

## **NATIONAL BARGAINING COUNCIL FOR THE ROAD FREIGHT AND LOGISTICS INDUSTRY**

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### **RULES FOR THE CONDUCT OF PROCESSES AND PROCEEDINGS BEFORE THE NBCRFLI – DISPUTE RESOLUTION**

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In accordance with the Exemptions and Dispute Resolution Collective Agreement of the National Bargaining Council for the Road Freight and Logistics Industry, the Council adopts the following rules to regulate the practice and procedures for resolving disputes referred to the Council (other than enforcement disputes).

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#### **1. Definitions**

What words mean in these rules - Any expression in these rules that is defined in the Labour Relations Act, (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 amended from time to time), and includes any regulation made in terms of that Act;

**“association”** means any unincorporated body of persons;

**“Commissioner”** means a CCMA accredited Conciliator and/or Arbitrator appointed by the Council who acts as a Conciliator and/or Arbitrator for the purposes of resolving disputes in terms of these rules;

**“Council”** means the National Bargaining Council for the Road Freight and Logistics Industry registered in accordance with Section 29 of the Act;

**“deliver”** means serve on other parties and file with the Council;

**“file”** means to lodge with the Council 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;

**“National Secretary”** means the National Secretary of the Council appointed by the Council from time to time and includes any person delegated by the Council or the Secretary to perform any of the functions of the Secretary;

**“party”** means any party to proceedings before the Council;

**“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;

**“Senior Commissioner”** means a CCMA accredited Conciliator and/or Arbitrator appointed and recognized by the Council as being a senior practitioner in relation to labour issues;

“serve” means to serve in accordance with rule 7 and “service” has a corresponding meaning; and

“sms” means to notify by short message service

“taxing officer” means any employee or nominee of the Council appointed by the National Secretary in terms of rule 41.2.

## **2. Addresses of the Council**

### **Gauteng Region - disputes.gauteng@nbcfrfi.co.za**

#### **Johannesburg**

Private Bag X69  
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0007

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Pretoria  
0083

Tel. No.: 012 440 8454  
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### **Head Office Region - disputes.ho@nbcfrfi.co.za**

#### **Bloemfontein**

P.O. Box 4485  
Bloemfontein  
9300

2<sup>nd</sup> Floor, Room 208  
2 President Brand Street  
Bloemfontein  
9301

Tel. No.: 051 448 9422  
Fax No.: 051 448 9480

#### **East London**

P.O. Box 7075  
East London  
5201

Suite 5  
1<sup>st</sup> Floor Norvia House  
34 Western Avenue  
Vincent  
East London  
5247

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P.O. Box 3000  
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8300

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Kimberley  
8301

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Biblio Plaza Building  
Cnr Nelson Mandela &  
President Mbeki Roads  
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Tel. No.: 014 597 1320  
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**Witbank**

P.O. Box 1731  
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1035

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64 Mandela Street  
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**Western Cape Region - [disputes.wc@nbcrcfi.co.za](mailto:disputes.wc@nbcrcfi.co.za)****Cape Town**

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**George**

P.O. Box 9753  
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6530

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**KwaZulu Natal Region - disputes.kzn@nbcrfi.co.za**

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Private Bag X54378  
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4000

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**New Castle**

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4<sup>th</sup> Floor, Room 402  
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**Pietermaritzburg**

P.O. Box 3653  
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Fax No.: 035 789 3849

**PART ONE**  
**SERVING AND FILING DOCUMENTS**

**3. How to contact the Council**

- 3.1 The addresses, telephone, telefax numbers and e-mail addresses of the offices of the Council are listed in Rule 2.
- 3.2 Documents may only be filed with the Council at the addresses, telefax numbers and e-mail addresses listed in Rule 2.

**4. When are the offices of the Council open**

- 4.1 The offices of the Council will be open every Monday to Friday excluding public holidays, between 08h00 and 16h30 or as determined by the Council.
- 4.2 Documents may only be filed with the Council during the hours referred to in sub-rule 4.1.
- 4.3 Notwithstanding sub-rule 4.2, documents may be faxed or e-mailed to the Council any time.

**5. How to calculate time periods in these rules**

- 5.1 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 sub-rule 5.2.
- 5.2 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.

**6. Who must sign documents**

- 6.1 A document that a party must sign in terms of the Act or these rules must 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.
- 6.2 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.



## **7. How to serve documents on other parties**

7.1 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 authorized 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 sub-rule 7.2;
- (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 sub-rule 7.3;
- (c) by e-mailing, faxing or telexing a copy of the document to the person's e-mail, fax or telex number respectively, or an e-mail address, fax or telefax 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.

7.2 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' organization by handing a copy of the document to a responsible employee or official at the main office of the trade union or employers' organization

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 chairperson or secretary of the managing or other controlling body of the association, as the case may be;
- (e) 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;
- (f) 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.

7.3. If no person identified in sub-rule 7.2 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.

7.4 The Council or a Commissioner may order service in a manner other than prescribed in this rule.

7.5 The Council may provide notice of a conciliation or arbitration hearing, or any other proceedings before it, by means of any of the methods prescribed in Rule 7 and may, in addition, give notice by means of short message service (sms).

## **8. How to prove that documents were served in terms of the rules**

8.1 A party must prove to the Council or a Commissioner that a document was served in terms of these Rules, by providing the Council 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 transmission advice of the fax or e-mail communicating the document to the 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.
- 8.2 If proof of service in accordance with sub-rule (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. The relevant provisions of the Electronic Communications and Transactions Act 25 of 2002 are applicable in respect of any issue concerning service by e-mail.
- 8.3 The Council or a Commissioner may accept proof of service in a manner other than prescribed in this rule, as sufficient.

## **9. How to file documents with the Council**

- 9.1 A party must file documents with the Council -
- (a) by handing the document to an office of the Council as listed in Rule 2;
  - (b) by sending a copy of the document by registered post or e-mail to an office of the NBCRFLI at the addresses listed in Rule 2; or
  - (c) by faxing or e-mail the documents to an office of the Council at a number listed in Rule 2.
- 9.2 A document is filed with the Council when –
- (a) the document is handed to an office of the Council;
  - (b) a document sent by registered post is received by an office of the Council; or
  - (c) the transmission of a fax is completed; or
  - (d) The e-mail is received at an office of the Council and only designated email addresses as listed in Rule 2

- 9.3 A party must only file the original of a document filed by fax, if requested to do so by the NBCRFLI or a Commissioner. A party must comply with a request to file an original document within seven days of the request.

**10. Documents and notices sent by registered post**

Any document or notice sent by registered post by a party or the Council 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.

**11. How to seek condonation for documents delivered late**

- 11.1 This Rule applies to any referral document or application delivered outside of the applicable time period prescribed in the Act or these rules.
- 11.2 A party must apply for condonation, in terms of Rule 33, when delivering the document to the Council.
- 11.3 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 party's, 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.
- 11.4 The Council may assist a referring party to comply with this rule.

**PART TWO**  
**CONCILIATION OF DISPUTES**

**12. How to refer a dispute to the Council for conciliation**

- 12.1 A party must refer a dispute to the Council for conciliation by delivering a properly completed Form 7:11 ("the referral document").
- 12.2 The referring party must -

- (a) sign the referral document in accordance with rule 6;
- (b) attach to the referral document written proof, in accordance with Rule 7, 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 11.

12.3 The Council must accept, but may refuse to process a referral document until sub-rule (2) has been complied with.

**13. What notice must the Council give of a conciliation**

The Council must notify the parties in writing of a conciliation hearing at least fourteen (14) days prior to the scheduled date, unless the parties agree to a shorter period or reasonable circumstances require a shorter period. The time period of fourteen (14) days runs from the date the notification is sent by the Council. If a notification is sent by registered mail an additional seven (7) days must be allowed.

**14. Council may seek to resolve dispute before conciliation**

The Council 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.

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

15.1 All parties to a dispute must attend a conciliation in person, irrespective of whether they are represented.

15.2 If a party is represented at the conciliation but fails to attend in person, the Commissioner must —

- (a) continue with the proceedings;
- (b) adjourn the proceedings; or
- (c) issue a certificate of outcome, in terms of Section 135(5) of the LRA, that the dispute remains unresolved.

15.3 In exercising a discretion in terms of sub-rule 15.2, 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.

15.4 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 32.

**16. 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 the referring party to prove that the Council has the jurisdiction to conciliate the dispute through conciliation, provided that all jurisdictional issues requiring evidence may be deferred to arbitration.

**17. 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.

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

18.1 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 or as order by a court of law.

18.2 No person, including a Commissioner, may be called as a witness during any subsequent proceedings in the Council or in any court to give evidence about what transpired during conciliation unless as ordered by a court of law.

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

**19. Conduct of Con-Arb in terms of Section 191 (5A)**

The following provisions shall apply to a con-arb process:

- 19.1 The Council must notify the parties in writing of a con-arb hearing at least fourteen (14) days prior the scheduled date, unless the parties agree to a shorter period or reasonable circumstances require a shorter period. The time period of fourteen (14) days runs from the date the notification is sent by the Council unless sent by registered mail in which case an additional seven (7) days must be allowed.
- 19.2 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 Council and the other party, at least seven (7) days prior to the scheduled date in terms of sub-rule (1).
- 19.3 Sub-rule (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.
- 19.4 If a party fails to appear or be represented at a hearing scheduled in terms of sub-rule (19.1), the Commissioner must conduct the conciliation on the date specified in the notification issued in terms of sub-rule (19.1).
- 19.5 Sub-rule (19.4) applies irrespective of whether a party has lodged a notice of objection in terms of sub-rule (19.2).
- 19.6 The provisions of these Rules that are applicable to conciliation and arbitration respectively, including rules on representation, apply with the changes required by the context, to the conciliation and arbitration parts of con-arb proceedings, respectively.
- 19.7 If the arbitration does not proceed or is not concluded on the date specified in terms of the notice in sub-rule (19.1), the Council must schedule the matter for arbitration either in the presence of the parties or by notifying the parties in terms of Rule 21.

**PART FOUR**

## **ARBITRATIONS**

### **20. How to request arbitration**

- 20.1 A party may request the Council to arbitrate a dispute by delivering a document in the form of Form LRA7:13 (“the referral document”).
- 20.2 The referring party must—
  - (a) sign the referral document in accordance with rule 6;
  - (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 7; and
  - (c) if the referral document is served out of time, attach an application for condonation in accordance with rule 11.
- 20.3 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.
- 20.4 A minute in terms of sub-rule (20.3) may also deal with any other matter listed in sub-rule (20.2).

### **21. When must the parties file statements**

- 21.1 The Council or a Commissioner may direct—
  - (a) the referring party in an arbitration to deliver a statement of case; and
  - (b) the other party to deliver an answering statement.
- 21.2 A statement in terms of sub-rule 21.1 must—
  - (a) set out the material facts upon which the party relies and the legal issues that arise from the material facts;
  - (b) be delivered within the time-period directed by the Council or Commissioner.
- 21.3 The Commissioner has a discretion to continue with the matter despite non-compliance with a Commissioner’s directive. However, any non-compliance may be taken into account when considering costs at the conclusion of the arbitration hearing.

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



- 22.1 The parties to an arbitration must hold a pre-arbitration conference dealing with the matters referred to in sub-rule 22.2, if directed to do so by the National Secretary or a Commissioner. Parties may be assisted to compile the Pre-Arb minutes by the presiding Commissioner or National Secretary.
- 22.2 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;
  - (b) facts that are agreed between the parties;
  - (c) facts that are in dispute;
  - (d) the issues that the Council 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 Council 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.
- 22.3 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.
- 22.4 A minute in terms of sub-rule 22.3 may also deal with any other matter listed in sub-rule 22.2.
- 22.5 The referring party must ensure that a copy of the pre-arbitration conference minutes is delivered to the Council as directed by the Commissioner but not less than 7 days.
- 22.6 The Council must, 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.
- 22.7 If a party that has referred a matter to arbitration fails to attend a pre-arbitration conference, the Commissioner must deal with the matter in terms of Rule 32. Notwithstanding sub-rule 22.6 above, the Commissioner may propose or schedule an Arbitration to give effect to a directive in terms of sub-rule 22.1.
- 22.8 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.
- 22.9 The parties to an arbitration may agree to hold a pre-arbitration conference in accordance with sub-rule 22.2.

### **23. When must the Council notify parties of an arbitration**

The Council must notify the parties in writing of an arbitration hearing at least twenty-one (21) days prior to the scheduled date, unless the parties agree to a shorter period or reasonable circumstances require a shorter period. The time period of twenty-one (21) days runs from the date the notification is sent by the Commission unless sent by registered mail in which case an additional seven (7) days must be allowed.

**24. 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 Council has jurisdiction to arbitrate the dispute.

**25. How to postpone an arbitration**

25.1 An arbitration may be postponed—

- (a) by agreement between the parties in terms of sub-rule 25.2;  
or
- (b) by application to the other parties in terms of sub-rule 25.3.

25.2 The Council 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 Council more than seven days prior to the scheduled date of the arbitration.

25.3 If the conditions of sub-rule 25.2 are not met, any party may apply in terms of Rule 33 to postpone an arbitration by delivering an application to the other parties to the dispute and filing a copy with the Council before the scheduled date of the arbitration.

25.4 After considering the written application, the Council may—

- (a) without convening a hearing, postpone the matter; or
- (b) convene a hearing to determine whether to postpone the matter.

25.5 Nothing in this rule shall prevent a party from applying for a postponement of an arbitration at the arbitration, save that non-compliance with this rule will be a factor to be considered by the Commissioner considering such application.

**PART FIVE**  
**RULES THAT APPLY TO CONCILIATIONS/ARBITRATIONS AND CON-ARBS**

**26. Where a conciliation or arbitration will take place**

- 26.1 A dispute must be conciliated or arbitrated at the Council's office nearest to where the cause of action arose, unless the National Secretary directs otherwise.
- 26.2 The Council determines the venue for conciliation or arbitration proceedings.

**27. Representation before the Council**

- 27.1 (a) In conciliation proceedings, a party to the dispute may appear in person or be represented only by-
- (i) *if the party is an employer, a director or employee of that party and, in addition, if it is a close corporation, a member of that close corporation;*
  - (ii) *any member, office bearer or official of that party's registered trade union or registered employers' organization.*
  - (iii) *if the party is a registered trade union, any office bearer, official or member of that trade union authorized to represent that party; or*
  - (iv) *if the party is a registered employers' organization, any office bearer or official of that party or a director or employee of an employer that is a member of that employers' organization authorized to represent that party.*
- (b) Subject to paragraph (c), in any arbitration proceedings a party to the *dispute* may appear in person or be represented only by -
- (i) *a legal practitioner; or*
  - (ii) *an individual entitled to represent the party at conciliation proceedings in terms of sub-rule (1)(a).*
- (c) 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, a party is not entitled to be represented by a *legal practitioner* in the proceedings unless -

- (i) the Commissioner and all the other parties consent;
  - (ii) the Commissioner concludes that it is unreasonable to expect a party to deal with the *dispute* without legal representation, after considering -
    - (a) the nature of the questions of law raised by the *dispute* ;
    - (b) the complexity of the *dispute*;
    - (c) the public interest; and
    - (d) the comparative ability of the opposing parties or their representatives to deal with the *dispute*.
  - (d) No person representing a party in proceedings before the Commission in a capacity contemplated in paragraph (a) or (b), other than a legal practitioner contemplated in paragraph (b)(i), may charge a fee or receive a financial benefit in consideration for agreeing to represent that party unless permitted to do so by the Council.
- 27.2 If the 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 this Rule, the Commissioner must determine the issue.
- 27.3 The Commissioner may call upon the representative to establish why the representative should be permitted to appear in terms of this Rule.
- 27.4 A representative must tender any documents requested by the Commissioner for the purposes of sub-rule (27.2), including constitutions, pay slips, contracts of employment, documents and forms, recognition agreements and proof of membership of a trade union or employers' organization.
- 27.5 Despite the provisions of sub-rule (27.1), a Commissioner may exclude any person who is representing a party in any proceedings on the basis that they are a member of the same employers' organization as an employer party, or a member of an employers' organization that is a party to proceedings, if the Commissioner, after enquiring into the matter and considering relevant representations, believes that –
- (a) the representative joined the employer's organization for the purpose of representing parties in the Council; or
  - (b) the representative's participation in the dispute resolution process –

- (i) would be contrary to the purpose of the rule which is to promote inexpensive and expeditious dispute resolution in a manner that is equitable to all parties;
- (ii) is not in keeping with the objectives of the Labour Relations Act 66 of 1995; or
- (iii) may have the consequence of unfairly disadvantaging another party to the dispute.”

## **28. How to join or substitute parties to proceedings**

- 28.1 The Council 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.
- 28.2 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.
- 28.3 A Commissioner may make an order in terms of sub-rule 28.2—
- (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.
- 28.4 An application in terms of this rule must be made in terms of Rule 33.
- 28.5 When making an order in terms of sub-rule 28.2, a Commissioner may—
- (a) give appropriate directions as to the further procedure in the proceedings; and
    - (i) if the party is a registered *trade union*, any *office bearer, official* or member of that trade union authorized to represent that party; or
    - (ii) if the party is a registered *employers’ organization*, any *office bearer or official* of that party or a *director* or *employee* of an employer that is a member of that employers’ organization authorized to represent that party.
  - (b) Subject to paragraph (c), in any arbitration proceedings a party to the *dispute* may appear in person or be represented only by -

- (i) a *legal practitioner*; or
  - (ii) an individual entitled to represent the party at conciliation proceedings in terms of sub-rule (1)(a).
- (c) 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, a party is not entitled to be represented by a *legal practitioner* in the proceedings unless -
  - (i) the Commissioner and all the other parties consent;
  - (ii) the Commissioner concludes that it is unreasonable to expect a party to deal with the *dispute* without legal representation, after considering -
    - a) the nature of the questions of law raised by the *dispute*;
    - b) the complexity of the *dispute*;
    - c) the public interest; and
    - d) the comparative ability of the opposing parties or their representatives to deal with the *dispute*.
- (d) No person representing a party in proceedings before the Commission in a capacity contemplated in paragraph (a) or (b), other than a legal practitioner contemplated in paragraph (b)(i), may charge a fee or receive a financial benefit in consideration for agreeing to represent that party unless permitted to do so by the Commission.
- (2) If the 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 this Rule, the commissioner must determine the issue.
- (3) The Commissioner may call upon the representative to establish why the representative should be permitted to appear in terms of this Rule.
- (4) A representative must tender any documents requested by the Commissioner for the purposes of sub-rule (2), including constitutions, pay slips, contracts of employment, documents and forms, recognition agreements and proof of membership of a trade union or employers' organization.
- 5) Despite the provisions of sub-rule (1), a Commissioner may exclude any person who is representing a party in any proceedings on the basis that they are a member of the same employers' organization as an employer party, or a member of an employers'

organization that is a party to proceedings, if the Commissioner, after enquiring into the matter and considering relevant representations, believes that –

- (a) the representative joined the employer's organization for the purpose of representing parties in the Commission; or
- (b) the representative's participation in the dispute resolution process –
  - (i) would be contrary to the purpose of the rule which is to promote inexpensive and expeditious dispute resolution in a manner that is equitable to all parties;
  - (ii) is not in keeping with the objectives of the Labour Relations Act 66 of 1995; or
  - (iii) may have the consequence of unfairly disadvantaging another party to the dispute.”
- (c) make an order of costs in accordance with these rules.

28.6 If in any proceedings it becomes necessary to substitute a person for an existing party, any party to the proceedings may apply to the Council 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.

28.7 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. The application may be made at any stage prior to the conclusion of an arbitration hearing.

28.8 Subject to any order made in terms of sub-rules 28.5 and 6, a joinder or substitution in terms of this rule does not affect any steps already taken in the proceedings.

## **29. How to correct the citation of a party**

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

## **30. When the Council may consolidate disputes**

The Council or a Commissioner, of its own accord or on application, may if appropriate and after notice to the parties consolidate more than one dispute so that the disputes may be dealt with in the same proceedings.



**31. Disclosure of documents**

- 31.1 Either party may request a Commissioner to make an order as to the disclosure of relevant documents or other evidence.
- 31.2 The parties may agree on the disclosure of documents or other relevant evidence.

**32. What happens if a party fails to attend arbitration proceedings before the Council**

- 32.1 If a party to the dispute fails to attend or be represented at any proceedings before the Council, and that party—
- (a) had referred the dispute to the Council, a Commissioner may—
    - (i) adjourn the proceedings.
  - (b) had not referred the matter to the Council, the Commissioner may—
    - (i) continue with the proceedings in the absence of that party; or
    - (ii) adjourn the proceedings.
- 32.2 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 sub-rule 32.1.
- 32.3 If a matter is dismissed, the Council must send a copy of the ruling to the parties within 14 days.

**PART SIX**  
**APPLICATIONS**

**33. How to bring an application**

- 33.1 This rule applies to any—
- (a) application for condonation, joinder, substitution, variation or rescission or postponement;
  - (b) application in a jurisdictional dispute;
  - (c) other preliminary or interlocutory application.

- 33.2 An application must be brought at least fourteen (14) days prior to the date of the hearing on notice to all persons who have an interest in the application.
- 33.3 The party bringing the application must sign the notice of application in accordance with Rule 6 and must state—
- (a) the title of the matter;
  - (b) the case number assigned to the matter by the Council if available;
  - (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 five (5) 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 subparagraph 33.3(e);
  - (g) that a schedule is included listing the documents that are material and relevant to the application.
- 33.4 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 11; 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.
- 33.5 (a) Any party opposing the application may deliver a notice of opposition and an answering affidavit within five (5) 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 sub-rules 33.3 and 33.4 respectively.
- 33.6 (a) The party initiating the proceedings may deliver a replying affidavit within three (3) 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.
- 33.7 A Commissioner may permit the affidavits referred to in this rule to be substituted by a written statement.
- 33.8 In an urgent application, the Council or a Commissioner may—
  - (a) dispense with the requirements of this rule; and
  - (b) only grant an order against a party that has had reasonable notice of the application.
- 33.9 (a) The Council 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 Council 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.
- 33.10 Despite this Rule, the Council or a Commissioner may determine an application in any manner it deems fit, provided that the Council or the Commissioner informs the parties of how the process will be conducted and gives the parties an opportunity to be heard.

#### **34. How to apply to vary or rescind arbitration awards or rulings**

- 34.1 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.

- 34.2 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.

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

- 35.1 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 (90) 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 (14) days of the referral for arbitration being filed.
- 35.2 Despite sub-rule (1), a party that requests arbitration may not thereafter make an application in terms of Section 191(6).
- 35.3 The application must state the grounds on which a party relies in requesting that the dispute be referred to the Labour Court.
- 35.4 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 (7) days of receipt of the application.
- 35.5 The Council must notify the parties of its decision in terms of Section 191(8) within fourteen (14) days of receiving the objection.

**PART SEVEN**  
**PRE-DISMISSAL ARBITRATION IN TERMS OF SECTION 188A**

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

- 36.1 An employer requesting the Council to conduct an inquiry, must do so by delivering a completed LRA Form 7.19 to the Council.
- 36.2 The employee must sign the LRA Form 7.19 unless the employee has agreed in terms of Section 188A(4)(b)<sup>1</sup> to the inquiry in a contract of employment or the inquiry is held in accordance with a collective agreement, in which case a copy of the contract or the collective agreement must be attached to the Form.
- 36.3 When filing the LRA Form 7.19, the employer must pay the prescribed fee to the Council. Payment of the fee may only be made by -

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<sup>1</sup> Only an employee whose earning exceed the amount determined by the Minister in terms of section 6(3) of the Basic Conditions of Employment Act, (currently R205 433.30 per annum) my consent to an inquiry in a contract of employment

- (a) bank guaranteed cheque; or
  - (b) electronic transfer into the bank account of the Council.
- 36.4 Within seven (7) days of receiving a request in terms of sub-rule (36.1) and payment of the prescribed fee, the Council must notify the parties to the inquiry of when and where the inquiry will be held.
- 36.5 Unless the parties agree otherwise, the Council must give the parties at least seven (7) days' notice of the commencement of the Inquiry.
- 36.6 The Council is only required to refund a fee paid in terms of sub-rule (36.3), if the Council is notified of the resolution of the matter prior to issuing a notice in terms of sub-rule (36.4).

## **PART EIGHT**

### **GENERAL**

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

- 37.1 The Council or a Commissioner may condone any failure to comply with any provision of these Rules, on good cause shown.
- 37.2 In exercising its powers and performing its functions the Council may act in such a manner as it deems expedient in the circumstances in order to achieve the objects of the Act. In doing so it shall have regard to substance rather than form, save where the Act provides otherwise.

#### **38. Recordings of Council proceedings**

- 38.1 The Council must keep a record of—
- (a) any evidence given in an arbitration hearing;
  - (b) any sworn testimony given in any proceedings before the Council; and
  - (c) any arbitration award or ruling made by a Commissioner.
- 38.2 The record may be kept by legible hand-written notes or by means of an electronic recording.
- 38.3 A party may request a copy of the transcript of a record or a portion of a record kept in terms of sub-rule 38.2, on payment of the costs of the transcription.

- 38.4 After the person who makes the transcript of the record has certified that it is correct, the record must be returned to the National Secretary.
- 38.5 The transcript of a record certified as correct in terms of sub-rule 38.4 is presumed to be correct, unless the Labour Court decides otherwise.

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

- 39.1 Any party who requires the Council or a Commissioner to subpoena a person in terms of section 142(1) of the Act, must file a completed subpoena together with a written motivation setting out why the evidence of the person to be subpoenaed is necessary.
- 39.2 A party requesting the Council to waive the requirement for the party to pay witness fees in terms of section 142(7)(c) of the Act must set out the reasons for the request in writing at the time of requesting the Council to issue a subpoena in respect of that witness.
- 39.3 An application in terms of sub-rule 39.1 must be filed with the Council at least fourteen days before the arbitration hearing, or as directed by the Commissioner hearing the arbitration.
- 39.4 The Council 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 seven (7) days in which to comply with the subpoena;
  - (c) the Council 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.
- 39.5 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 Council, 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 and subsistence expenses.

- 39.6 Sub-rules 39.4 (c) and 39.5 (b) do not apply if the Council in terms of section 142(7)(c) of the Act, has waived the requirement to pay witness fees.

### **39A Expert witnesses**

A party intending to call an expert witness shall give seven (7) days, prior to the hearing, notice thereof to the Council and the other party to the dispute together with a summary of the proposed evidence of such witness, any document on which the witness will rely during evidence and the basis on which the witness is regarded to be an expert to enable the other party to consider the summary and obviate the need for any postponement.

### **40. Payment of witness fees**

- 40.1 A witness subpoenaed in any proceedings in the Council 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.
- 40.2 The witness fee must be paid by—
- (a) the party who requested the Council to issue the subpoena; or
  - (b) the Council, if the issue of the subpoena was not requested by a party or if the Council waives the requirement to pay witness fees in terms of section 142(7)(c) of the Act.
- 40.3 Despite sub-rule 40.1, the Commissioner may, in appropriate circumstances, order that a witness receive no fee or only part of the prescribed fee.

### **41. Taxation of bills of cost**

- 41.1 The basis on which a Commissioner may make an order as to costs against any party or representative of any party in any arbitration, is regulated by section 138(10) of the Act. If a Commissioner finds a dismissal or an unfair labour practice is procedurally unfair, that proceedings before the Council have been vexatiously or frivolously conducted or that the postponement of proceedings has been unreasonably caused by a party that failed to comply with Rule 31, the Commissioner may order the employer or the party that caused such proceedings or postponement as the case may be to pay an arbitration fee to the Council in an amount not exceeding R1 500,00. (Still investigating if this amount must remain the same)
- 41.2 The Secretary may appoint taxing officers to perform the functions of a taxing officer in terms of these rules.

- 41.3 The taxing officer must tax any bill of costs for services rendered in connection with proceedings in the Council 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 or the Commissioner has directed the application of a different tariff.
- 41.4 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.
- 41.5 Any person requesting a taxation must complete LRA Form 7.17 and must satisfy the taxing officer—
- (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.
- 41.6 Despite subrule 41.4, 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.
- 41.7 Any decision by a taxing officer is subject to review by the Labour Court.

## **42 Order of costs in an arbitration**

- 42.1 In any arbitration proceedings, the Commissioner may make an order for the payment of costs according to the requirements of law and fairness and when doing so should have regard to -
- (a) the measure of success that the parties achieved;
  - (b) considerations of fairness that weigh in favour of or against granting a cost order;
  - (c) any with prejudice offers that were made with a view to settling the dispute;
  - (d) whether a party or the person who represented that party in the arbitration proceedings acted in a frivolous and vexatious manner –
    - (i) by proceeding with or defending the dispute in the arbitration proceedings, or



- (ii) in its conduct during the arbitration proceedings;
  - (e) the effect that a cost order may have on a continued employment relationship;
  - (f) any agreement concluded between the parties to the arbitration concerning the basis on which costs should be awarded;
  - (g) the importance of the issues raised during the arbitration to the parties as well as to the labour community at large;
  - (h) any other relevant factor.
- 42.2 A Commissioner may make an award of costs in favour of a party who is represented in arbitration by a person contemplated by rule 25(1)(a) in respect of reasonable disbursements actually incurred in the conduct of its case in the arbitration. A Commissioner who makes an award in terms of this provision must specify clearly the items and amounts in respect of which costs are ordered.
- 42.3 A Commissioner may make an award of costs in respect of the legal fees of a party that is represented in an arbitration by a legal practitioner, only if the other parties to the arbitration were represented by a legal practitioner.
- 42.4 An award of costs for costs in terms of sub-rule (3) must be in the amount of –
- (a) in respect of the first day of an arbitration (including any arbitration concluded in a single hearing) – R6 000-00 (VAT inclusive);
  - (b) in respect of each additional day of an arbitration – R4 000-00 (VAT inclusive).
- 42.5 The National Secretary may appoint taxing officers to determine any dispute that may arise from any award of costs in terms of this Rule.
- 42.6 Any dispute concerning an award of costs must be submitted on LRA Form 7.17 to which any relevant documentation must be annexed.

### **43. Certification and enforcement of arbitration awards**

- 43.1 An application to have an arbitration award certified must be made to the Commission for Conciliation, Mediation and Arbitration in accordance with its rules.

**Annexures to these Rules**

- Form LRA7.11 – referral to conciliation form.
- Form LRA7.13 - referral to arbitration form.
- Form LRA7.12 – certificate of outcome of conciliation form.
- Form LRA3.10A – subpoena form.

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