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PRESIDENT'S OFFICE

No. 1049.

19 July 1995

It is hereby notified that the President has assented to the following Act which is hereby published for general information:—

No. 30 of 1995: Labour Appeal Court Sitting as Special Tribunal Act, 1995.

KANTOOR VAN DIE PRESIDENT

No. 1049.

19 Julie 1995

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 30 van 1995: Wet op die Arbeidsappèlhof wat sit as Spesiale Tribunaal, 1995.

ACT

To enable the labour appeal court to act as a special tribunal in determining claims and disputes of right which arise out of the implementation of the transitional arrangements on public administration and the rationalisation of the public administration as contemplated in sections 236 and 237 of the Constitution; and to provide for matters connected therewith.

PREAMBLE

WHEREAS section 237(4) of the Constitution envisages legislation to enable the labour appeal court, established by section 17A of the Labour Relations Act, 1956 (Act No. 28 of 1956), to sit as a special tribunal to determine any claim or dispute of right in terms of a law regulating, as at 1 November 1993, employment in an institution referred to in section 236(1) of the Constitution and arising out of the implementation of sections 236 and 237 of the Constitution;

AND WHEREAS section 237(4) of the Constitution provides that the envisaged legislation shall prescribe expeditious procedures for the adjudication of the claims and disputes, including the granting of interim and final relief; that those procedures shall be the only procedures to be followed by the special tribunal, notwithstanding any law; and that a decision of the special tribunal on any such claim or dispute shall be final and binding; and makes provision for the lapsing of that subsection and the envisaged legislation;

(English text signed by the President.)
(Assented to 10 July 1995.)

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa as follows:—

Definitions

1. In this Act and in the Schedules hereto, unless the context otherwise indicates—

- (i) “a law regulating employment” means any law in terms of which an employee was employed, or any labour relations law or other relevant law, or the common law applicable to employment, as at 1 November 1993; (ix)
- (ii) “Chief Justice” means the Chief Justice of the Supreme Court of South Africa contemplated in section 97 of the Constitution; (vii)
- (iii) “day” means a calendar day and when any particular number of days are prescribed for the doing of any act; those days shall be reckoned by excluding the first and including the last day, unless the last day falls on a Saturday, a Sunday or any public holiday, in which case the number of days shall be reckoned by excluding the first day and also any such Saturday, Sunday or public holiday; (iv)
- (iv) “dispute” means any claim or dispute of right, including, but not limited to, an alleged unfair labour practice, in terms of a law regulating employment and arising out of the implementation of sections 236 and 237 of the Constitution, and “in dispute” has a corresponding meaning; (v)
- (v) “employee” means a person who, in terms of a law regulating employment—
 - (a) on the date of commencement of the Constitution, was in the employ of a public service, department of state (including a police force), administration, military force as defined in section 224(2)(a) or (b) of the Constitution or other institution (excluding any local government) performing, immediately prior to the commencement

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- of the Constitution, governmental functions under control of an authority referred to in section 235(1)(a), (b) or (c) or 232 (1)(c) of the Constitution; or
- (b) after the commencement of the Constitution, was or is employed by any of the above institutions or any institution rationalised in terms of section 237 of the Constitution; (xv) 5
- (vi) "employee organisation" means a staff association or trade union which has employees as members; (xvi)
- (vii) "labour appeal court" means the labour appeal court established by section 17A of the Labour Relations Act; (i) 10
- (viii) "Labour Relations Act" means the Labour Relations Act, 1956 (Act No. 28 of 1956); (xvii)
- (ix) "Minister" means the Minister appointed by the President in terms of section 88 of the Constitution to administer the Office of the Public Service Commission; (viii) 15
- (x) "order" means any final relief or remedy, including, but not limited to, a determination; (iii)
- (xi) "party" an employee, employee organisation or responsible authority, and includes a duly authorised representative of such a person, organisation or authority; (xii) 20
- (xii) "public holiday" means a public holiday as referred to in the Public Holidays Act, 1994 (Act No. 36 of 1994); (xi)
- (xiii) "responsible authority" means any authority which is a party to or which is responsible for the decision on or execution of the abolition, incorporation, integration, consolidation or rationalisation of institutions referred to in section 236(1) of the Constitution; (xiv) 25
- (xiv) "serve" means the serving of any document in accordance with rule 3 of Schedule 1, and "service" has a corresponding meaning; (ii)
- (xv) "special tribunal" means the labour appeal court sitting as a special tribunal as contemplated in section 237(4) of the Constitution and includes any member or assessor authorised to perform the functions of the labour appeal court; (xiii) 30
- (xvi) "this Act", includes the rules contained in Schedule 1; (vi)
- (xvii) "unfair labour practice" means any act or omission, other than a strike or a lock-out, which has or may have the effect that— 35
- (a) any employee or class of employees is or may be unfairly affected or that his, her or their employment opportunities or work security is or may be prejudiced or jeopardised thereby;
- (b) labour unrest is or may be created or promoted thereby; or
- (c) the labour relationship between the responsible authority and employee is or may be detrimentally affected thereby. (x) 40

Application of Act

2. This Act shall apply to any dispute between an employee, or where applicable, an employee organisation, and a responsible authority.

Labour appeal court sitting as special tribunal

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3. (1) Section 17A of the Labour Relations Act shall apply *mutatis mutandis* to the special tribunal except where otherwise provided for in this Act.

(2) The areas of jurisdiction of the respective divisions of the special tribunal shall be as set out in the second column of Schedule 2.

(3) The special tribunal may in respect of any dispute— 50

- (a) grant interim relief;
- (b) make an order which any court, including the industrial court, would have been competent to make in terms of a law regulating employment; and
- (c) generally deal with all matters necessary for or incidental to the performance of its functions under this Act. 55

(4) For purposes of this Act, the special tribunal may be approached without it being necessary to make use of or to exhaust any other procedure in terms of any other law or the common law: Provided that a party which so approaches the special tribunal shall observe the rules with regard to the referral and adjudication of disputes referred to in section 4(1): Provided further that in the case of an application for interim relief the applicant may request the special tribunal to dispense with any of those rules. 5

Rules and Rules Committee for special tribunal

4. (1) The rules which give effect to the expeditious procedures prescribed by this Act are contained in Schedule 1. 10

(2) The Minister may, after consultation with the Chief Justice, appoint a Rules Committee, other than the Rules Board referred to in section 17(22) of the Labour Relations Act, consisting of a judge, as chairperson, an advocate and an attorney, which may effect amendments, not inconsistent with this Act, to the rules contained in Schedule 1. 15

Orders by special tribunal

5. (1) An employee who, or where applicable, an employee organisation which, is in dispute with a responsible authority may apply to the special tribunal for an order under section 3(3)(a) or (b).

(2) Unless the special tribunal on good cause shown decides otherwise, no order may be made under section 3(3)(a) or (b) if the relevant application in terms of subsection (1) was not made within 90 days from the date on which the reasons for the dispute became known to the applicant, or from the date of the commencement of this Act, whichever is the later date. 20

(3) The special tribunal shall as soon as possible, but not later than 60 days after receipt of an application in terms of subsection (1), adjudicate on the dispute. 25

(4) The special tribunal may on good cause shown or of its own motion—

(a) either before or after expiry of any period prescribed by this Act, extend such period;

(b) condone non-compliance with any time limit prescribed by this Act. 30

(5) The special tribunal shall not make an order as to costs in respect of any proceedings brought before it, except—

(a) on the grounds of unreasonableness or triviality on the part of a party to a dispute;

(b) on the grounds that a party refused or unjustifiably failed to attend the pre-trial conference convened in terms of rule 5(5) of Schedule 1, or failed to participate properly at such conference in order to limit or define the issues in dispute in terms of rule 5(7) of Schedule 1. 35

Extraordinary procedure

6. Should a situation arise during proceedings for which no provision has been made in this Act, the special tribunal may adopt any procedure or make any order which it deems necessary or expedient in order to achieve the objects of section 237(4) of the Constitution. 40

Short title and commencement

7. This Act shall be called the Labour Appeal Court Sitting as Special Tribunal Act, 1995, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*. 45

SCHEDULE 1

RULES FOR PROCEEDINGS IN THE
SPECIAL TRIBUNAL

Definitions

1. In these Rules, unless the context otherwise indicates, any word or expression to which a meaning has been assigned in the Act shall bear the same meaning and—

“notice” means a written notice and “notify” means to notify in writing;

“registrar” means the registrar of the labour appeal court contemplated in section 17A(6) of the Labour Relations Act.

Office hours and address of registrar, and filing documents with registrar

2. (1)(a) Subject to paragraph (b), the office of the registrar shall be open for the issue of process and the filing of documents from 08:00 to 12:30 and from 14:00 to 15:30 on every day other than on a Saturday, Sunday or public holiday.

(b) The registrar may in exceptional circumstances issue process and accept documents at any time, and shall do so when so directed by the special tribunal.

(2)(a) Subject to paragraph (b), the addresses of the registrar's offices shall be those mentioned in Appendix 3 to these Rules.

(b) The registrar may from time to time give notice in the *Gazette* of any change of address or address in addition to the addresses referred to in paragraph (a).

(3)(a) The filing of documents with the registrar may take place by hand or by registered post.

(b) Notwithstanding paragraph (a), the registrar may accept documents transmitted by telefacsimile if the original document is also, within seven days thereafter, filed with the registrar or sent to him or her by registered post.

(c) A document shall be deemed to have been filed with the registrar on the date—

- (i) on which such document was handed in to the registrar;
- (ii) on which such document was sent by registered post to the registrar; or
- (iii) of the completion of the telefacsimile transmission to the office of the registrar or to such other telefacsimile receiver as the registrar may appoint.

Service of documents

3. (1) Subject to subrule (2), any document which is required to be served in terms of the Act and these Rules shall be served by or on behalf of the party who desires service thereof—

- (a) by handing a copy thereof to the party concerned personally;
- (b) by leaving a copy thereof at the place of employment of the party concerned with any person who is apparently not less than 16 years of age and who is apparently in authority over the party concerned;
- (c) by leaving a copy thereof at the address which the party concerned has chosen as *domicilium citandi et executandi*;
- (d) by handing a copy thereof to any representative authorised in writing to accept service on behalf of the party concerned;
- (e) by sending a copy thereof by registered post to the last known postal address of the party concerned, and in such a case, unless the contrary is proved, it shall be presumed that service was effected on the 10th day following the day upon which the document was posted;
- (f) by sending a copy thereof by telefacsimile transmission to the telefacsimile receiver of the party concerned; or

- (g) where a document is to be served on a statutory body, by handing a copy thereof to an officer or member of such body.
- (2) If the special tribunal is satisfied that the service cannot conveniently or expeditiously be effected in any manner contemplated in subrule (1), service may be effected in any manner directed by the special tribunal.
- (3) Unless otherwise directed by the special tribunal, service shall be effected as near as possible between the hours of 07:00 and 19:00 on any day other than a Saturday, Sunday or public holiday.
- (4) Service shall be proved before the special tribunal—
- (a) by a signed acknowledgement of receipt by the party upon whom the document was served;
 - (b) by an affidavit by the party who effected service;
 - (c) in the case of service by registered post, by the party who effected service by producing the certificate issued by the post office for the posting of such letter; or
 - (d) in the case of service by telefacsimile transmission, by the party who effected service by producing the transmission slip relating to such transmission.
- (5) If the special tribunal is not satisfied that service has been proved in accordance with subrule (4), it may make such order as it may deem fit.

Form and content of process

4. (1) Unless otherwise provided, any process initiating proceedings or opposing an application shall be substantially in accordance with the forms prescribed in Appendices 1 and 2 to these Rules, and a party may abbreviate a form by omitting sections which are not relevant.
- (2)(a) Any party which wishes to challenge an address provided in any form for the service of any document or the nomination of a representative shall do so by serving a copy of a notice setting out such changes on the other party and filing the original with the registrar.
- (b) Any change of address or change in the nomination of a representative shall only take effect on receipt of the relevant notice by the other party.

Application, notice of opposition, notice of exception, pre-trial conference, and hearing

5. (1) An application for an order under section 3(3) shall be commenced by requesting the registrar to affix a case number to the form prescribed in Appendix 1 to these Rules.
- (2) The applicant shall serve a copy of the form contemplated in subrule (1) on the respondent and file the original with the registrar together with proof of service as contemplated in rule 3(4).
- (3) The respondent referred to in subrule (2) may within 14 days or, in the case of an application for interim relief, within five days from the date on which the copy of the application was served on such respondent, serve a notice of opposition, in the form prescribed in Appendix 2 to these Rules, on the applicant and file the original with the registrar.
- (4) The respondent may, together with the notice of opposition, give notice of an exception.
- (5) On receipt of a notice of exception the registrar shall fix a date, time and venue for the hearing of the exception and shall give written notice of set down to the parties.
- (6) On receipt of the notice of opposition, or after the expiry of the 14 days or the five days referred to in subrule (3), the registrar shall fix a date, time and venue for the hearing of the application and shall give written notice of set down to the parties.
- (7) The notice of set down referred to in subrule (6) shall, in the absence of a notice of opposition, contain a statement that judgement by default may be entered against the respondent.
- (8) If a notice of opposition is received the registrar shall, except in the case of

an application for interim relief or notice of exception, fix a date, time and venue for a pre-trial conference and shall give written notice thereof to the parties.

(9) Each party shall, not later than 10 days prior to the pre-trial conference, furnish every other party with—

- (a) a list of the admissions which he, she or it requires;
- (b) the enquiries which he, she or it will direct and other matters regarding preparation for trial which such party will raise for discussion at the pre-trial conference;
- (c) statements of witnesses or summaries thereof; and
- (d) summaries of the opinions and reasons therefor of his, her or its expert witnesses, if any.

(10)(a) At the pre-trial conference the parties shall endeavour to limit or define the issues in dispute and to facilitate the expeditious determination of the application, and shall thereafter prepare minutes in respect of that conference which shall reflect those endeavours.

(b) The pre-trial conference may be chaired by a mediator agreed upon by the parties, and the parties shall share the costs of such mediator.

(11) Whenever a matter is settled prior to the date of hearing or when the parties agree to postpone the matter, the applicant shall forthwith notify the registrar by delivering a notice of withdrawal or postponement, as the case may be.

(12) At the commencement of the hearing and after hearing representations from the parties and having regard to the documents filed, the special tribunal shall determine whether any further documentary or written or oral evidence is required and shall give directions in respect of the presentation to the special tribunal of such evidence.

(13) In respect of any oral evidence presented pursuant to a direction of the special tribunal as contemplated in subrule (12) the special tribunal may proceed in an inquisitorial manner and may give directions concerning the examination, cross-examination or re-examination of witnesses.

(14) After directions made in terms of subrule (13) have been complied with, the parties may present argument to the special tribunal subject to any directions given by the special tribunal concerning the presentation thereof.

Joinder of parties

6. (1) The special tribunal may of its own motion, or on application on notice to each party, make an order joining any person as a party to the proceedings.

(2) An order referred to in subrule (1) shall be made only where the party to be joined has a substantial interest in the dispute.

(3) In making such order the special tribunal may impose such conditions in respect of the delivery of documents and, subject to section 5(5), as to costs as it deems fit.

Consolidation of disputes

7. The special tribunal may of its own motion, or on application by any party on notice to every other party, make an order consolidating the disputes pending before it in separate proceedings where it deems such consolidation to be expedient and just.

Consent to judgment or relief claimed, and judgment by default

8. (1)(a) A respondent may at any time in respect of the whole or any part of an application consent to judgment or to the relief claimed.

(b) The consent referred to in subrule (1) shall be in writing, signed and dated by the respondent.

(c) On receipt of a consent referred to in subrule (1), the applicant may apply in writing for an order to be made in accordance with such consent.

(2) Whenever a respondent fails to submit a notice of opposition in response to an application, the special tribunal may on application, having satisfied itself that notice of set down has been given to all parties, proceed with the matter and make such order as it considers just in the absence of the respondent.

Witness fees

9. A witness subpoenaed to give evidence before the special tribunal shall be entitled to such fees and costs as such witness would have been entitled to receive if he or she had been subpoenaed to give evidence before the Supreme Court.

Taxation of costs

10. (1) The costs ordered in terms of section 5(5) shall be taxed by the registrar on the scale which could have been allowed in a provincial division of the Supreme Court.

(2) Costs taxed by the registrar shall be subject to review by the special tribunal on application by one or more of the parties within 14 days of such taxation.

(3) Any application referred to in subrule (2) shall identify each disputed item or part thereof together with the grounds of the objection to the allowance or disallowance thereof.

Oath of office of interpreter

11. (1) Before any interpreter may interpret in the special tribunal he or she shall take an oath or make an affirmation in the following form:

"I, do hereby swear/truly affirm that whenever I may be called upon to perform the functions of an interpreter in any proceedings in the special tribunal I shall truly and correctly and to the best of my ability interpret from the..... language into the language and *vice versa*."

(2) Such oath or affirmation shall be taken or made in the manner prescribed by law for taking an oath or making an affirmation, and shall be signed by the interpreter.

Correction, clarification, rescission or variation of order

12. (1) The special tribunal may of its own motion, or on application by any party on notice to every other party, correct an omission or error or clarify any provision in any order.

(2) The special tribunal may on good cause shown in an application by the respondent rescind or vary any order which was given on the grounds of the respondent having been in default in his, her or its reply or having failed to appear at the hearing.

(3) Any party bringing an application under subrule (2) shall within 14 days after having become aware of the order in question give notice of his, her or its application to all parties whose interests may be affected by the rescission or variation sought.

(4) The special tribunal shall not rescind or vary any order unless it is satisfied that all parties whose interests may be affected have notice of the rescission or variation proposed.

APPENDIX 1

- 1 **Applicant** Case Number
- 1.1 Title and full names
- 1.2 Details of position held
- 1.3 Details of Department, organisational component or institution in which applicant is employed
- 1.4 Persal reference number (or any other applicable reference number)
- 1.5 Telephone, telefacsimile and telex numbers
- 1.5.1 Home:
- 1.5.2 Work:
- 1.6 Address at which applicant shall receive documents in the proceedings and where process are to be served
- 2 **Respondent**
- 2.1 Name of Department, organisational component or institution
- 2.2 Name of head of Department, organisational component or institution
- 2.3 Address at which documents will be delivered and person on whom process will be served
- 2.4 Telephone, telefacsimile and telex numbers
- 3 **Particulars of employment relationship of applicant**
- 3.1 Date of employment
- 3.2 Position employed in at present
- 3.3 Place of work
- 3.4 Salary or wages before deductions, if applicable
- 3.5 Salary or wages after deductions, if applicable
- 3.6 Date of termination of employment, if applicable
- 4 **Appointment of representative, if applicable**
- 4.1 Name of applicant's representative
- 4.2 Business address
- 4.3 Postal address
- 4.4 Telephone, telefacsimile and telex numbers
- 4.5 Address at which documents are to be delivered and process are to be served
- 5 **The complaint**
- 5.1 The description of the action committed by the respondent against applicant:
- 5.2 Alleged reasons for the action:
- 5.3 Why applicant believes this action to be unfair:
- 6 **Brief description of relief sought**
- 7 **Reason why the matter is urgent (if applicable)**

DATED at on this the..... day of19

SIGNED:

TO:

The Registrar

AND TO:

The Responder

APPENDIX 2**1 Details of respondent****1.1** Name of Department, organisational component or institution**1.2** Name of head of Department, organisational component or institution**2 Notice of opposition**

I, the undersigned respondent, hereby give notice that I oppose the relief sought by the applicant in Appendix 1, Case No.

3 Order sought

I seek an order dismissing the application or alternatively the following order:

(Details of the order sought)

4 Appointment of representative**4.1** Name of representative**4.2** Business address**4.3** Postal address**4.4** Telephone, telefacsimile and telex numbers**4.5** Address at which documents are to be delivered and person on whom process are to be served**5 Defence to applicant's complaint****5.1** The following allegations on the applicant's form are correct and are admitted:**5.2** The following allegations on the applicant's form are incorrect and are denied, for the following reasons:**5.3** The application is opposed by reason of the following facts:**5.4** Reasons why matter is urgent (if applicable):

DATED at on this the..... day of19

SIGNED:

TO:

The Registrar

AND TO:

The Applicant

APPENDIX 3

REGISTRAR'S OFFICES

1. PRETORIA
NOTE: Also serves the Orange Free State Division
Postal address: Private Bag X117
PRETORIA
0001
Street address: Continental Building
Visagie Street
PRETORIA
Telephone number: (012) 323 7643
Telefacsimile number: (012) 323 9586
2. CAPE TOWN
NOTE: Also serves the Northern Cape Division
Postal address: Private Bag X6
ROGGEBAAI
8012
Street address: 6th Floor
Thomas Pattulo Building
19 Jan Smuts Street
Heerengracht
ROGGEBAAI
CAPE TOWN
Telephone number: (021) 419 3555
Telefacsimile number: (021) 251 933
3. PORT ELIZABETH
Postal address: Private Bag X3912
NORTH END
6056
Street address: Silver Oaks House
North Street
NORTH END
PORT ELIZABETH
Telephone number: (041) 542 404
Telefacsimile number: (041) 547 142
4. DURBAN
Postal address: Private Bag X54312
DURBAN
4000
Street address: Suite No. 2
D'Urban Hall
Cato Square
DURBAN
Telephone number: (031) 329 620, 329 629 or 329 631
Telefacsimile number: (031) 370 857

SCHEDULE 2**DIVISIONS OF THE SPECIAL TRIBUNAL AND AREAS OF JURISDICTION**

Divisions	Area of Jurisdiction
Cape of Good Hope Division of the Special Tribunal	The province of Western Cape
Eastern Cape Division of the Special Tribunal	The province of Eastern Cape
Northern Cape Division of the Special Tribunal	The province of Northern Cape
Natal Division of the Special Tribunal	The province of KwaZulu/Natal
Orange Free State Division of the Special Tribunal	The province of Orange Free State
Transvaal Division of the Special Tribunal	The province of Pretoria- Witwatersrand-Vereeniging The province of North-West The province of Northern Transvaal The province of Eastern Transvaal