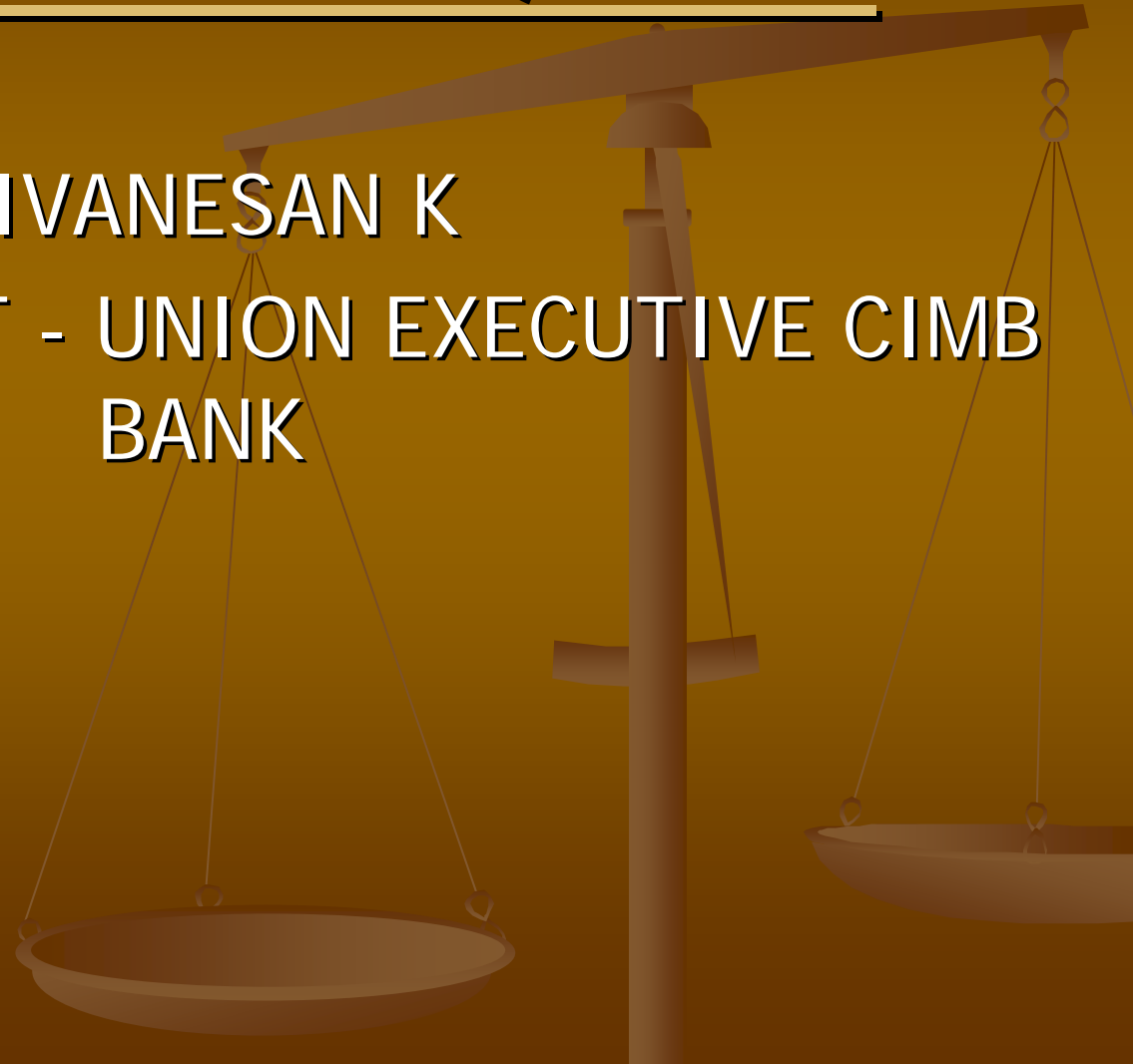


DOMESTIC INQUIRY

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VICE PRESIDENT - UNION EXECUTIVE CIMB
BANK



THE ACT

SECTION 14 – EMPLOYMENT ACT 1955

1) An employee may, on the ground of **misconduct**...of his service, after **due Inquiry**

a) Dismiss .. the employee

b) Downgrade the employee

c) Impose any other punishment as he deems just and fit.

2) For the purpose of an inquiry....the employer may suspend...

MISCONDUCT



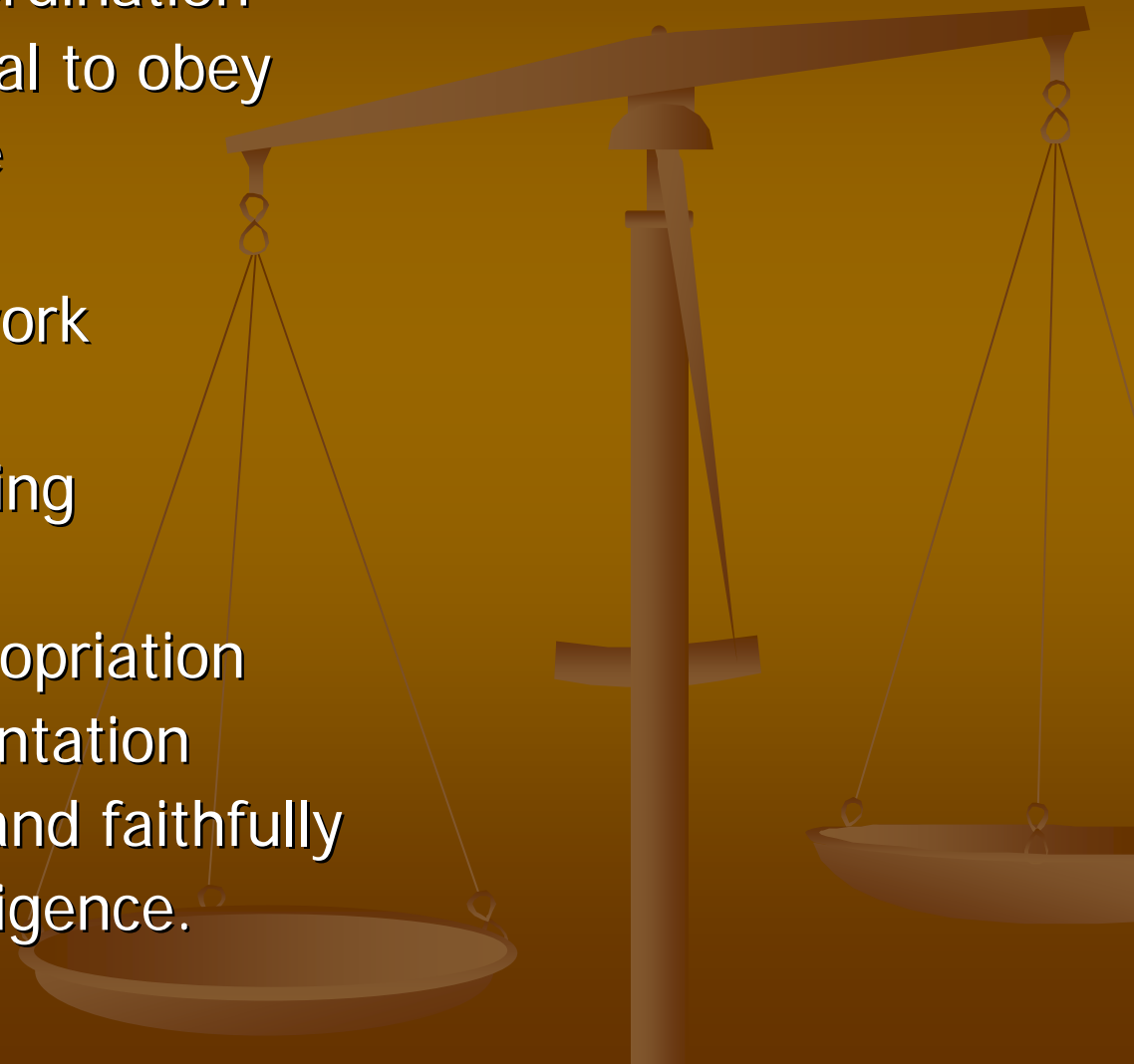
Section 14 implies misconduct as conduct of an employee that is inconsistent with the fulfillment of the express or implied conditions of his service.

Dictionary meaning – improper behavior or deliberate violation of a rule of standard behavior.

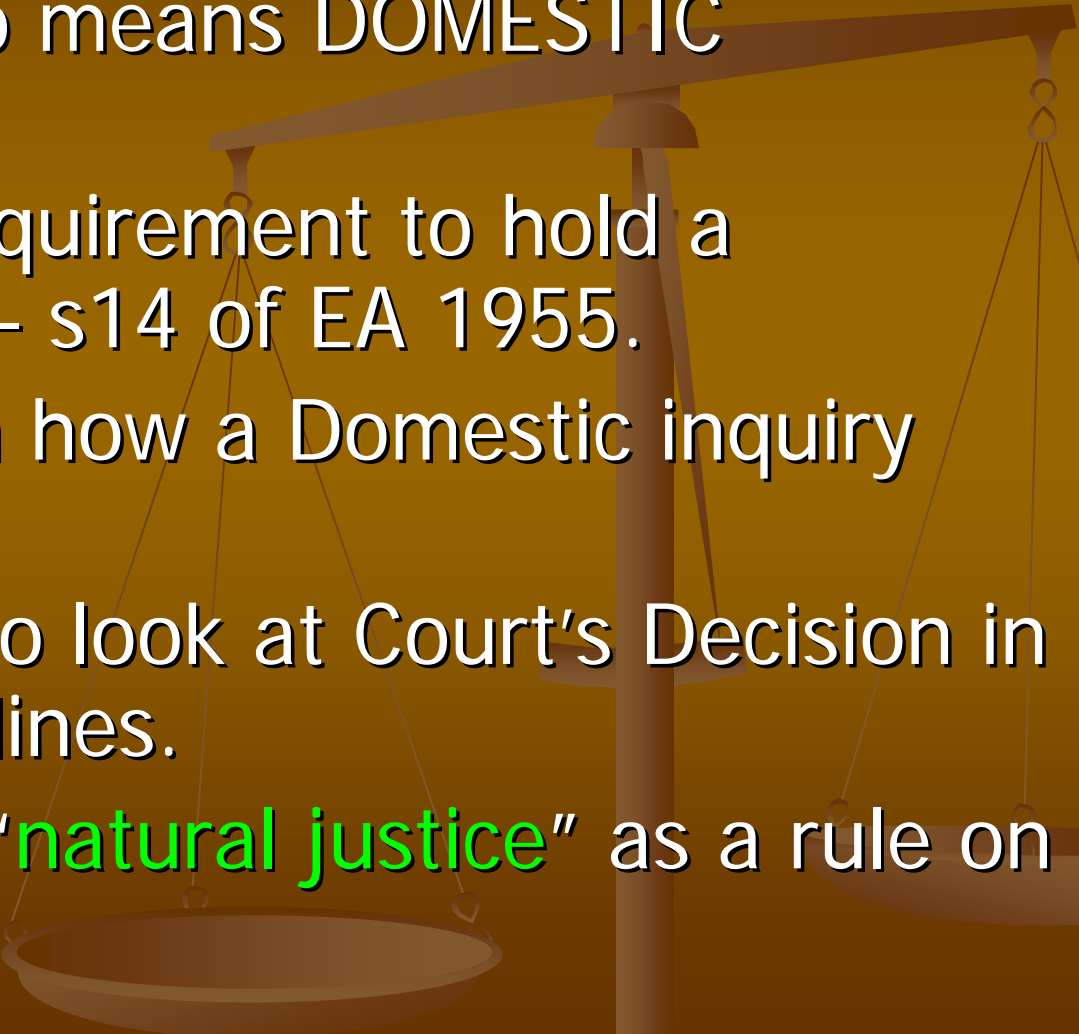
MISCONDUCT

KIND OF MISCONDUCT:

- 1) Disrespect and insubordination
- 2) Disobedience or refusal to obey
- 3) Lateness and absence
- 4) Sleeping on duty
- 5) Failure or refusal to work
- 6) Threat and assault
- 7) Gambling and quarreling
- 8) Theft and dishonesty
- 9) Cheating and misappropriation
- 10) Fraud and misrepresentation
- 11) Duty to serve loyally and faithfully
- 12) Duty of care and negligence.



DUE INQUIRY

- DUE INQUIRY also means DOMESTIC INQUIRY.
 - It is a statutory requirement to hold a Domestic Inquiry – s14 of EA 1955.
 - No specific rule on how a Domestic inquiry should be held?
 - As such we need to look at Court's Decision in coming to a guidelines.
 - Courts advocates “**natural justice**” as a rule on Domestic Inquiry.
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NATURAL JUSTICE



Courts defines two main rule in regards to “natural justice” ...

- a) Rules against bias – impartiality.
- b) Right to be heard - fairness.

Simply means that the workman who is being charged for misconduct have:

- 1) Reasonable notice on the case he has to meet.
- 2) Reasonable opportunity of being heard in his defence.
- 3) The hearing must be impartial – panel of judges must not be directly or indirectly a party to the case.

DOMESTIC INQUIRY

Sketch Plan

J2

J1

J3

S

W

PO

U1

D

J1/J2/J3 – Panel of judges

J1 – Chairman

W – witness

D - defendant

U1 – Union rep / colleague

PO – Prosecution Officer

S – Secretary

DI - Proceedings



1. Panel sits at the appointed time and venue to commence the inquiry.
2. The Chairman introduces the panel members to the defendant. Challenges or objections if any to be recorded.
3. Confirmation of the witnesses by parties, choice of common language as well as the representation for the defendant.
4. The Chairman reads and explains the charges to the defendant.
5. Records the plea of the defendant.
6. If the defendant pleads guilty, the Chairman will repeat the charges and explain the consequences of the offence and confirm the plea again. Both parties will be required to submit their cases to reinforce or to mitigate.

DI - Proceedings



7. If the defendant pleads not guilty, the process continues.
8. Prosecuting Officer presents his case and witnesses. Witnesses will be asked to relate their knowledge of the case to the panel through questioning process by Prosecuting Officer. The panel members may intervene to clarify.
9. Upon completion of the questioning, the defendant is given the opportunity to cross-examine the witness.
10. The Prosecuting Officer will then be given the opportunity to re-examine his witness.
11. This process is repeated for every witness that is brought in front of the panel.

DI - Proceedings



12. The witnesses of the defendant will go through the same process where the Defendant will conduct his questioning first, followed by the Prosecuting Officer in his cross-examination.
13. After all the witnesses and evidence has been put forward to the panel, both parties will be asked to make their submission of the case. All the facts and evidence of the case will be summarised at this step.
14. The Chairman will then close the inquiry and release the parties.
15. The panel will deliberate on the case and prepare its findings and recommendations for submission to the appropriate authority as required by the notice of the inquiry.
16. The appropriate authority will make the final decision based on the findings and recommendations of the panel. The defendant will then be informed of the decision in writing.

DI - The Role of Chairman

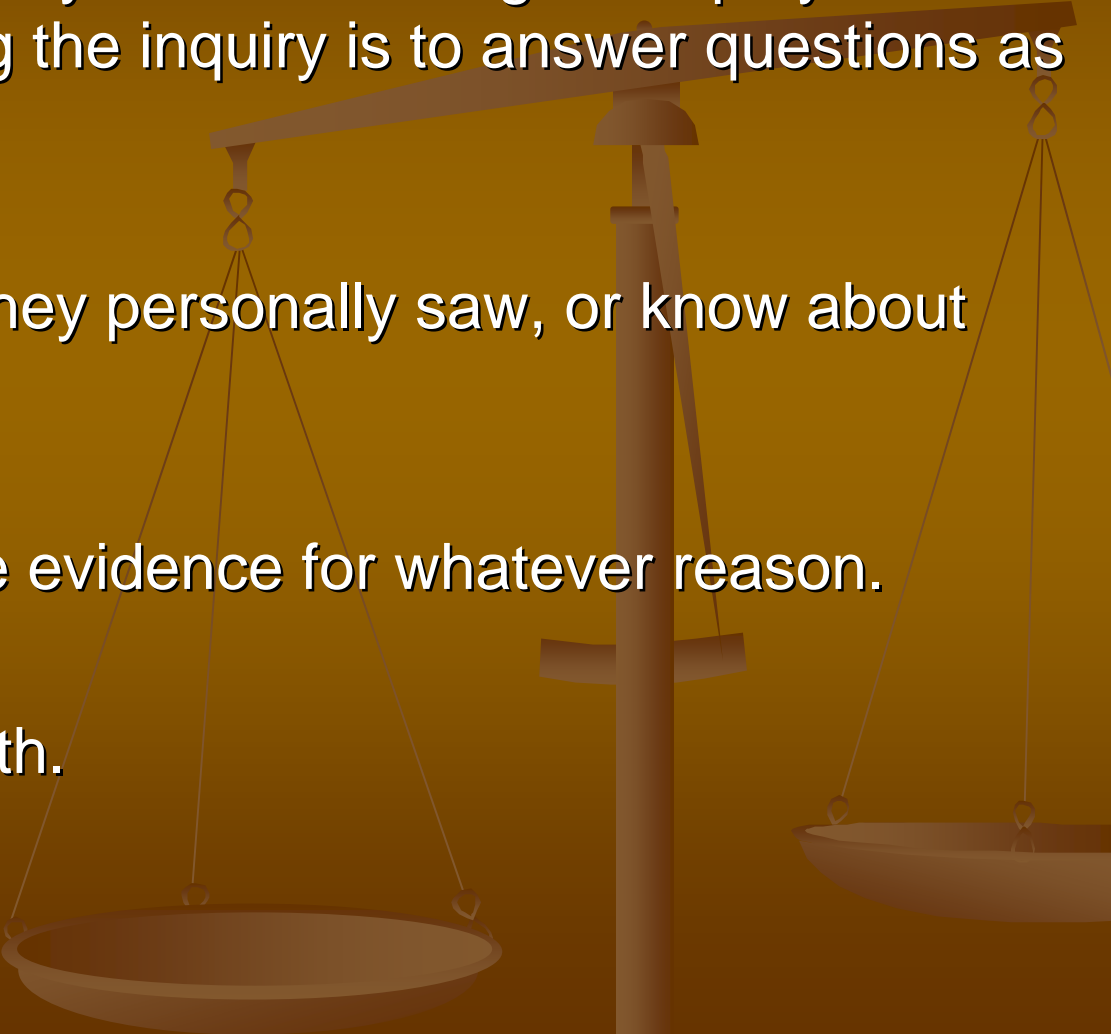
- ❑ To have overall control of the running of the inquiry.
- ❑ To ensure that the alleged employee understands the charge by reading and explaining its contents at the start of the inquiry.
- ❑ To allow the prosecutor, the alleged employee or his union official to submit their evidence.
- ❑ To ensure that all witnesses are produced to testify in front of the Panel.
- ❑ To keep all records, evidence and exhibits adduced during the inquiry.
- ❑ To delegate specific duties to the panel members as he thinks fit in the conduct of the inquiry.
- ❑ At the end of the inquiry, he is to deliberate on the case with the panel members and form up a finding and an opinion together with the recommendation on the disciplinary action to be taken against the alleged employee.

DI - Role of Prosecuting Officer

- ❑ To submit his case to the Chairman.
- ❑ To produce his witnesses in front of the panel and submit evidence therefrom.
- ❑ To submit exhibits for the case.
- ❑ To allow his witnesses to be cross-examined by the alleged employee or his union official.
- ❑ To cross-examine witnesses produced by the alleged employee.
- ❑ To make his submission at the close of the inquiry as allowed by the Chairman.

The union official representing the alleged employee will assume the role similar to that of the Prosecuting Officer, except that his role is to represent the alleged employee in making his defence

DI - Role of Witnesses

- ❑ The role for both the employer and the alleged employees witnesses testifying during the inquiry is to answer questions as directed to them.
 - ❑ They should state what they personally saw, or know about the case.
 - ❑ They should not fabricate evidence for whatever reason.
 - ❑ Their role is to tell the truth.
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DI - Role of Alleged Employee

- ❑ To be present in front of the Panel of Inquiry to defend himself.
- ❑ If he is represented by his union official, to allow him to question the witnesses.
- ❑ If he is not represented, to question the prosecution witnesses during cross-examination.
- ❑ To produce his witnesses in front of the Panel of Inquiry to defend himself.
- ❑ To make his submission at the close of the inquiry as his final defence.

It is to be noted that, should the alleged employee be absent or fail to attend the domestic Inquiry after being duly informed, without any reasonable excuse, the inquiry may proceed without him. Such an inquiry is allowable and referred to as ex-parte inquiry.

DI - Role of the Secretary

Normal proceeding in a DI, the Chairman / one of the panel members will write down all the proceedings (notes of the inquiry) but as per our Banks practice this duty is passed on to the Secretary... role of the secretary:

- ❑ To write down all proceedings (verbatim / typed), word for word, throughout the course of the Domestic Inquiry.
- ❑ Passed on all the notes of the inquiry to the Chairman.

To ensure that there is no dispute from the defence, the notes should be counter signed by the alleged employee.