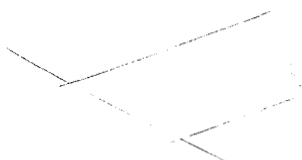


No. R. 961

25 July 2002

**LABOUR RELATIONS ACT, 1995 (ACT NO 66 OF 1995) (AS AMENDED)****COMMISSION FOR CONCILIATION, MEDIATION AND ARBITRATION****RULES FOR THE CONDUCT OF PROCEEDINGS BEFORE THE CCMA**

The Governing Body of the Commission for Conciliation, Mediation and Arbitration hereby, in terms of section 115(6) of the Labour Relations Act, 1995 (Act No. 66 of 1995), publishes the rules made in terms of section 115(2A).



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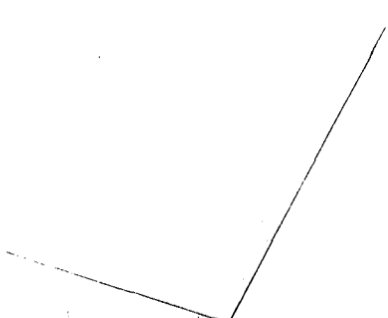
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## **PART ONE**

### **SERVING AND FILING DOCUMENTS**

#### **1. How to contact the Commission**

- (1) The addresses, telephone and telefax numbers of the offices of the Commission are listed in Schedule One to these rules.
- (2) Documents may only be filed with the Commission at the addresses or telefax numbers listed in Schedule One.

#### **2. When are the offices of the Commission open**

- (1) The head office and the provincial offices of the Commission will be open every day from Monday to Friday, excluding public holidays, between the hours of 08h30 and 16h30, or as determined by the Commission.
- (2) Documents may only be filed with the Commission during the hours referred to in subrule (1).
- (3) Notwithstanding subrule (2), documents may be faxed at any time to the Commission.

#### **3. How to calculate time periods in these rules**

- (1) For the purpose of calculating any period of time in terms of these rules –
  - (a) day means a calendar day; and
  - (b) the first day is excluded and the last day is included, subject to subrule (2).
- (2) The last day of any period must be excluded if it falls on a Saturday, Sunday, public holiday or on a day during the period between 16 December to 7 January.

#### **4. Who must sign documents**

- (1) A document that a party must sign in terms of the Act or these rules may be signed by the party or by a person entitled in terms of the Act or these rules to represent that party in the proceedings.

- (2) If proceedings are jointly instituted or opposed by more than one employee, documents may be signed by an employee who is mandated by the other employees to sign documents. A list in writing, of the employees who have mandated the employee to sign on their behalf must be attached to the referral document.

## 5. How to serve documents on other parties

- (1) A party must serve a document on the other parties –
  - (a) by handing a copy of the document to
    - (i) the person concerned;
    - (ii) a representative authorised in writing to accept service on behalf of the person;
    - (iii) a person who appears to be at least 16 years old and in charge of the person's place of residence, business or place of employment premises at the time;
    - (iv) a person identified in subrule (2);
  - (b) by leaving a copy of the document at –
    - (i) an address chosen by the person to receive service;
    - (ii) any premises in accordance with subrule (3);
  - (c) by faxing or telexing a copy of the document to the person's fax or telex number respectively, or a number chosen by that person to receive service;
  - (d) by sending a copy of the document by registered post or telegram to the last-known address of the party or an address chosen by the party to receive service.
- (2) A document may also be served –
  - (a) on a company or other body corporate by handing a copy of the document to a responsible employee of the company or body at its registered office, its principal place of business within the Republic or its

main place of business within the magisterial district in which the dispute first arose;

- (b) on an employer by handing a copy of the document to a responsible employee of the employer at the workplace where the employees involved in the dispute ordinarily work or worked;
  - (c) on a trade union or employers' organisation by handing a copy of the document to a responsible employee or official at the main office of the union or employers' organisation or its office in the magisterial district in which the dispute arose;
  - (d) on a partnership, firm or association by handing a copy of the document to a responsible employee or official at the place of business of the partnership, firm or association or, if it has no place of business, by serving a copy of the document on a partner, the owner of the firm or the chairman or secretary of the managing or other controlling body of the association, as the case may be;
  - (e) on a municipality, by serving a copy of the document on the municipal manager or any person acting on behalf of that person;
  - (f) on a statutory body, by handing a copy to the secretary or similar officer or member of the board or committee of that body, or any person acting on behalf of that body;
  - (g) on the State or a province, a state department or a provincial department, a minister, premier or a member of the executive committee of a province by handing a copy to a responsible employee at the head office of the party or to a responsible employee at any office of the State Attorney.
- (3) If no person identified in subrule (2) is willing to accept service, service may be effected by affixing a copy of the document to –
- (a) the main door of the premises concerned or;
  - (b) if this is not accessible, a post-box or other place to which the public has access.



- (4) The Commission or a commissioner may order service in a manner other than prescribed in this rule.

**6. How to prove that a document was served in terms of the rules**

- (1) A party must prove to the Commission or a commissioner that a document was served in terms of these rules, by providing the Commission or a commissioner:
- (a) with a copy of proof of mailing the document by registered post to the other party;
  - (b) with a copy of the telegram or telex communicating the document to the other party;
  - (c) with a copy of the telefax transmission report indicating the successful transmission to the other party of the whole document; or
  - (d) if a document was served by hand –
    - (i) with a copy of a receipt signed by, or on behalf of, the other party clearly indicating the name and designation of the recipient and the place, time and date of service; or
    - (ii) with a statement confirming service signed by the person who delivered a copy of the document to the other party or left it at any premises.
- (2) If proof of service in accordance with subrule (1) is provided, it is presumed, until the contrary is proved, that the party on whom it was served has knowledge of the contents of the document.
- (3) The Commission may accept proof of service in a manner other than prescribed in this rule, as sufficient.

**7. How to file documents with the Commission**

- (1) A party must file documents with the Commission:
- (a) by handing the document to the office of the provincial registrar at the address listed in Schedule One;

- (b) by sending a copy of the document by registered post to the office of the provincial registrar at the address listed in Schedule One; or
  - (c) by faxing the document to the office of the provincial Registrar at a number listed in Schedule One.
- (2) A document is filed with the Commission when –
  - (a) the document is handed to the office of the provincial Registrar;
  - (b) a document sent by registered post is received by the office of the provincial Registrar; or
  - (c) the transmission of a fax is completed.
- (3) A party must only file the original of a document filed by fax, if requested to do so by the Commission or a commissioner. A party must comply with a request to file an original document within seven days of the request.

#### **8. Documents and notices sent by registered post**

Any document or notice sent by registered post by a party or the Commission is presumed, until the contrary is proved, to have been received by the person to whom it was sent seven days after it was posted.

#### **9. How to seek condonation for documents delivered late**

- (1) This rule applies to any referral document or application delivered outside of the applicable time period prescribed in the Act or these rules.
- (2) A party must apply for condonation, in terms of rule 31, when delivering the document to the Commission.
- (3) An application for condonation must set out the grounds for seeking condonation and must include details of the following:
  - (a) the degree of lateness;
  - (b) the reasons for the lateness;

- (c) the referring parties' prospects of succeeding with the referral and obtaining the relief sought against the other party;
  - (d) any prejudice to the other party; and
  - (e) any other relevant factors.
- (4) The Commission may assist a referring party to comply with this rule.

## **PART TWO**

### **CONCILIATION OF DISPUTES**

#### **10. How to refer a dispute to the Commission for conciliation**

- (1) A party must refer a dispute to the Commission for conciliation by delivering a completed LRA Form 7.11 ("the referral document").
- (2) The referring party must –
  - (a) sign the referral document in accordance with rule 4;
  - (b) attach to the referral document written proof, in accordance with rule 6, that the referral document was served on the other parties to the dispute;
  - (c) if the referral document is filed out of time, attach an application for condonation in accordance with rule 9.
- (3) The Commission must refuse to accept a referral document until subrule (2) has been complied with.

#### **11. What notice must the Commission give of a conciliation**

The Commission must give the parties at least 14 days notice in writing of a conciliation hearing, unless the parties agree to a shorter period of notice.

#### **12. Commission may seek to resolve dispute before conciliation**

The Commission or a commissioner may contact the parties by telephone or other means, prior to the commencement of the conciliation, in order to seek to resolve the dispute.

**13. What happens if a party fails to attend or is not represented at conciliation**

- (1) The parties to a dispute must attend a conciliation in person, irrespective of whether they are represented.<sup>1</sup>
- (2) If a party is represented at the conciliation but fails to attend in person, the commissioner may –
  - (a) continue with the proceedings;
  - (b) adjourn the proceedings; or
  - (c) dismiss the matter by issuing a written ruling.
- (3) In exercising a discretion in terms of subrule (2), a commissioner should take into account, amongst other things –
  - (a) whether the party has previously failed to attend a conciliation in respect of that dispute;
  - (b) any reason given for that party's failure to attend;
  - (c) whether conciliation can take place effectively in the absence of that party;
  - (d) the likely prejudice to the other party of the commissioner's ruling;
  - (e) any other relevant factors.
- (4) If a party to a dispute fails to attend in person or to be represented at a conciliation, the commissioner may deal with it in terms of rule 30.

**14. How to determine whether a commissioner may conciliate a dispute**

If it appears during conciliation proceedings that a jurisdictional issue has not been determined, the commissioner must require

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<sup>1</sup> Section 135(4) provides that: "In the conciliation proceedings a party to the dispute may appear in person or be represented only by –

- (a) a *director* or *employee* of that party; or
- (b) any member, *office bearer* or *official* of that party's registered *trade union* or registered *employers' organisation*."

the referring party to prove that the Commission has the jurisdiction to conciliate the dispute through conciliation.

**15. Issuing of a certificate in terms of section 135(5)**

A certificate issued in terms of section 135(5) that the dispute has or has not been resolved, must identify the nature of the dispute as described in the referral document or as identified by the commissioner during the conciliation process.

**16. Conciliation proceedings may not be disclosed**

- (1) Conciliation proceedings are private and confidential and are conducted on a without prejudice basis. No person may refer to anything said at conciliation proceedings during any subsequent proceedings, unless the parties agree in writing.
- (2) No person, including a commissioner, may be called as a witness during any subsequent proceedings in the Commission or in any court to give evidence about what transpired during conciliation.

**PART THREE**

**CON-ARB IN TERMS OF SECTION 191(5A)**

**17. Conduct of con-arb in terms of section 191(5A)**

- (1) The Commission must give the parties at least fourteen days notice in writing that a matter has been scheduled for con-arb in terms of section 191(5A) of the Act.
- (2) A party that intends to object to a dispute being dealt with in terms of section 191(5A), must deliver a written notice to the Commission and the other party, at least seven days prior to the scheduled date in terms of subrule (1).
- (3) Subrule (2) does not apply to a dispute concerning the dismissal of an employee for any reason related to probation or an unfair labour practice relating to probation.
- (4) If a party fails to appear or be represented at a hearing scheduled in terms of subrule (1), the commissioner must conduct the conciliation on the date specified in the notice issued in subrule (1).

- (5) Subrule (4) applies irrespective of whether a party has lodged a notice of objection in terms of subrule (2).
- (6) In con-arb proceedings a party to the dispute may appear in person or be represented only by –
  - (a) subject to subrule (7) a legal practitioner;
  - (b) a director or employee of that party; or
  - (c) any member, office bearer or official of that party's registered trade union or registered employers' organisation<sup>2</sup>.
- (7) If the dispute concerns an unfair dismissal and the party has alleged the reason for the dismissal relates to the employee's conduct or capacity, a party may only be represented by a legal practitioner in the circumstances contemplated in section 140(1).<sup>3</sup>
- (8) The provisions of the Act and these rules that are applicable to conciliation and arbitration respectively apply, with the changes required by the context, to con-arb proceedings.
- (9) If the arbitration does not commence on the date specified in terms of the notice in subrule (1), the Commission must schedule the matter for arbitration either in the presence of the parties or by issuing a notice in terms of rule 21.

## PART FOUR

### ARBITRATIONS

#### 18. How to request arbitration

- (1) A party may request the Commission to arbitrate a dispute by delivering a document in the form of Annexure LRA 7.13 ("the referral document").
- (2) The referring party must –
  - (a) sign the referral document in accordance with rule 4;

<sup>2</sup> Subrules (6) and (7) apply item 27(1)(c) of Schedule 7 to the Act.

<sup>3</sup> The text of section 140(1) is reproduced in footnote 5 to Rule 25.

- (b) attach to the referral document written proof that the referral document was served on the other parties to the dispute in accordance with rule 6; and
  - (c) if the referral document is served out of time, attach an application for condonation in accordance with rule 9<sup>4</sup>.
- (3) The Commission must refuse to accept a referral document until subrule (2) has been complied with.
- (4) This rule does not apply to con-arb proceedings held in terms of section 191(5A).

**19. When must the parties file statements**

- (1) The Commission or a commissioner may direct –
- (a) the referring party in an arbitration to deliver a statement of case; and
  - (b) the other parties to deliver an answering statement.
- (2) A statement in terms of subrule (2) must –
- (d) set out the material facts upon which the party relies and the legal issues that arise from the material facts;
  - (e) be delivered within the time-period in the notice referred to in subrule (2).

**20. When the parties must hold a pre-arbitration conference**

- (1) The parties to an arbitration must hold a pre-arbitration conference dealing with the matters referred to in subrule (2), if directed to do so by the Director.
- (2) In a pre-arbitration conference, the parties must attempt to reach consensus on the following:
- (a) any means by which the dispute may be settled;

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<sup>4</sup> In terms of section 136(1)(b), a party must request the Commission to arbitrate a dispute within 90 days after the Commission has issued a certificate that the dispute has not been resolved. A request made outside of this time-period may be condoned on good cause shown.

- (b) facts that are agreed between the parties;
- (c) facts that are in dispute;
- (d) the issues that the Commission is required to decide;
- (e) the precise relief claimed and if compensation is claimed, the amount of the compensation and how it is calculated;
- (f) the sharing and exchange of relevant documents, and the preparation of a bundle of documents in chronological order with each page numbered;
- (g) the manner in which documentary evidence is to be dealt with, including any agreement on the status of documents and whether documents, or parts of documents, will serve as evidence of what they appear to be;
- (h) whether evidence on affidavit will be admitted with or without the right of any party to cross-examine the person who made the affidavit;
- (i) which party must begin;
- (j) the necessity for any on-the-spot inspection;
- (k) securing the presence at the Commission of any witness;
- (l) the resolution of any preliminary points that are intended to be taken;
- (m) the exchange of witness statements;
- (n) expert evidence;
- (o) any other means by which the proceedings may be shortened;
- (p) an estimate of the time required for the hearing;
- (q) the right of representation; and
- (r) whether an interpreter is required and, if so, for how long and for which languages.



- (3) Unless a dispute is settled, the parties must draw up and sign a minute setting out the facts on which the parties agree or disagree.
- (4) A minute in terms of subrule (3) may also deal with any other matter listed in subrule (2).
- (5) The referring party must ensure that a copy of the pre-arbitration conference minute is delivered to the appointed commissioner within seven days of the conclusion of the pre-arbitration conference.
- (6) The commissioner may, after receiving a pre-arbitration minute –
  - (a) enrol the matter for arbitration;
  - (b) direct the parties to hold a further pre-arbitration conference; or
  - (c) make any other direction to the parties concerning the conduct of the arbitration.
- (7) If a party that has referred a matter to arbitration fails to attend a pre-arbitration conference, the commissioner may deal with the matter in terms of rule 30.
- (8) If any other party fails to attend a pre-arbitration conference without a justifiable reason, the commissioner may make an order of costs against that party.
- (9) The parties to an arbitration may agree to hold a pre-arbitration conference in terms of subrule (2).

**21. What notice must the commission give of an arbitration**

The Commission must give the parties at least 21 days notice, in writing, of an arbitration hearing, unless the parties agree to a shorter period.

**22. How to determine whether a commissioner may arbitrate a dispute**

If during the arbitration proceedings it appears that a jurisdictional issue has not been determined, the commissioner must require the referring party to prove that the Commission has jurisdiction to arbitrate the dispute.

**23. How to postpone an arbitration**

- (1) An arbitration may be postponed –
  - (a) by agreement between the parties in terms of subrule (2); or
  - (b) by application and on notice to the other parties in terms of subrule (3).
- (2) The Commission must postpone an arbitration without the parties appearing if –
  - (a) all the parties to the dispute agree in writing to the postponement; and
  - (b) the written agreement for the postponement is received by the Commission more than seven days prior to the scheduled date of the arbitration.
- (3) If the conditions of subrule (2) are not met, any party may apply in terms of rule 31 to postpone an arbitration by delivering an application to the other parties to the dispute and filing a copy with the Commission before the scheduled date of the arbitration.
- (4) After considering the written application, the Commission may –
  - (a) without convening a hearing, postpone the matter; or
  - (b) convene a hearing to determine whether to postpone the matter.

**PART FIVE****RULES THAT APPLY TO CONCILIATIONS AND ARBITRATIONS AND  
CON-ARBS****24. Where a conciliation or arbitration will take place**

- (1) A dispute must be conciliated or arbitrated in the province in which the cause of action arose, unless a senior commissioner in the head office of the Commission directs otherwise.
- (2) The Commission within a province determines the venue for conciliation or arbitration proceedings.

**25. Objections to a representative appearing before the Commission.**

- (1) If a party to the dispute objects to the representation of another party to the dispute or the commissioner suspects that the representative of a party does not qualify in terms of the Act, the commissioner must determine this issue.<sup>5</sup>
- (2) The commissioner may call upon the representative to establish why the representative should be permitted to appear in terms of the Act.
- (3) A representative must tender any documents requested by the commissioner, in terms of subrule (2), including constitutions, payslips, contracts of employment, documents and forms, recognition agreements and proof of membership of a trade union or employers' organisation.

**26. How to join or substitute parties to proceedings**

- (1) The Commission or a commissioner may join any number of persons as parties in proceedings if their right to relief depends on substantially the same question of law or fact.

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<sup>5</sup>The representation of parties at the Commission is dealt with in sections 135(4), 138(4) and 140(1) of the Act.

Section 135(4) provides that: "In the conciliation proceedings a party to the dispute may appear in person or be represented only by –

- (a) a *director* or *employee* of that party; or
- (b) any member, *office bearer* or *official* of that party's registered *trade union* or registered *employers' organisation*."

Section 138(4) provides that: "In any arbitration proceedings, a party to the *dispute* may appear in person or be represented only by:

- (a) that a *legal practitioner*,
- (b) a *director* or *employee* of the party; or
- (c) any member, *office-bearer* or *official* of that party's registered *trade union* or a registered *employers' organisation*."

Section 140(1) provides that: "If the *dispute* being arbitrated is about the fairness of a *dismissal* and a party has alleged that the reason for the *dismissal* relates to the *employee's* conduct or capacity, the parties, despite section 138(4), are not entitled to be represented by a *legal practitioner* in the proceedings unless –

- (a) the commissioner and all the other parties consent;
- (b) the commissioner concludes that it is unreasonable to expect a party to deal with the *dispute* without legal representation, after considering –
  - (i) the nature of the questions of law raised by the *dispute*;
  - (ii) the complexity of the *dispute*;
  - (iii) the public interest; and
  - (iv) the comparative ability of the opposing parties or their representatives to deal with the *dispute*.

- (2) A commissioner may make an order joining any person as a party in the proceedings if the party to be joined has a substantial interest in the subject matter of the proceedings.
- (3) A commissioner may make an order in terms of subrule (2) -
  - (a) of its own accord;
  - (b) on application by a party; or
  - (c) if a person entitled to join the proceedings applies at any time during the proceedings to intervene as a party.
- (4) An application in terms of this rule must be made in terms of rule 31.
- (5) When making an order in terms of subrule (2), a commissioner may –
  - (a) give appropriate directions as to the further procedure in the proceedings; and
  - (b) make an order of costs in accordance with these rules.
- (6) If in any proceedings it becomes necessary to substitute a person for an existing party, any party to the proceedings may apply to the Commission for an order substituting that party for an existing party, and a commissioner may make such order or give appropriate directions as to the further procedure in the proceedings.
- (7) An application to join any person as a party to proceedings or to be substituted for an existing party must be accompanied by copies of all documents previously delivered, unless the person concerned or that person's representative is already in possession of the documents.
- (8) Subject to any order made in terms of subrules (5) and (6), a joinder or substitution in terms of this rule does not affect any steps already taken in the proceedings.

**27. How to correct the citation of a party**

If a party to any proceedings has been incorrectly or defectively cited, the Commission may, on application and on notice to the parties concerned, correct the error or defect.

**28. When the Commission may consolidate disputes**

The Commission or a commissioner, of its own accord or on application, may consolidate more than one dispute so that the disputes may be dealt with in the same proceedings.

**29. Disclosure of documents**

- (1) Either party may request a commissioner to make an order as to the disclosure of relevant documents.
- (2) The parties may agree on the disclosure of documents.

**30. What happens if a party fails to attend proceedings before the Commission**

- (1) If a party to the dispute fails to attend or be represented at any proceedings before the Commission, and that party -
  - (a) had referred the dispute to the Commission, a commissioner may dismiss the matter by issuing a written ruling; or
  - (b) had not referred the matter to the Commission, the commissioner may -
    - (i) continue with the proceedings in the absence of that party; or
    - (ii) adjourn the proceedings to a later date.
- (2) A commissioner must be satisfied that the party had been properly notified of the date, time and venue of the proceedings, before making any decision in terms of subrule (1).
- (3) If a matter is dismissed, the Commission must send a copy of the ruling to the parties.

## PART SIX

### APPLICATIONS

#### 31. How to bring an application

- (1) This rule applies to any –
  - (a) application for condonation, joinder, substitution, variation or rescission;
  - (b) application in a jurisdictional dispute;
  - (c) other preliminary or interlocutory application.
- (2) An application must be brought on notice to all persons who have an interest in the application.
- (3) The party bringing the application must sign the notice of application in accordance with rule 4 and must state –
  - (a) the title of the matter;
  - (b) the case number assigned to the matter by the Commission;
  - (c) the relief sought;
  - (d) the address at which the party delivering the document will accept delivery of all documents and proceedings;
  - (e) that any party that intends to oppose the matter must deliver a notice of opposition and answering affidavit within fourteen days after the application has been delivered to it;
  - (f) that the application may be heard in the absence of a party that does not comply with sub-paragraph (e);
  - (g) that a schedule is included listing the documents that are material and relevant to the application.
- (4) The application must be supported by an affidavit. The affidavit must clearly and concisely set out –
  - (a) the names, description and addresses of the parties;

- (b) a statement of the material facts, in chronological order, on which the application is based, in sufficient detail to enable any person opposing the application to reply to the facts;
  - (c) a statement of legal issues that arise from the material facts, in sufficient detail to enable any party to reply to the document;
  - (d) if the application is filed outside the relevant time period, grounds for condonation in accordance with rule 9; and
  - (e) if the application is brought urgently, the circumstances why the matter is urgent and the reasons why it cannot be dealt with in accordance with the time frames prescribed in these rules.
- (5)
  - (a) Any party opposing the application may deliver a notice of opposition and an answering affidavit within fourteen days from the day on which the application was served on that party.
  - (b) A notice of opposition and an answering affidavit must contain, with the changes required by the context, the information required by subrules (3) and (4) respectively.
- (6)
  - (a) The party initiating the proceedings may deliver a replying affidavit within seven days from the day on which any notice of opposition and answering affidavit are served on it.
  - (b) The replying affidavit must address only issues raised in the answering affidavit and may not introduce new issues of fact or law.
- (7) A commissioner may permit the affidavits referred to in this rule to be substituted by a written statement.
- (8) In an urgent application, the Commission or a commissioner -
  - (a) may dispense with the requirements of this rule; and
  - (b) may only grant an order against a party that has had reasonable notice of the application.
- (9)
  - (a) The Commission must allocate a date for the hearing of the application once a replying affidavit is

delivered, or once the time limit for delivering a replying affidavit has lapsed, whichever occurs first.

- (b) The Commission must notify the parties of the date, time and place of the hearing of the application.
  - (c) Applications may be heard on a motion roll.
- (10) Despite this rule, the Commission or a commissioner may determine an application in any manner it deems fit.

**32. How to apply to vary or rescind arbitration awards or rulings**

- (1) An application for the variation or rescission of an arbitration award or ruling must be made within fourteen days of the date on which the applicant became aware of—
  - (a) the arbitration award or ruling; or
  - (b) a mistake common to the parties to the proceedings.
- (2) A ruling made by a commissioner which has the effect of a final order, will be regarded as a ruling for the purposes of this rule.

**33. How to apply to refer a dismissal dispute to the Labour Court**

- (1) An application in terms of section 191(6) of the Act to refer a matter to the Labour Court, must be delivered -
  - (a) within ninety days of a certificate that the dispute has not been resolved being issued; or
  - (b) by a party that has not requested arbitration, within fourteen days of the referral for arbitration being filed.
- (2) Despite subrule (1), a party that requests arbitration may not thereafter make an application in terms of section 191(6).
- (3) The application must state the grounds on which a party relies in requesting that the dispute be referred to the Labour Court.



- (4) If any party to the dispute objects to the matter being referred to the Labour Court, that party must state the grounds for the objection within seven days of receipt of the application.
- (5) The Commission must notify the parties of its decision in terms of section 191(8) within fourteen days of receiving the objection.

## **PART SEVEN**

### **PRE-DISMISSAL ARBITRATION IN TERMS OF SECTION 188A**

#### **34. How to request a pre-dismissal arbitration in terms of section 188A**

- (1) An employer requesting the Commission to conduct a pre-dismissal arbitration, must do so by delivering a completed LRA Form 7.19 to the Commission.
- (2) The employee must sign the LRA Form 7.19 unless the employee has consented in terms of section 188A(4)(b)<sup>6</sup> to pre-dismissal arbitration in a contract of employment, in which case a copy of the contract must be attached to the form.
- (3) When filing the LRA Form 7.19, the employer must pay the prescribed fee to the Commission. Payment of the fee may only be made by -
  - (a) bank guaranteed cheque; or
  - (b) electronic transfer into the bank account of the Commission.
- (4) Within twenty-one days of receiving a request in terms of subrule (1) and payment of the prescribed fee, the Commission must notify the parties to the pre-dismissal arbitration of when and where the pre-dismissal arbitration will be held.
- (5) Unless the parties agree otherwise, the Commission must give the parties at least fourteen days notice of the commencement of the pre-dismissal arbitration.

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<sup>6</sup> Only an employee whose earnings exceed the amount determined by the Minister in terms of section 6(3) of the Basic Conditions of Employment Act, (currently R89 499 per annum), may consent to pre-dismissal arbitration in a contract of employment.

- (6) The Commission is only required to refund a fee paid in terms of subrule (3), if the Commission is notified of the resolution of the matter prior to issuing a notice in terms of subrule (4).

## **PART EIGHT**

### **GENERAL**

#### **35. Condonation for failure to comply with the rules**

The Commission or a commissioner may condone any failure to comply with the time frames in these rules, on good cause shown.

#### **36. Recordings of Commission proceedings**

- (1) The Commission must keep a record of –
- (a) any evidence given in an arbitration hearing;
  - (b) any sworn testimony given in any proceedings before the Commission; and
  - (c) any arbitration award or ruling made by a Commissioner.
- (2) The record may be kept by legible hand-written notes or by means of an electronic recording.
- (3) A party may request a copy of the transcript of a record or a portion of a record kept in terms of subrule (2), on payment of the costs of the transcription.
- (4) After the person who makes the transcript of the record has certified that it is correct, the record must be returned to the provincial Registrar.
- (5) The transcript of a record certified as correct in terms of subrule (4) is presumed to be correct, unless the Labour Court decides otherwise.

#### **37. How to have a subpoena issued**

- (1) Any party who requires the Commission or a commissioner to subpoena a person in terms of section 142(1) of the Act, must file a completed LRA Form 7.16

together with a written motivation setting out why the evidence of the person to be subpoenaed is necessary.

- (2) A party requesting the Commission to waive the requirement for the party to pay witness fees in terms of section 142(7)(c) must set out the reasons for the request in writing at the time of requesting the Commission to issue a subpoena in respect of that witness.
- (3) An application in terms of subrule (1) must be filed with the Commission at least fourteen days before the arbitration hearing, or as directed by the commissioner hearing the arbitration.
- (4) The Commission or a commissioner may refuse to issue a subpoena if—
  - (a) the party does not establish why the evidence of the person is necessary;
  - (b) the party subpoenaed does not have a reasonable period in which to comply with the subpoena;
  - (c) the Commission or a commissioner is not satisfied that the party has made arrangements to pay the witness fees and the reasonable travel costs of the person subpoenaed.
- (5) A subpoena must be served on the witness subpoenaed –
  - (a) by the person who has requested the issue of the subpoena or by the Sheriff, at least seven days before the scheduled date of the arbitration; and
  - (b) if so directed by the Commission, accompanied by payment of the prescribed witness fees for one day in accordance with the tariff of allowances published by notice in the Government Gazette in terms of section 142(7) of the Act and the witnesses' reasonable travel costs.
- (6) Subrules 4(c) and 5(b) do not apply if the Commission in terms of section 142(7)(c), has waived the requirement to pay witness fees.

### **38. Payment of witness fees**

- (1) A witness subpoenaed in any proceedings in the Commission must be paid a witness fee in accordance

with the tariff of allowances published by notice in the Government Gazette in terms of section 142(7) of the Act.

- (2) The witness fee must be paid by –
  - (a) the party who requested the Commission to issue the subpoena; or
  - (b) the Commission, if the issue of the subpoena was not requested by a party or if the Commission waives the requirement to pay witness fees in terms of section 142(7)(c).
- (3) Despite subrule (1), the commissioner may, in appropriate circumstances, order that a witness receive no fee or only part of the prescribed fee.

#### 39. Taxation of bills of cost

- (1) The basis on which a commissioner may make an order as to costs in any arbitration, is regulated by section 138(10) of the Act.<sup>7</sup>
- (2) The Director may appoint taxing officers to perform the functions of a taxing officer in terms of these rules.
- (3) The taxing officer must tax any bill of costs for services rendered in connection with proceedings in the Commission on Schedule A of the prescribed Magistrates' Court tariff, in terms of the Magistrates' Courts Act, No 32 of 1944, unless the parties have agreed to a different tariff.
- (4) At the taxation of any bill of costs, the taxing officer may call for any book, document, paper or account that, in the taxing officer's opinion, is necessary to properly determine any matter arising from the taxation.
- (5) Any person requesting a taxation must complete LRA Form 7.17 and must satisfy the taxing officer -

<sup>7</sup> Section 138(10) of the Act provides: "The commissioner may not include an order for costs in the arbitration award unless a party, or the person who represented that party in the arbitration proceedings, acted in a frivolous or vexatious manner –

- (a) by proceeding with or defending the *dispute* in the arbitration proceedings; or
- (b) in its conduct during the arbitration proceedings.

- (a) of that party's entitlement to be present at the taxation; and
  - (b) that the party liable to pay the bill has received notice of the date, time and place of the taxation.
- (5) Despite subrule (4), notice need not be given to a party -
  - (a) who failed to appear or to be represented at the hearing; or
  - (b) who consented in writing to the taxation taking place in that party's absence.
- (6) Any decision by a taxing officer is subject to review by the Labour Court.

**40. Certification and enforcement of arbitration awards**

- (1) An application to have an arbitration award certified must be made on or contain the information in -
  - (a) LRA Form 7.18 in respect of an award by a commissioner;
  - (b) LRA Form 7.18A in respect of an award in arbitration conducted under the auspices of a bargaining council.
- (2) Any arbitration award that has been certified in terms of section 143 of Act that orders the payment of an amount of money, may be executed:
  - (a) by using the warrant of execution in the LRA Form 7.18 or LRA Form 7.18A; or
  - (b) the warrant of execution prescribed in the Rules for the Conduct of Proceedings in the High Court.
- (3) For the purposes of subrule (2), an arbitration award includes an award of costs in terms of section 138(10), a taxed bill of costs in respect of an award of costs and an arbitration fee charged in terms of section 140(2).

41. **What words mean in these rules**

Any expression in these rules that is defined in the Labour Relations Act<sup>8</sup>, 1995 (Act No. 66 of 1995), has the same meaning as in that Act and

**"Act"** means the Labour Relations Act, 1995 (Act No. 66 of 1995), and includes any regulation made in terms of that Act;

**"association"** means any unincorporated body of persons;

**"Commission"** means the Commission for Conciliation Mediation and Arbitration established by section 112 of the Act;

**"commissioner"** means a Commissioner appointed in terms of section 117 of the Act;

**"con-arb"** means proceedings held in terms of section 191(5A);

**"deliver"** means serve on other parties and file with the Commission;

**"Director"** means the Director of the Commission appointed in terms of section 118 of the Act, and includes any person delegated by the director to perform any of the functions of the director;

**"file"** means to lodge with the Commission in terms of rule 7;

**"Labour Court"** means the Labour Court established by section 151 of the Act and includes any judge of the Labour Court;

**"party"** means any party to proceedings before the Commission;

**"provincial registrar"** means the provincial registrar of the Commission appointed in terms of section 120 of the Act in each of the provinces, or any other person authorised to act in the place of the Provincial Registrar;

**"public holiday"** means a public holiday referred to in section 1 of the Public Holidays Act, 1994 (Act No. 36 of 1994);

**"rules"** means these rules and includes any footnote to a rule;

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<sup>8</sup> The following words used in the rules are defined in section 213 of the Act : dispute, dismissal, employee, employers' organisation, trade union, and workplace.

**“senior commissioner”** means a senior commissioner appointed in terms of section 117 of the Act and includes any person delegated by the senior commissioner to perform any of the functions of the senior commissioner;

**“serve”** means to serve in accordance with rule 5 and **“service”** has a corresponding meaning; and

**“taxing officer”** means any employee of the Commission appointed by the Director in terms of rule 39.

## SCHEDULE ONE

### ADDRESSES OF THE COMMISSION

The addresses of the head office of the *Commission* are as follows:

#### CCMA HEAD OFFICE

*Physical address:* The National Registrar  
CCMA House  
20 Anderson Street  
Johannesburg  
2001  
*Postal address:* Private Bag X94  
Marshalltown  
2107  
*Telephone:* (011) 377-6650  
*Fax:* (011) 834-7351

The addresses of the provincial offices of the CCMA are as follows:

#### CCMA EASTERN CAPE

*Physical address:* The Registrar  
102 Govan Mbeki Avenue  
Port Elizabeth  
6001  
*Postal address:* Private Bag X22500  
Port Elizabeth  
6000  
*Tel:* (041) 586-4466  
*Fax:* (041) 586-4585/6

#### CCMA FREE STATE

*Physical address:* The Registrar  
CCMA House  
Cnr. Elizabeth & West Kruger Streets  
Bloemfontein  
9301  
*Postal address:* Private Bag X20705  
Bloemfontein  
9300  
*Tel:* (051) 505-4400  
*Fax:* (051) 448-4468/9



**CCMA GAUTENG**

*Physical address:* The Registrar  
CCMA House  
20 Anderson Street  
Johannesburg

*Postal address:* Private Bag X96  
Marshalltown  
2107

*Tel:* (011) 377-6600  
*Fax:* (011) 377-6658; 377-6680; 377-6804; 377-6618; 377-6678 or  
834-7331

**CCMA KWAZULU NATAL**

*Physical address:* The Registrar  
Garlicks Chambers  
61 Field Street  
Durban  
4001

*Postal address:* Private Bag X54363  
Durban  
4000

*Tel:* (031) 306-5454  
*Fax:* (031) 306-5401/4

**CCMA LIMPOPO**

*Physical address:* The Registrar  
104 Hans Van Rensburg Street  
Polokwane  
0699

*Postal address:* Private Bag X9512  
Polokwane  
0700

*Tel:* (015) 297-5010  
*Fax:* (015) 297-1649

**CCMA MPUMALANGA**

*Physical address:* The Registrar  
Foschini Centre  
Eddie Street  
Witbank  
1035

*Postal address:* Private Bag X7290  
Witbank  
1035

*Tel:* (013) 656-2800  
*Fax:* (013) 656-2885/6

**CCMA NORTH WEST**

*Physical address:* The Registrar  
47-51 Siddle Street  
Klerksdorp  
2570  
*Postal address:* Private Bag X5004  
Klerksdorp  
2571  
*Tel:* (018) 464-0700  
*Fax:* (018) 462-4126

**CCMA NORTHERN CAPE**

*Physical address:* The Registrar  
1 A Bean Street  
Kimberley  
8301  
*Postal address:* Private Bag X6100  
Kimberley  
8300  
*Tel:* (053) 831-6780  
*Fax:* (053) 831-5947/8

**CCMA WESTERN CAPE**

*Physical address:* The Registrar  
78 Darling Street  
Cape Town  
8001  
*Postal address:* Private Bag X9167  
Cape Town  
8000  
*Tel:* (021) 469-0111  
*Fax:* (021) 4657193/7

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