancellor and in the event that these efforts were unsuccessful revert to the institution of disciplinary action as discussed in the first option”. “Reconciliation efforts” are ADR, there is no reference to ADR as one of the steps in the process for Serious Misconduct (refer to Section 6 and Annexure B flow diagram). Further, in the unions’ view ADR is never applied in disciplinary processes by the institution and it is always straight to the disciplinary steps. The Disciplinary Code is a collective agreement and any deviation from this will be challenged by the unions. It is also noted that this article refers to suspension, which we strongly advocate in this letter, even before reading The Mercury article. This must be done immediately. The article also refers to the recommendation of charges of “incapacity due to incompatibility”. This is completely unacceptable, as it is a weak charge and does not reflect what transpired. The statement of “incapacity due to incompatibility” merely supports the aggravating circumstances for dismissal and should not be the only charge in itself. As mentioned above, the actions of these Executive members brought the University into disrepute and rendered it dysfunctional in many aspects, they were dishonest in their allegations against Dr van Jaarsveldt and have also been insubordinate.

It is obvious to everyone that there is no possibility of restoring the trust relationship with the employer and particularly with their line manager the Vice Chancellor. This means there can be only one outcome as the BoE has already made findings in terms of their allegations. With this outcome of the BoE, it is impossible for them to be able to successfully defend their actions. Then there are the issues raised in the union dossier, these must also be investigated and even you said some of the allegations could possibly be intertwined with the BoE outcomes.

The unions cannot begin 2017 with these Executive members remaining in their positions and if they are not suspended, at least, by when the University opens in January, the unions will embark on strike action to demonstrate against their continued presence. The CCMA has already issued a strike certificate and this remains valid and one of the grievances listed during the conciliation, was just on this, therefore, it will be a protected strike. As required, the unions will now proceed to ballot their members on strike action, unless you can assure us that disciplinary action will be carried out and that they will be suspended until the conclusion of that process. Given the feedback received from our membership on this issue in the past, we are positive that the strike ballot will be in support of strike action against their continued presence at the University of KwaZulu-Natal.

A further issue is that the disciplinary process must proceed forthwith, as we cannot have a situation where they continue to receive their high earnings whilst a disciplinary process drags on for months and months.

As a large body of UKZN stakeholders, the unions also request to be provided with a copy of the BoE report. The student and convocation members, who sit on Council will have been privy to this report and the unions are a major stakeholder, despite not having a seat on Council.

**Sent on behalf of**

**NEHAWU, NTEU, UKSU**