

Short notes on:

CONCILIATION PROCEEDINGS: NO SHOW FOR THE RESPONDENT!

Introduction

Conciliation is a crucial stage of resolving labour-related issues in a speedily and cost-effective manner, especially for the benefit of the parties, but more importantly, the vulnerable employees' sector of our society. The Labour Relations Act, 66 of 1995 (the LRA), created the CCMA as a statutory body to provide informal and straightforward processes for dispute resolution. In terms of section 115 of the LRA, the CCMA is empowered to make rules to regulate the consequences of a party's failure to attend conciliation or arbitration proceedings.

This article will explore the contrast the consequences of party's failure to attend Conciliation proceedings and how some Respondent (mostly employers) are disregarding the Conciliation process by their failure or refusal to appear during the Conciliation proceedings.

CCMA Notice of set down

The expectation associated with a notice of set down for Conciliation from the CCMA or Bargaining Council is for both parties to appear in front of the Commissioner and explore ways to settle the dispute by agreement.

When both parties receive a Notice of set down from the CCMA, it could mean that they are to appear for the following:

1. Conciliation.
2. Con/Arb.
3. Arbitration.

The best practice by most Applicants is to have both the Conciliation and Arbitration on different dates instead of the two processes happening immediately one after the other on the same day. However, there are some disputes like discrimination disputes wherein both proceedings must take place immediately one after the other. Additionally, there are also some Bargaining Councils which make it compulsory for both proceedings to take place consecutively.

Con/Arb

For other disputes, the CCMA in most cases will send a Notice of set down for Con/Arb. It is therefore up to the parties if they prefer the processes to be conducted immediately one after the other or on separate days.

If both parties prefer splitting the processes, they must send their Notice of Objection to Con/Arb at least seven days before the date of hearing which sets out their intention to object to Arbitration happening immediately after Conciliation. For the sake of a speedy resolution and avoiding the trouble and expense of returning to the CCMA, both parties may choose not to object, and the matters are heard concurrently.

Conciliation

Conciliation is an informal process where the parties in dispute appear before a Commissioner to discuss, explore, and negotiate ways of settling the dispute by agreement with the guidance of the Commissioner. Since legal representation is not permitted during Conciliation, that means the costs are minimal and time-efficient.

Consequences of the Applicant failure to appear at Conciliation

In terms of Rule 25(1)(a), *"if a party who referred a dispute fails to attend or to be represented at Conciliation, the Commissioner may:*

1. *Continue with the proceedings.*
2. *Adjourn the proceedings to a later date within the 30 days; or*
3. *Conclude the proceedings by issuing a certificate that the dispute remains unresolved."*

Rule 25 refers to a party who referred the dispute; however, it fails to mention what may the Commissioner do if the Respondent fails to appear. Unfortunately, there have been instances where the Commissioners dismissed matter due to the failure of the Applicant to appear. While on the other hand, when the Respondent fails to appear, the Commissioner will issue the certificate that the dispute remains unresolved without any repercussions against the Respondent. This often results in frustration for the Applicant, making the idea of Arbitration taking place immediately after Conciliation (Con/Arb) more intelligible.

Conclusion

As much the Conciliation proceedings are informal, and no prejudice is likely to be suffered by the Respondent's failure to attend, it should be emphasized that Conciliation proceedings are as crucial as Arbitrations proceedings as a component in the dispute resolution process. Safe to say, most disputes are resolved at Conciliation. Therefore, the failure of some Respondents to disregard this process is unwarranted and deserving of a sanction.

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