

Seeing the Bigger Picture: Performance Management And A Supporting Role For The Employee Relations Process

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INTRODUCTION

A Performance Management System (PMS) is the formal process of goal setting. It assists in determining bonus percentages. This is the conventional role played by a Performance Management System (PMS) within an organisation. However, a properly utilised PMS has the potential to support the wider Human Resources (HR) structures and processes, especially the Employee Relations (ER) process. It can provide:

- a structured reinforcement to decision making during the probationary period,
- add a framework to a performance improvement process and, ultimately,
- can validate a decision to dismiss.

This article examines this conventional role and outlines why an organisation should incorporate their PMS into their wider Human Resources.

PERFORMANCE MANAGEMENT

Performance Management is traditionally utilized as a HR process to drive the achievement of organisational strategy through the setting and appraisal of goals and objectives. Performance Management is defined by Armstrong and Baron as a “process which contributes to the effective management of individuals and teams in order to achieve high levels of organisational performance”.¹ A PMS can thus focus an employee’s behaviour on those work/performance elements that provides the greatest return to the organisation. In some organisations, the PMS is also used to drive their variable reward strategy thus reflecting the maxim that ‘that which gets measured (and in this case rewarded), gets done’.

Recent research has shown that organisations which have a PMS are

¹ Michael Armstrong and Angela Baron, *Managing Performance* (2nd ed., 2005, CIPD).

more successful than those that do not.² Such programmes channel employees' time and energy towards a defined goal. The "alignment of goals is key because it clarifies the direction the company is headed and what part each individual plays."³

However, such a narrowly defined view of performance management ignores the role that a PMS can play in support of other HR activities in particular as part of the ER process.

THE EMPLOYEE RELATIONS PROCESS

Employee Relations is one of the most significant aspects of the HR role. In recent years, organisations have evolved from a confrontational Industrial Relations environment, with its focus on collective bargaining, to one that emphasizes a direct engagement with employees. This greater emphasis on developing a relationship directly with the individual rather than through a third party, such as a Trade Union, has brought with it a need to develop a different approach to "work systems, rewards, management-employee communications and employee development."⁴

As a result of this move to engage with the individual, organisations must consequently develop their processes to manage those situations where the relationship breaks down. While such processes can, and should, exist where a collective engagement continues to exist, they are of critical importance where there is no such third party support for the individual. The organisation must recognise the power imbalance in the relationship and provide a process accordingly. Equally, in an age where employees are increasingly challenging an employers right to apply arbitrary sanctions – and with an industrial relations system that is ever likely to punish any failure to follow due process – companies must ensure that their decision making process is beyond reproach. An orderly and well managed ER process is of no use if any decisions taken by the organisation are not based on objective and supportable facts. Any such omission can be costly in financial terms, in management time and to an organisation's reputation.

THE PROBATIONARY PROCESS

A structured probationary process is the first line of defence for any

² McDonald, Donohue, *Shield of Hewitts and Smith of University of Chicago*.

³ *Ibid.*

⁴ Gunnigle, Heraty, Morley, *Human Resources Management in Ireland* (2nd ed., Gill & McMillan, Dublin, 2002).

organisation in minimising potential issues down the line. Those companies that use a probationary process to validate their hiring decision, and if necessary terminate an employment at the end of that probation, are shown to have fewer long term employee relations problems. While managers may be reluctant to admit that they have made a flawed recruitment decision, the potential cost to the company of retaining a wrong employee in employment is far greater than accepting that no hiring process is perfect. If used purposefully, the probationary period can demonstrate to both parties whether or not a good match exists and whether the relationship should continue.

Use of the company's PMS ensures that a new employee's performance is monitored from the date of hire. By the immediate setting of goals, the new hire not only is appraised but also learns productive work habits and gets an opportunity to demonstrate their ability. It also begins the engagement process thus assisting with the assimilation of the new hire. As engaged employees are more likely to be productive ones, this leads to increased productivity from the beginning. The alternative is an employee without an understanding of the organisation's expectations of them or one who selects their own priorities.

A formal feedback session should take place at least once during this period, preferably at the mid-point. Any performance issues can be identified at this meeting and the employee given the opportunity, and support of the company, to address them. In the event that any such issues are identified, a further meeting should take place prior to the end the probationary period. Such a structured process ensures that there are no surprises, whether the decision is to confirm the employee, extend the probation or terminate the employment.

If progress has been made but the employee has not yet completely met the company's expectations, an extension to the probationary period is normal good practice and should be provided for within the contract of employment. However, companies should be aware that any extension should take into account the time limits of the Unfair Dismissals Acts (1977 to 2001). While there is a one-year's continuous service requirement for an employment to be subject to the requirements of the Act, a contracted notice period is counted as part of continuous service.

In a recent case at the Rights Commissioner, *Portroe Stevedores and A Worker*,⁵ the determination reviewed a company agreement in deciding the fairness of a dismissal. The employee's contract was terminated for

⁵ IR200100/04/D1.

poor performance after six months (a three month probationary period extended for further three months). The Rights Commissioner stated that “the Agreement ... is specific in that it sets down a procedure to be adapted where the competency of an employee is identified as being below the standard required”. A failure in this case to use a systematic approach to “remedy any gap that existed or, at the least, to show that the worker was incapable of performing his duties” resulted in an award, upheld and increased to €7,000 at the Labour Court.

In a separate case taken to the Labour Court,⁶ the employee was dismissed after 11 months on performance grounds. This occurred despite the previous full payment of his bonus. The employee stated that at no time was there any suggestion that his performance was poor or unacceptable. The Labour Court held that the “disciplinary procedures adopted by the company were inappropriate ... and did not convey Management’s view that the claimant’s employment was in jeopardy”. A €20,000 compensatory award for loss of employment was recommended.

In both of the above cases, it was the failure of the company to properly manage the under-performance that led to the upholding of the claims for unfair dismissal. Fairness and due process are considered to be of critical importance by Third Party Industrial Relations bodies who recognise that the balance of power in the employment relationship lies with the employer. All decisions to dismiss are deemed unfair and it is up to the employer to prove otherwise.

It is also worth noting that both cases were taken under section 20(1) of the Industrial Relations Acts 1969, thus avoiding the minimum service requirement of the Unfair Dismissals legislation. While only the party taking the case to the court, normally the employee, is bound by the recommendation, any such recommendation from the Labour Court carries significant weight.

OUTSIDE THE PROBATIONARY PROCESS

Not all performance issues can be identified during the probationary period. At other times, a structured Performance Improvement Process (PIP) can be used to assist underperforming employees. Use of a PIP is considered best practice and stands to a company should performance fail to improve and a decision to dismiss is deemed necessary. The PMS should, again, form the core of this process thus providing a consistent structured process.

⁶ CD/04/04 Recommendation No. 18014.

However, the PIP should not be confused with the normal performance management process. All parties should be clear as to the type of process that is being engaged in – the employee should be fully aware of the seriousness of the process and that a disciplinary process is the next step.

Where there is continued underperformance, the company can resort to a structured disciplinary process and, possibly, dismissal. By linking a PMS to your overall ER processes, the company provides a consistent approach to the management of performance. Both parties understand the process, avoiding the complication of using varied or even contradictory processes. At all times, the company can show that they have engaged with the employee providing opportunities for improvement that are clear and unambiguous and that they have the support of the company in achieving the requisite changes in performance or behaviour. As part of good practice, all stages of dealing with performance issues should be documented, with copies available to both parties. This will also allow the company to support any case that may end up at Third Party Dispute Resolution.

SUPPORT AT THIRD PARTY TRIBUNAL

Despite the improvements brought about by the increasing professionalism of HR, a significant number of claims for unfair/discriminatory dismissal are successfully taken under various pieces of protective legislation. The statutory courts and tribunals have shown an inclination to provide substantial awards where it is shown that the employer has abused due process.

In UD712/ 2002, the Employment Appeals Tribunal (EAT) awarded €130,000 to a senior manager whose position was terminated according to the claimant without any “opportunity to state his case” nor “training to remedy the situation”. The Tribunal concluded that “while the respondent had concerns regarding the performance and output of the plant, the concerns were not wholly, or mainly attributable to the claimant’s performance”. Management at the company failed to provide any structure to manage the concerns expressed about the claimant. Although these concerns were raised

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with the claimant's boss by a senior manager, he subsequently "could not recall specific instances" when he had raised these concerns with the claimant. The failure to use a PMS to either confirm or alleviate concerns in relation to the employee proved costly to the organisation. As stated by the EAT, these concerns were ultimately found to be attributable to the company's failure to provide replacement machinery, a fact which the witness "was not in a position to dispute".

CONCLUSION

A Performance Management System is an important part of the professional HR armoury. While its obvious use is in supporting the achievement of the organisational strategy, a PMS has a supporting role in creating a positive employee relations environment. Failure by the company to properly include a PMS, for example, in the probation or disciplinary process can have a serious financial implication. Such inclusion can allow the resolution of many issues without the need to resort to the finality of a dismissal. It can also provide a protection to the company by proving that all steps possible were taken before such a final decision was taken and, more importantly, that decision was valid and reasonable. The consistency of such an approach can also have profound effects on the relationship between an organisation and its staff. In an era where employee engagement is considered critical to the success of an organisation, the absence of processes or the use of contradictory processes can undermine the organisation's attempts to develop mutual respect.