

Short notes on:

Conciliation at the Commission for Conciliation, Mediation and Arbitration

Introduction

The Commission for Conciliation, Mediation and Arbitration (hereinafter referred to as “the CCMA”) is a dispute resolution body which was established in terms of the Labour Relations Act, 66 of 1995 (hereinafter referred to as “the LRA”) and was one of the first key organizations established under the new democratic Republic of South Africa. The CCMA is an independent and neutral body and its objective and intention is to promote social justice and equality in the workplace, and in doing so, reverse any wrongdoings, illegal behaviour, unlawful activity and transgressions by an employer. The CCMA has a two-fold process in which it deals with most disputes referred to it; conciliation being the first step and arbitration being the second and final step (if the dispute is not resolved at conciliation). In this article, we will look at referring a dispute to the CCMA, the conciliation process as well as what to expect when attending conciliation.

Steps to be taken to refer a labour dispute to the CCMA

First and foremost, an employee or ex-employee, alternatively referred to as the Applicant in the dispute, must ensure that he or she refers a dispute timeously and accurately in order to obtain a date for conciliation. It is imperative that the Applicant take steps immediately if he or she has a labour-related dispute. For example, in the case of an unfair dismissal dispute, an ex-employee has only 30 (thirty) days from the date on which he or she was dismissed to refer the matter timeously. If the dispute relates to an unfair labour practice, for example an unfair suspension, an employee has 90 (ninety) days from the date of the unfair suspension to refer the matter timeously.

The referral forms that the Applicant will need to complete in order to refer a dispute are available on the CCMA website being <http://www.ccma.org.za> along with instructions on how to complete the referral form and how to serve the form correctly on the employer or ex-employer as well as the CCMA. The CCMA will inform the employer and the employee or ex-employee (hereinafter referred to as “the parties”) as to the date, time and venue of the conciliation.

The Conciliation Process

Conciliation is a process where a Commissioner meets with both parties to a dispute and attempts to explore various ways which would be equally acceptable to both parties with the view to settle the dispute by agreement without having to resort to litigation during the arbitration process. Commissioners are trained in labour-related matters and resolving labour-related disputes and are appointed by the CCMA on the strength of their experience and expertise in labour matters, particularly dispute resolution. The conciliation is conducted in an informal manner and contrary to popular belief is not conducted in a formal manner in which a usual Court proceeding would be conducted, for example in criminal or civil Court.

First time attendees at the CCMA are often surprised at the informal manner of the proceedings which are conducted in office-like rooms with a roundtable where parties along with the Commissioner sit quite closely to one another. That said, it is this informal manner which in most cases assists the parties in resolving the dispute with the assistance of a Commissioner, as the intention of the process is not to place further pressure on either party or raise further anxiety the parties may feel in respect of the dispute.

The conciliation process is without prejudice, meaning that all discussions or negotiations which take place at conciliation may not be used at arbitration if the dispute is not resolved at conciliation. For this reason, the conciliation proceedings are not recorded as opposed to arbitrations which are recorded. The Commissioner commences the conciliation proceedings by meeting jointly with the parties and enquiring about the dispute. The Commissioner at conciliation has no power to make any rulings on the merits of the dispute however does need to know a summary of the facts and issues in order to assist and guide the parties in respect of a possible resolution.

If the dispute is settled, a settlement agreement will be drawn up at conciliation which will record the terms and conditions of the settlement agreement. If the terms and conditions of the settlement agreement are breached, then either party may apply to the CCMA to certify the settlement agreement as an arbitration award which terms are then executable. For example, if it was a term of the settlement agreement that the employer pay the employee one month's remuneration by a certain date and same is not paid by said date, this would amount to a breach of the agreement and the employee will be able to instruct the relevant Sheriff, with the CCMA's permission, to attach the employer's property in the amount of the remuneration owed.

Conclusion

If no agreement is reached between the parties at conciliation, the Commissioner will issue a certificate of non-resolution. Depending on the nature of the dispute, it may be referred to the CCMA for arbitration or the Labour Court as the next step.

If you as an employee or employer require advice or assistance in respect of conciliation or settlement of CCMA disputes, contact SchoemanLaw Incorporated for assistance in this regard.

