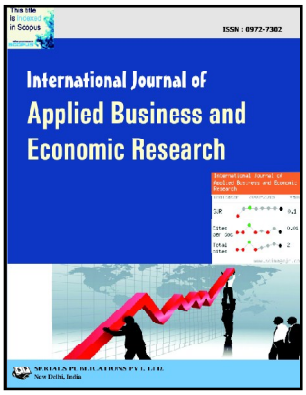

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Employee Grievance Mediation Process: Rethinking its Modalities

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Abstract: Grievance mediation is not a new method for settling grievance disputes although its success is eclipsed by its shortcomings. Although the importance of grievance mediation cannot be ignored, it is imperative to re-assess this technique. Therefore, the primary aim of this article is to review the modalities of employee grievance mediation in the workplace. In this regard, the interactional justice theory is evoked to demystify the complexities associated with grievance mediation. Further, this article presents a critique of mediator's role, strategies and tactics in grievance mediation process. The strengths and weaknesses of grievance mediation process are explicated succinctly. Additionally, a brief discussion of grievances not suitable for mediation is incorporated as a further extension of the debate about the efficacy of mediation in addressing different forms of grievances. It is argued that the mediator should not dictate or impose the outcome upon the disputants. At the same time, the mediator needs to remain ethical and independent. Moreover, active participation of disputants in the mediation process is essential for successful settlement of grievance disputes. Besides, power imbalances between disputants unfairly place the less powerful parties in an irregular position. Considering the intricacies pertaining to grievance mediation, a careful and thoughtful decision needs to be made before initiating grievance mediation process.

Keywords: dispute, grievance mediation, grievant, interactional justice

I. INTRODUCTION

Grievance mediation is a voluntary, nonbinding process whereby a mediator facilitates a negotiated settlement between parties in an impartial manner (Birken, 2000). According to Irvine (1993), mediation is "a process through which two or more disputing parties negotiate a voluntary settlement of their differences with the help of a 'third party' (the mediator) who typically has no stake in the outcome. At the same time, Wall, Stark and Standifer (2001) and Fitzpatrick (2006) point out that mediation is a cautious and thorough process whereby two parties choose to involve a third party to resolve a grievance dispute which translates into a win-win outcome. In other words, the aim of the mediator is to persuade negotiators though plausible arguments and proposals in order to achieve a unanimous settlement of grievance dispute (Irvine, 1993).

Skratek (1990) points out that grievance mediation is a voluntary process, which implies that disputants are at liberty to withdraw from the process if it does not seem to have desired effects. Therefore, in the context of this article, grievance arbitration is a voluntary, nonbinding process where the grievant and employer involve a third independent party to assist in resolving a grievance dispute.

Regarding the involvement of the third party in resolving grievance disputes, the employer and the employee have an option of utilising the services of an external or internal mediator. In Bennet's (2017) analysis, internal mediator are able to dedicate sufficient amount of time in order to resolve a dispute more effectively in comparison to the external mediator; although training internal mediator could be costly. Internal grievance mediation mechanism is commonly use in public institutions in the United States and Britain (Galiakbarova and Saimova, 2016).

Noteworthy, grievance mediation is not a new technique for resolving employee grievances although its success appears to be sporadically reported (Feuille and Kolb, 1994). Grievance mediation emerged in the 1930s in order to resolve labour related disputes although it gained popularity in the 1980s (Feuille, 1992). Additionally, between the 1950s and the 1960s grievance mediation disappeared. It was during this period when more adjudicatory form of arbitration was adopted which created tension between those representing employers and employees as they pushed for anticipated outcomes (Feuille, 1992). Nevertheless, Galiakbarova and Saimova (2016) reveal that mediation of dispute is seldom utilised in Europe than United Kingdom and Unites States of America.

Feuille and Kolb (1994) argue that grievance mediation has been hailed as the most successful method in grievance dispute resolution yet disputants seem to be reluctant to use this method. Nevertheless, grievance mediation process is influenced by numerous factors, namely: grievance issue, mediator' skills, disputants' attitudes, and the environment (Wall *et al.*, 2001). On the one hand, a pessimistic view of mediation process is that it plays a trivial role in redressing employee grievances. Moreover, the outcome of this process is determined by circumstances. On the other hand, an optimistic view is that mediation is an important process for resolving grievances involving employees and their employers under different situations (Feuille and Kolb, 1994).

Ideally, mediation should present disputants with an opportunity to exchange information about grievance dispute in a profound manner and allow for extensive discussions of views (Goldberg, 2005). According to Erasmus, Swanepoel, Schenk, Van der Westhuizen and Wessels (2005), grievance mediation is viewed as an important process for numerous reasons:

- When disputants are no longer in a position to resolve a dispute on their own.
- When neither party to a dispute is prepared to accede to an offer.
- When the disputants are polarised in terms of their preferences and demands.
- When it becomes increasingly essential to offer multiple options to the parties or disputants so that they can start to gravitate towards one another.

The primary aim of this article is to review the modalities of employee grievance mediation in the workplace. The interactional justice theory is applied to demystify the intricacies associated with grievance mediation. Further, a critique of mediator's role, strategies and tactics in grievance mediation process is presented. Again, informative explanations about the strengths and weaknesses of grievance mediation

process are presented. In addition, a brief discussion of grievances that are not suitable for mediation is incorporated as a further extension of the debate about the effectitveness of mediation in addressing different types of grievances. This is in line with Feuille's (1992) argument that although grievance mediation is an important as grievance redressal technique, it needs to be re-examined meticulously. In support of this view, Feuille and Kolb (1994) state that the argument that grievance mediation is efficient in addressing disputes needs to be revisited, particularly, if grievances remain unresolved after mediation attempts. Considering the intricacies pertaining to grievance mediation, a careful and thoughtful decision needs to be made before initiating grievance mediation process.

II. THEORETICAL FRAMEWORK

The theoretical framework is "the foundation from which all knowledge is constructed (metaphorically or literally) for a research study." In fact, theoretical framework forms a pivotal part of the research process because it is a reflection of how the researcher views the world (Gant and Osanloo, 2014). In essence, the theoretical framework informs a research process but in the context of what is being researched. For the purposes of this article, the interactional justice theory is applied.

2.1. Interactional Justice Theory

The concept of interactional justice was introduced by Bies and Moag (1986) in the article entitled "Interactional justice: communication criteria of fairness" (Dai and Xie, 2016). Interactional justice refers to "concerns about fairness of interpersonal communication" (Karriker and Williams, 2009). According to Barkhordar, Ahmadi, Yavari and Nadiri (2016), interactional justice is "the manner through which organisational justice is transferred from supervisor to subordinate employees and it includes components of the process of communication such as manners, honesty and courtesy between the source and the recipient." The interactional justice theory is predicated on four basic principles, which are as follows: justification (providing clarity for certain decisions), truthfulness (avoiding underhandedness), respect (courteous), and propriety (avoiding inappropriate remarks and unfair judgemental opinions) (Colquitt, 2001; Yadav and Yadav, 2016).

Moreover, interactional justice serves as an indication of quality of treatment an employee receive in the workplace (Nidhi and Kumari, 2016; Kalay, 2016). Dai and Xie (2016) argue that interactional justice places more emphasis on the "attitudes and behaviours of the exchangers." This suggests that the attitudes and behaviours of disputants and mediators are important determinants of the fruitful mediation process. In contrast, power differentials can be associated with inequity or lack of fairness (Ngahu, Kibera and Kobonyo, 2016). Therefore, it is the primary aim of interactional justice to seek to create a balance, particularly during interaction of grievance disputants in the mediation process. In Ngahu *et al.*'s (2016) view, interactional justice theory pursues creating of psychological balance when it is perceived to be lacking.

The perceptions of interactional justice in the workplace determines the attitudes and behaviours of an employee (Nidhi and Kumari, 2016). Hence, Bakhordar *et al.* (2016) mention that interactional justice could be associated with "cognitive, affective and behavioural reactions…" In other words, if employees perceive fair treatment during mediation process, the outcomes of such process could also be perceived as being fair. Perceived fair treatment of employees enhances employees' sense of belonging and morale in the workplace (Kalay, 2016; Yadav and Yadav, 2016; Dai and Xie, 2016). According to Karriker and Williams

(2009), one of the shortcomings of the interactional theory is that it lacks clarity in terms of its link to procedural justice. This theory is divided into two distinct sub-dimensions: informational justice and interpersonal (Kalay, 2016). In relation to informational and interpersonal justice, the principle of respect and propriety are applicable (Colquitt, 2001).

2.1.1. Information Justice Theory

Informational justice requires "fairness of information provided during the procedures and outcome distribution related to issues such as the accuracy of the information and timeliness with which the information was provided" (Karriker and Williams, 2009). Moreover, informational justice holds that any information shared between different stakeholders within the organisation should be reasonable, timely and specific (Colquitt, 2001). In this sense, information shared among the disputants during mediation process ought to authentic, reliable and useful. Essentially, information shared during mediation process should be adequate and appropriate for the purpose (Ngahu *et al.* 2016).

2.1.2. Interpersonal Justice Theory

Interpersonal justice is "understood as whether a person in authority treats people with respect and dignity while implementing organisational processes and procedures (Yadav and Yadav, 2016). Greenberg (1991) found that previous literature on interactional justice theory mentioned unequivocally that an individual's perception of fairness is influenced by treatment received from other people. Colquitt (2001) asserts that fairness should be manifested through humane, dignified and respectful treatment of other people. In this regard, Ngahu *et al.* (2016) emphasise that courtesy is an indispensable aspect of human interaction and should be encouraged. Therefore, interpersonal justice theory demand that disputants, particularly employees should be treated fairly and courteously during grievance mediation process. The management should not ostracise employees because of filing grievances in the workplace. Dai and Xie (2016) postulate that the attitude of a person of authority in implementing certain decisions serves as a major determinant of the perceptions of fairness in the workplace.

III. MEDIATOR'S ROLE, STATEGIES AND TACTICS IN GRIEVANCE MEDIATION

In the performance of mediation duties, a mediator needs to communicate effectively with the disputants. According to Feuille (1992; Godlberg, 1982), a mediator can arrange one-on-one deliberations with disputants in order to highlight the strengths and weaknesses of the positions and arguments. Alternatively, a mediator may provide an advisory opinion regarding the issue at hand. Mediators should strive to persuade disputants to reconsider their views or perspectives when dealing with variety of issues (Feuille and Kolb, 1994). In keeping with this view, Bendix (2001:557) states that in an attempt to resolve grievance issues, a mediator may persuade parties to gravitate towards one another so that a mutually agreed outcome could be reached. Nevertheless, the mediator will have to guard against advancing the interests of one party at the expense of the other. In other words, although the mediator may be persuasive in approach, care should be exercised in order to enhance credibility and trust. Bendix (2001) accentuates that mediators should only "act in an advisory and conciliatory capacity." Therefore, under no circumstances should mediators attempt to impose their views upon disputants. Although some authors (Bendix, 2001; Feuille and Kolb, 1994) argue that a

mediator does not have powers to impose an outcome in relation to a grievance dispute, Wall *et al.* (2001) contend mediators may exercise the powers to impose an outcome uponqqqq11 disputants.

Furthermore, mediators have a duty to educate disputants during the negotiation process and ensure the concessions or compromises are understood by all parties concerned (Wall *et al.*, 2001). In doing so, the mediator may engage each party to the grievance dispute privately (Goldberg, 2005). Agapiou (2016) accedes that mediation process is meant to empower the disputants by allowing free flow of information between parties in order find unanimous settlement. In Fitzpatrick's (2006) analysis, this should allow the mediator to encourage any party to a grievance dispute to make a compromise without pressurising the parties to reach an agreement. Equally important, Wall *et al.* (2001) argue that the mediator's one-on-one discussion with disputants is necessary to alleviate a hostile environment. Besides, this will present an opportunity for each party to divulge information that was not revealed during joint sessions due to the presence of the other party (Irvine, 1993). However, the mediator should also remember that his or her role is an advisory one, particularly if parties fail to agree on certain issues. This means that such an advice shall not have any binding effect upon the disputants concerned (Goldberg, 2005). Interestingly, Goldberg (2005) and Irvine (1993) argue that information shared during mediation cannot be utilised against any party to the grievance mediation process if the matter remains unresolved. This assertion requires further scrutiny because it not yet clear whether self-implicating statement made by either party may not be put forward during arbitration process. Nevertheless, this should be a concerning issue, especially if grievance dispute cannot be resolved through mediation.

Once mediation process is started or initiated, it is important to actively engage with the parties concerned by requesting to submit written submissions to the mediator (Erasmus *et al.*, 2005). By so doing, the mediator will have a clear idea about the extent and nature of the grievance dispute under consideration. The role of the mediator is not to enforce ideas upon the parties concerned (Bennet, 2017), hence submissions from disputants are important at the inception of mediation process. In addition, mediators must not be tempted to make impulsive and premature proposition but should rather remain as much neutral as possible whilst encouraging parties to appraise their initial positions (Erasmus *et al.*, 2005). Goldberg (2005) argues that such a role constitutes an evaluative feedback, therefore, it should not be construed as practice of law or passing a judgement. The mediator has to spur the disputants to examine alternative solutions and state the importance of introducing proposals that will result in mutual satisfaction for parties involved (Irvine, 1993). In this regard, it is imperative to emphasize that the mediator is expected to offer legal information instead of "giving legal advise" (Goldberg, 2005). At the same time, Goldberg (2005) concedes that the mediator's role of predicting the possible outcomes of the arbitration could be interpreted as an infringement of the principle of neutrality. Basically, Irvine (1993) states that the mediator should only consider providing a non-binding advisory opinion after a failure to settle a grievance dispute.

A mediator may use three distinct strategies in settling disputes, namely: directive, nondirective and reflexive. Directive strategy means that "the mediator actively promotes a specific solution to pressure or manipulate the parties directly into ending the dispute." Nondirective strategy suggests that the mediator endeavours to create an opportunity for disputants to identify mutually acceptable solutions without or with little involvement of the third party. Reflexive strategy holds that the mediator makes efforts to acquaint himself or herself with a grievance dispute in order to identify settlement alternatives (Carnevale and Pegnetter, 1985).According to Bennet (2017), directive strategy should be given preference because it

allows the mediator to make proposals that may be accepted or rejected by the disputants. Contrary to this notion, Agapiou (2016) argues that directive meditation presents an ethical dilemma to the mediator because the third party must avoid imposing own terms and preferences. However, a mediator's choice of strategy is influence by the urgency and sensitivity of the matter at hand. In this sense, the mediator may decide to apply a heuristic or compensatory strategy. "Heuristic strategies involve the use of minimal information and time, as well as the consideration of few alternatives and problem attributes. By contrast, compensatory strategies extensive amount of information and time; herein, many alternatives and attributes are also considered" (Wall *et al.*, 2001). Additionally, Wall *et al.* (2001) maintain that the mediator's goal to remain neutral and seem to be neutral does not influence a choice of technique or mediation method. Therefore, it is imperative to ensure that mediation is technique is applied consistently to all disputing parties.

The mediator must have a good interpersonal, communication and conflict handling skills in order to be effective. Additionally, a mediator must be able to handle and deals with a confidential information (Erasmus *et al.*, 2005). Similarly, a mediator's level of training and knowledge of rules governing mediation process may influence the methods and tactics employed in redressing a dispute (Wall *et al.*, 2001). Additionally, a mediator should have sufficient knowledge and understanding of labour legislation as well as collective agreement. Besides, a mediator needs to be more tactful and diplomatic in handling grievance mediation process (Bendix, 2001). In essence, any effort by a mediator towards redressing a grievance dispute must never be construed as an endeavour to discredit any party to the dispute. Pragmatically, disputants are of a view that a mediator will demonstrate or have relevant knowledge and skills to assist in redressing a grievance dispute (Wall *et al.*, 2001).

The mediator must be an independent, experienced and skilful individual appointed unanimously by disputants (Bendix, 2001) This suggest that a mediator must not biased against any party to the grievance dispute. Apart from the issue of neutrality of the mediator, other factors pertaining to the mediator's trustworthiness, credibility and the ability to handle confidential matters must be considered rigorously (Bendix, 2001). Irvine (1993) asserts that the mediator must be "fair, impartial, and non-judgemental; the process must be voluntary and free of bias; and parties must be equal in the dispute." Concerning the mediator, Erasmus *et al.* (2005) state that the mediator should be an impartial, trustworthy and highly esteemed individuals who act as a peace-maker in an endeavour to broker an agreement. Equally important, Erasmus *et al.* (2005) suggest that if the mediator is of a view that he or she is conflicted, it is imperative to withdraw from mediation process. At the same time, the mediator should be wary of employers who may attempt to use mediation process to achieve unethical goals, for instance, inducing an employee to resign (Agapiou, 2016).

The scarcity of resources could have an adverse impact on the realisation of grievance settlement (Wall and Lynn, 1993). In fact, lack of financial resources can affect mediation institutions (Bower *et al.*, 1982). In this regard, mediators are also careful about employing techniques that could be costly in the process of resolving grievances. Therefore, mediators do analyse costs and benefit before applying any strategy (Wall *et al.*, 2001). This is done to avoid any possible waste of scarce resources.

Wall *et al.* (2001) and Wall and Lynn (1993) emphasise that disputants' commitment to mediation process is an important precondition for this process to be successful. In keeping with this view, Rocker (2012) states that mediation will not yield positive outcome if the disputants do not cooperate with the

mediator. In Bendix's (2001) observation and interpretation, grievance mediation is bound to fail dismally if commitment from disputants towards resolving an impasse is lacking. This is based on the fact that commitment determines to a larger degree, achievement of grievance dispute settlement (Wall and Lynn, 1993). In other words if the disputants are not receptive to the mediation process, the mediator is bound to fail in his or her role.

IV. BENEFITS OF GRIAVANCE MEDIATION PROCESS

The grievance mediation process is linked to various benefits which are discussed below.

4.1. Cost savings

Grievance mediation reduces costs that would otherwise be incurred if grievance issues were to be arbitrated (Skratek, 1990). Feuille (1992) also reported the issue of cost savings in relation to grievance mediation, especially financial savings. In this regard, Skratek (1990) accentuates that the time required by legal representatives during mediation is minimised to resolve grievance disputes. Mediated grievance disputes could be resolved within a day. This suggests that more savings would be made, particularly in respect of time and money. Generally, this is achieved by excluding attorneys from the mediation process (Bower, Seeber and Stallworth, 1982; Birken, 2000). Furthermore, Feuille and Kolb (1994) opine that mediation "enables disputes to be resolved faster, cheaper, in a less adversarial manner, and with a drastically reduced reliance on lawyers, briefs and other legalistic trappings". Goldberg (2005) postulates that grievances are resolved speedily during mediation process because it is informal and allows multiple grievances to be resolved within a limited space of time. Clearly, grievance mediation process is more expeditious in resolving grievances (Feuille, 1992). Birken (2000) mentions that mediating a grievance can take less than fifteen days to conclude whereas arbitration can take almost nine months before an award could be delivered. Nevertheless, Roehl and Cook (1985) argue that once off mediation process may not be able to address a grievance dispute. Consequently, a grievance may have to be dealt with over an extended period depending on the complexity of the matter.

4.2. Increased level of satisfaction

Roehl and Cook (1985) found that approximately 80-89% of grievance disputes resolved through mediation results in great satisfaction for parties involved. Consistent with this finding, Birken (2000) states that 76% of disputants are reportedly found to be satisfied with grievance mediation process. However, Roehl and Cook (1985) indicate that delaying tactics in terms of complying with mediation agreement tends to be more problematic because parties seem to be reluctant to ensure compliance within a reasonable period. Skratek (1990) highlights that grievance mediation results in great satisfaction for disputants in three different ways, namely: procedural, substantive and psychological satisfaction. Procedural satisfaction implies that disputants are content about the procedures adopted towards mediating a dispute. Moreover, substantive satisfaction refers to disputants" satisfaction with the final outcome of the grievance mediation process, particularly when a grievance issue is resolved amicably. Psychological satisfaction refers the extent to which the disputants are content about their involvement and contributions as active partakers during mediation process (Skratek, 1990).

4.3. Achieves lasting settlement owned by the disputants

Grievance mediation allows the employees and employers to engage in a meaningful way by sharing information that contributes towards finding a lasting solution to grievance disputes (Feuille, 1992). Moreover, this can be enhanced by allowing employees and employers or their representatives, sufficient opportunity to articulate their standpoints or arguments (Goldberg, 2005). Besides, Goldberg (2005) and Hodges (2004) state that grievance mediation leads to improved relations between employees and the employers.

4.4. Positive influence on negative conflict culture

Birken (2000) asserts that mediation promotes mutual understanding and cohesion between disputants, particularly during joint discussions. Grievance mediation can improve the disputants' reliance on collective bargaining in addressing their grievance disputes (Bower *et al.*, 1982). In fact, frank deliberations during mediation process lead to the generation of new or innovative ideas for resolving grievance issues (Skratek, 1990). Goldberg (2005) points out that a non-adjudicative form of grievance mediation creates an environment where disputants can easily resolve conflict without involving legal representatives. In other words, the disputants must be given sufficient time to determine solutions to their own problems through facilitation by the third party.

V. CRITICISMS AGAINST GRIEVANCE MEDIATION

The benefits of grievance mediation tend to be eclipsed by disadvantages. The ensuing discussion below focuses on disadvantages of grievance mediation process.

5.1. Solution is not guaranteed

Wall *et al.*, (2001) state that an integrative technique does not yield desired outcome if disputants do not have common ground due to a desire by either parties to emerge victorious. When disputants chose to employ mediation in resolving their disputes, they ought to have a desire to settle such disputes. In fact, grievances should be referred to mediation after a thorough examination of circumstances that may impede resolution of grievances (Skratek, 1990). Due to the shortcomings associated with grievance mediation, it is essential to screen disputes that can be mediated appropriately and successfully (Feuille and Kolb, 1994).

5.2. Mediation is weak

Mediation cannot be considered as an enduring grievance redressal method because it fails to resolve difficult disputes (Feuille and Kolb, 1994). In fact, grievance mediation will not achieve desired outcomes if either party to the grievance objects proposed solutions. This indicates that an impasse can be reached easily parties fail to attain mutual agreement and understating on issues (Feuille and Kolb, 1994). In relation to this concern, Goldberg (1982) states that the mediator's failure to communicate persuasively and effectively can contribute to collapse of negotiations during mediation processes. According to Feuille and Kolb (1994), the mediator's goal of attempting to attain a mutually agreed outcome is problematic considering that initial steps had failed to produce desirable outcomes. In other words, this process could be seen as a futile exercise because of its continued reliance of mutual cooperation and understanding. This implies that decisions that appear to favour either of the parties concerned may not be accepted. Therefore, this

can be seen as a complete ignorance of the fact that grievance mediation process is initiated in quest for just and fair solution rather than mutual compromise (Feuille and Kolb, 1994). This shortcoming of grievance mediation creates an impression that mediation is a "second class justice" (Roehl and Cook, 1985).

5.3. Managerial reluctance

Managers tend to be reluctant to employ grievance mediation because they consider it a technique intended to influence decisions in favour of the grievant (Feuille and Kolb, 1994). This suggests that managers perceive grievance mediation process as less favourable grievance redressal method. Similarly, Goldberg (1982) indicates that employers reject mediation because it is less costly, which could make it easy for employees and unions to continuously challenge management decisions. Nevertheless, Feuille and Kold (1994) state that most parties that have utilised grievance mediation in the past have reported great satisfaction about the mediation despite managerial reluctance to engage in this process.

5.4. Lack of trust

Trust is "described as a positive expectation is based on the behaviour of another, under conditions of vulnerability and dependence" (Dickie, 2015). One of the determinants of successful grievance mediation process is trust. If disputants do not trust one another, it will be difficult to reach a mutually agreed resolution. In this regard, It is essential for each party to recognise and accommodate the perspectives of the other party to the grievance dispute (Feuille and Kolb, 1994). In this regard, Notter (1995) state that reciprocal and conciliatory behaviour is essential in order for disputants to start regaining trust. However, a challenge is that the disputants may have an insatiable desire to emerge triumphant in the dispute rather than achieving a win-win outcome. Such desire creates an adversarial aura where employees as grievants may place an economic pressure on the employer in order to force an outcome favourable to them (Feuille and Kolb, 1994).This may happen for various reasons and under different circumstances. On the one hand, employee representatives may reject a compromise due to fear of criticism that they failed to protect employee interests. On the other hand, employers' representatives may do the same because they do not want to be labelled as weak or being ill equipped to defend the employer (Feuille and Kolb, 1994).

The employee representatives may find themselves in an anomalous position, especially if they want to accede to a compromise whereas employees insist on win-lose outcome. In the same way, supervisors who provoke employees by continuously making decisions that are not consistent with established procedures and policies (Feuille and Kolb, 1994) can exacerbate the situation. In relation to this concern, Notter (1995) state that grievance mediation requires trust which is predicated on shared commitment and mutual respect. Therefore, when grievance mediation process is adopted, the disputants must be willing to cooperate and commit to the final outcome (Feuille and Kolb, 1994). Additionally, positive attitudes of the disputants and problem solving skills of the mediators could be seen as major determinants of success in grievance mediation process (Feuille and Kolb, 1994).

5.5. Lack of support for mediation process

Feuille and Kolb (1994) argue that arbitrators who tend to benefit from arbitration process do not favour grievance mediation. Based on this argument, grievance arbitration creates an additional income for arbitrators, especially when considering the high costs associated with arbitration and the time it take to

arbitrate. To the extent that grievance mediation remains doubtful about redressing employee grievances, disputants will seldom support it. The effectiveness of grievance mediation will be largely determined by the manner in which disputants conduct themselves during mediation process (Skratek, 1990). In fact, grievance mediation fail due to disputants' obsession with their original positions and interests (Skratek, 1990).

5.6. Power relations

According to Roehl and Cook (1985), "power differentials between disputing parties may result in the more powerful party refusing to participate in mediation or dominating a hearing to the point of intimidating the less-powerful party into a potentially inequitable agreement." Power disparities is problematic in grievance mediation, hence a less powerful party may latter claim implied coercion to agree to mediation terms, which breeds dissatisfaction about the process (Roehl and Cook, 1985). Therefore, mediation poses a serious challenge to a situation where power imbalance negatively influences the attainment of just and fair mediation outcome. For instance, the imbalance of power between the harasser and the victim implies that the victim cannot enter into a mediation agreement freely, knowingly, and without fear or coercion." (Irvine, 1993). Hodges (2004) argues that an informal dispute resolution mechanism such as mediation disadvantages the less powerful individuals, particularly employees who are less skilled. The inclusion of attorneys during mediation could contribute to creation of power balance although the costs may be exorbitant.

VI. GRIEVANCES NOT SUITABLE FOR MEDIATION

Mediation is "not suitable for all types of grievances" (Irvine, 1993). In this regard, it is important to start by identifying the two types of disputes which may be referred to the mediator for mediation. Firstly, disputes of right, which is defined as a dispute regarding the interpretation of existing rights or collective agreement, for instance, unfair dismissal and discrimination. Such disputes are legal in nature and can be difficult to mediate; therefore, disputes of rights can be resolved through arbitration process (Erasmus *et al.* 2005). Secondly, disputes of interest, which is a dispute concerning matters of mutual interest between the employer and the employee where the disputants do not have an established right to the demands, for example, salary (Erasmus *et al.*, 2005). Worth noting, "the relative unsuitability of some grievances for mediation does not mean that they cannot be resolved in mediation. No matter how complex the factual issues, how firmly held the parties' positions, or how important the issues, final resolution through mediation is possible, perhaps even more frequently than the parties might anticipate" (Goldberg, 1982).

According to Bowers *et al.* (1982) issues related to employment discrimination, management policies and pensions are not suitable for resolution through grievance mediation. In fact, policy and discipline issue have been found to be difficult to resolve through negotiations (Tjosvold and Morishima, 1999). Again, Tjosvold and Morishima (1999) point out that grievances in respect of work allocations are not easily resolved in comparison to those concerning working conditions. Further, Irvine (1993) and Hodges (2004) contend that sexual harassment grievances are not suitable for mediation since they constitute a serious offence by the harasser and due to the power differentials between the harasser and victim. Moreover, the manner in which sexual harassment incidents are treated is a clear manifestation of how women are treated in the workplace. Therefore, attempts at mediating sexual harassment case may be seen or interpreted as "trivialising the seriousness of sexual harassment and maintaining an inhospitable environment for female workforce." Hodges (2004) points out that sexual harassment incidents should be handled with a

greater degree of caution and sensitivity. Contrary to the aforementioned views, Skratek (1990) argues that discipline and discrimination issues can be effectively resolved through mediation process. However, Tjosvold and Morishima (1999) note that grievance disputes that are difficult to resolve test the mediator's conflict handling skills as well as the ability to communicate their perspectives more effectively. Although mediation is fraught with a degree of difficulty, it presents employees and employers with an opportunity to negotiate their preferences in a meaningful fashion.

VII. CONCLUSIONS AND RECOMMENDATIONS

Bases on the foregoing assessment of grievance in the workplace, it is clear that resolution of grievances through mediation is one of the difficult tasks yet not impossible. Indeed, grievance mediation could be a major challenge if is trivialised by those who are involved in the process. In order to unravel a conundrum pertaining to the intricacies of grievance mediation, an interactional justice theory should be applied. This theory is predicated on four basic principles, thus, justification, truthfulness, respect and propriety. Essentially, the parties involved in the grievance mediation process should adhere to the aforementioned basic tenets. Moreover, interactional justice theory advocates fair treatment for the disputants (providing accurate and relevant information, and treating employees with respect and dignity).

Further, the mediator should be able to communicate effectively in order to build and enhance credibility in the process of working towards grievance settlement. In doing so, the mediator needs to be tactful and diplomatic because disputants may need to be educated about resolving their own problems. Although directive grievance mediation strategy is preferred, the choice of strategy to be used must be dictated by prevailing circumstances and urgency to resolve a grievance dispute. Similarly, a selected strategy should be complemented by comprehensive conflict handling skills. Equally important, the mediator needs to remain ethical and fully independent. In other words, any disputant must not taint the mediator's neutrality with undue influence during mediation process.

Furthermore, grievance mediation is recognised and rated highly for its cost saving benefit and achieving increased levels of satisfaction among disputants. Further, mediation allows meaningful engagement among disputants. The disputants must have an opportunity to determine their own solutions to their own problems through facilitation by a third party. However, grievance mediation is criticised for numerous reasons. Firstly, a failure to redress difficult grievance dispute creates an impression that mediation is "second class justice." Secondly, a grievance resolution process can easily stagnate if one party does not subscribe to the mediation's terms of reference. Thirdly, managers are unwilling to employ mediation because of the perceptions that employees would challenge management decisions continuously. In response to this challenge, the mediator should solicit full commitment of the disputants before the mediation commences. Fourthly, diminished trust as a result of grievance disputes jeopardises the likelihood of achieving mutual settlement. In this regard, the disputants should be encourage to enter into mediation process in good faith. Fifthly, due to power imbalances inherent in employer and employee relationships, grievants may find themselves in a helpless situation. The mediator will need to ensure that an environment within which grievance mediation takes place does not make an employee feel inferior and intimidated. Apart from these shortcomings, grievance disputes relating to discrimination and sexual harassment are considered unsuitable for resolution through mediation process. Therefore, considering the intricacies pertaining to grievance mediation, a careful and thoughtful decision needs to be made before initiating grievance mediation process.

BIBLIOGRAPY

Agapiou, A. (2016), The Impact of Mediation Practice on and the Resolution of Grievances, The Preservation of Employment Relationships and Termination. *US-China Law Review,* 13: 267-275.

Barkhordar, N., Ahmadi, S.A.A., Yavari, M. and Nadiri, M. (2016), The Relationship between Organisational Justice and Organisational Citizenship Behaviour: The Case of Department of Physical Education of Tehhran. *International Business Management*, 10(10): 1886-1892.

Bendix, S. (2001), *Industrial Relations in South Africa*. Cape Town: Juta.

Bennet, T. (2017), Reflections on the Role of a Workplace Mediator. *Journal of Mediation and Applied Analysis,* 4(1): 117-130.

Birken, M.S. (2000), *Grievance Medaition: The impact of Process and Outcomes on the Interests of the Parties.* Kingston: Industrial Relations Centre.

Bowers, M.H., Seeber, R.L. and Stallworth, L.E. (1982), Grievance Mediation: A route to Resolution for the Cost-Conscious 1980s. *Labour Law Journal. IRRA Spring Meeting*, August 1982.

Carnevale, P.J.D. and Pegner, R. (1985), The selectiom of Mediation Tactics in Public Sector Disputes: A Contingency Analysis. *Journal of Social Issues*, 41(2): 65-81.

Colquitt, J. (2001), On the Dimensionality of Organisational Justice: A Construct Validation of a Measure. *Journal of Applied Psychology*, 86(3): 386-400.

Dai, L. and Xie, H. (2016), Review and Prospects on International Justice. *Open Journal of Social Sciences,* 4: 55-61.

Dickie, J. (2015), Trust and Conflict Resolution: Relationship for Learning. *Procedia – Social Behavioural Sciences,* 197: 2066-2073.

Eramus, B., Swanepoel, B., Schenk, H., Van der Westhuizen, E.J. and Wessels, J.S. (2005), *South African Human Resource Management*. Cape Town: Juta.

Feuille, P. (1992), In Practice: Why does Grievance Mediation Resolve Grievances? *Negotiation Journal,* 8(2): 131-145.

Feuille, P. and Kolb, D.M. (1994), Waiting in the Wings: Mediation's Role in Grievance Resolution. *Negotiation Journal*, 10(3): 249-264.

Fitzpatrick, K.D. (2006), Effective Grievance Handling. *Labour Management Conference*. 7-9 June 2006. Jekyll Island, Georgia.

Galiakbarova, G. and Saimova, S. (2016), Mediation of Labour Disputes in Kazakhstan in Comparative Context. *Russian Journal of Law*, IV(2): 96-111.

Goldberg, S.B. (1982), The Mediation of Grievances under a Collective Bargaining Contract: An Alternative to Arbitration. *Northwestern University Law Review*, 77(3): 270-315.

Goldberg, S.B. (2005), How Interest-Based Grievance Mediation Performs Over the Long Term. *Dispute Resolution Journal*, 59(4): 1-7.

Grant, C. and Osanloo, A. (2014), Understanding, Selecting, and Integrating a Theoretical Framework in Dissertation Research: Creating the Blueprint for your "House" *Administrative Issues Journal: Connecting Education, Practice, and Research*, 4(2): 12-26.

Greenberg, J. (1991), Organisational Justice: Yesterday, Today, and Tomorrow. *Journal of Management,* 16(2): 399-432.

Hodges, A.C. (2004), Mediation and the Transformation of American Labour Unions. *Missouri Law Review,* 69(2): 365-439.

Irvine, M. (1993), Mediation: Is it Appropriate for Sexual Harassment Grievances? Ohio State *Journal on Dispute Resolution*, 9(1): 27-53.

Kalay, F. (2016), The impact of Organisational Justice on employee performance: A Survey in Turkey and Turkish Context. *International Journal of Human Resource Studies*, 6(1): 1-20.

Karriker, J.H. and Williams, M.L. (2009), Organisational Justice and Organisational Citizenship Behaviour: A Mediated Multifoci Model. *Journal of Management,* 35(1): 112-135.

Ngahu, C., Kibera, F. and Kobonyo, P. (2016), Influence of International Justice Strategy on Recovery Satisfaction among Customers of Mobile money Services in Kenya. *Journal of Marketing and Consumer Research,* 27: 55-61.

Nidhi, D. and Kumari, K. (2016), International Justice: A Key to Organisational Citizenship Behaviour. *International Journal of Pure and Applied Management Sciences*, 1(2): 2456-4516.

Notter, J. (1995), *Trust and Conflict Transformation*. Arlington VA: Institute for Multi-Track Diplomacy.

Rocker, C. (2012), Responsibility of a Frontline Manager Regarding Staff Bullying. *The Online Journal of Issues in Nursing,* 18(2).

Roehl, J.A. and Cook, R.F. (1985), Issues in Mediation: Rhetoric and Reality Revisited. *Journal of Social Issues,* 41(2): 161-178.

Skratek, S. (1990), Grievance Mediation: Does it Really Work? *Negotiation Journa*l, 6(3): 269-280.

Tjosvold, D. and Morishima, M. (1999), Grievance Resolution: Perceived Goal Interdependence and Interaction Patterns, *Industrial Relations*, 54(3): 527-548.

Wall, J. and Lynn, A. (1993), Mediation: A Current Review. *Journal of Conflict Resolution*, 37(1): 160-194.

Wall, J.A., Stark, J.B. and Standifer, R.L. (2001), Mediation: A Current Review and Theory Development, *Journal of Conflict Resolution*, 45(3): 370-391.

Yadav, L.K. and Yadav, N. (2016), Organisational Justice: An analysis of Approaches, Dimensions and Outcomes. *NMIMS Management Review*, XXXI: 14-40.