

NATIONAL BARGAINING COUNCIL FOR THE ROAD FREIGHT INDUSTRY

RULES FOR THE CONDUCT OF PROCESSES AND PROCEEDINGS BEFORE THE NBCRFI – DISPUTE RESOLUTION

In accordance with the Exemptions and Dispute Resolution Collective Agreement of the National Bargaining Council for the Road Freight 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), 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 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;

“**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;

“**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.

“**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 5 and “**service**” has a corresponding meaning;

“**taxing officer**” means any employee or nominee of the Council appointed by the Secretary in terms of rule 39; and

2. Addresses of the Council.

HEAD OFFICE - JOHANNESBURG

PRIVATE BAG X69
BRAAMFONTEIN
2017

ROAD FREIGHT HOUSE WEST
29 DE KORTE STREET
BRAAMFONTEIN
2001

TEL. NO.: 011-403-9990
FAX NO.: 011-403-7891 / 403-4379

BLOEMFONTEIN

P.O. BOX 4485
BLOEMFONTEIN
9300

2ND FLOOR
ROOM 208
2 PRESIDENT BRAND STREET
BLOEMFONTEIN
9301

TEL NO.: 051-448-9422
FAX NO.: 051-448-9480

DURBAN

PRIVATE BAG X54378
DURBAN
4000

CAPE TOWN

PRIVATE BAG X22
PAROW
7499

GROUND FLOOR
MCINTYRE PLACE
10 PICTON STREET
PAROW
7500

TEL. NO.: 021-930-7720/36/37
FAX NO.: 021-930-6032

EAST LONDON

P.O. BOX 5365
EAST LONDON
5208

6TH FLOOR, SUITE 601
OLD MUTUAL BUILDING
300 SMITH STREET
DURBAN
4001

TEL. NO.: 031-307-6070
FAX NO.: 031-307-6071

GEORGE
P.O. BOX 9753
GEORGE
6530

GROUND FLOOR
LIBERTY BUILDING
98 MEADE STREET
GEORGE
6529

TEL. NO.: 044-874-3098
FAX NO.: 044-874-4839

KLERKSDORP
P.O. BOX 10053
KLERKSDORP
2570

2ND FLOOR, ROOM 207
JADE SQUARE
CNR. MAGRET STREET &
OLIVER THAMBO AVENUE
KLERKSDORP
2571

TEL. NO.: 018-462-8311
FAX NO.: 018-462-8909

NEWCASTLE
P.O. BOX 2604
NEWCASTLE
2940

4TH FLOOR, ROOM 204
OLD MUTUAL BUILDING
CNR. SCOTT & VOORTREKKER
STREETS
NEWCASTLE
2940

2ND FLOOR, ROOM 202
N.B.S. BUILDING
15 TERMINUS STREET
EAST LONDON
5201

TEL NO.: 043-743-6777
FAX NO.: 043-722-2210

KIMBERLEY
P.O. BOX 3000
KIMBERLEY
8300

M-FLOOR
M.B.A. BUILDING
20 CURREY STREET
KIMBERLEY
8301

TEL. NO.: 053-831-6352
FAX NO.: 053-832-1081

NELSPRUIT
P.O. BOX 1561
NELSPRUIT
1200

1ST FLOOR
SUITE 101
PERMANENT BUILDING
27 BROWN STREET
NELSPRUIT
1201

TEL. NO.: 013-752-7420
FAX NO.: 013-753-2386

PIETERMARITZBURG
P.O. BOX 3653
PIETERMARITZBURG
3200

184 LOOP STREET
PIETERMARITZBURG
3201

TEL. NO.: 034-315-1207
FAX NO.: 034-312-9470

POLOKWANE

P.O. BOX 3602
POLOKWANE
0700

SUITE 106
FORUM THREE
23B THABO MBEKI STREET
POLOKWANE
0699

TEL. NO.: 015-291-1533
FAX NO.: 015-291-2531

PORT ELIZABETH

P.O. BOX 20119
HUMEWOOD
6013

4TH FLOOR
RUSSEL SQUARE
PARLIAMENT STREET
CENTRAL PORT ELIZABETH
6001

TEL. NO.: 041-582-5104
FAX NO.: 041-582-5209

RUSTENBURG

P.O. BOX 5010
RUSTENBURG
0300

1ST FLOOR, ROOM 103
BIBLIO PLAZA BUILDING
CNR. NELSON MANDELA &
PRESIDENT MBEKI ROADS
RUSTENBURG
0299

TEL. NO.: 014-597-1320
FAX NO.: 014-597-1547

TEL. NO.: 033-342-1761
FAX NO.: 033-342-4257

PRETORIA

P.O. BOX 55625
ARCADIA
0007

401 PROVISUS BUILDING
523 CHURCH STREET
ARCADIA
PRETORIA
0083

TEL. NO.: 012-440-8454
FAX NO.: 012-440-8453

RICHARDS BAY

P.O. BOX 61
RICHARDS BAY
3900

2ND FLOOR
OLD MUTUAL BUILDING
1ST KRUGERRAND STREET
RICHARDS BAY
3900

TEL. NO.: 035-789-3847
FAX NO.: 035-789-3849

WITBANK

P.O. BOX 1731
WITBANK
1035

GROUND FLOOR
B.F. BOSHIELO HOUSE
10 HOFMEYER STREET
WITBANK
1034

TEL. NO.: 013-656-1503
FAX NO.: 013-656-1509

PART ONE
SERVING AND FILING DOCUMENTS

3. How to contact the Council

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

4. When are the offices of the Council open

- 4.1 The head office and other offices of the Council will be open every day excluding Sundays and public holidays from Monday to Friday between 08h00 and 16h30 and Saturdays between 08h00 and 11h30, or such other times as determined by the Council from time to time.
- 4.2 Documents may only be filed with the Council during the hours referred to in subrule (1).
- 4.3 Notwithstanding subrule (2), documents may be faxed at any time to the Council.

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 subrule (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 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 a copy of the document to the person's fax number 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.

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 chairman 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 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.
- 7.4 The Council or a Commissioner may order service in a manner other than prescribed in this rule.
- 7.5 The Council may give any notice it is required to give in terms of these rules, the Act or the Exemptions And Dispute Resolution Collective Agreement in accordance with this rule.

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 telegram 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.
- 8.2 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.
- 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 to an office of the NBCRFI at the addresses listed in rule 2; or
 - (c) by faxing the document 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.

- 9.3 A party must only file the original of a document filed by fax, if requested to do so by the NBCRFI 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 RC1 ("the referral document"). (Annexure RC1).

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 refuse to accept a referral document until subrule (2) has been complied with.

13. What notice must the Council give of a conciliation

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

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 may—

- (a) continue with the proceedings;
- (b) adjourn the proceedings; or
- (c) dismiss the matter by issuing a written ruling.

15.3 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.

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.

17. Issuing of a certificate of outcome of conciliation

A certificate of outcome of conciliation 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. (Annexure COC1).

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.

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.

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

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

Not utilized currently.

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 RA1 (“the referral document”). (Annexure RA1).
- 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 The Council must refuse to accept a referral document until subrule (2) has been complied with.

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 subrule (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.

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 subrule (2), if directed to do so by the Secretary or a Commissioner. Parties may be assisted to compile the Pre-Arb minutes by the Commissioner or Secretary or may be directed to compile the Pre-Arb minutes.
- 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 subrule (3) may also deal with any other matter listed in subrule (2).

22.5 The referring party must ensure that a copy of the pre-arbitration conference minute 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 subrule (6) above, the Arbitrator may propose or schedule an Arbitration to give effect to a directive in terms of subrule (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 subrule (2).

23. What notice must the Council give of an arbitration

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

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 subrule (2); or
 - (b) by application to the other parties in terms of subrule (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 subrule (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 AND ARBITRATIONS

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 Secretary directs otherwise.
- 26.2 The Council determines the venue for conciliation or arbitration proceedings.

27. Representation before the Council

- 27.1 In conciliation proceedings a party to the dispute may appear in person or be represented only by-
- (a) a *director* or *employee* of that party and if a close corporation also a member thereof; or
 - (b) any *member, office bearer* or *official* of that party's registered *trade union* or *registered employers' organization*.
- 27.2 In any arbitration proceedings, a party to the dispute may appear in person or be represented only by-
- (a) a *legal practitioner*;
 - (b) a *director* or *employee* of the party and if a close corporation also a *member* thereof; or
 - (c) any *member, office bearer* or *official* of that party's registered *trade union* or a *registered employers' organization*.

- 27.3 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 subrule (2), are not entitled to be represented by a *legal practitioner* in the proceedings unless –
- 27.3.1 all the other parties consent; or
- 27.3.2 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.
- 27.4 If the party to the dispute objects to the representation of another party to the dispute or the Commissioner suspects that the representative party of a party does not qualify in terms of this rule, the commissioner must determine the issue.
- 27.5 The Commissioner may call upon the representative to establish why the representative should be permitted to appear in terms of this rule.
- 27.6 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' organization.
- 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 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.

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 subrule (2), a Commissioner may—

(a) give appropriate directions as to the further procedure in the proceedings; and

(d) 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.

28.8 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.

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.

31.2 The parties may agree on the disclosure of documents.

32. What happens if a party fails to attend 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) dismiss the matter by issuing a written ruling; or
 - (ii) 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 subrule (1).
- 32.3 If a matter is dismissed, the Council must send a copy of the ruling to the parties.

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;
 - (b) application in a jurisdictional dispute;
 - (c) other preliminary or interlocutory application.
- 33.2 An application must be brought 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;
- (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 subparagraph (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 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.

33.5 (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.

33.6 (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.

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—

- (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.

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 Commissioner may determine an application in any manner it deems fit and, in particular, may have applications determined on the papers as delivered with hearing and agreement.

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 or unfair labour practice 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 made to the Director of the Commission for Conciliation, Mediation and Arbitration in terms of its rules.

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 a pre-dismissal arbitration, 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 consented in terms of section 188A (4) (b) to pre-dismissal arbitration in a contract of employment, in which case a copy of the contract 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—
- (a) bank guaranteed cheque; or
 - (b) electronic transfer into the bank account of the Council.
- 36.4 Within twenty-one days of receiving a request in terms of subrule (1) and payment of the prescribed fee, the Council must notify the parties to the pre-dismissal arbitration of when and where the pre-dismissal arbitration will be held.
- 36.5 Unless the parties agree otherwise, the Council must give the parties at least fourteen days' notice of the commencement of the pre-dismissal arbitration.
- 36.6 The Council is only required to refund a fee paid in terms of subrule (3), if the Council is notified of the resolution of the matter prior to issuing a notice in terms of subrule (4).

PART EIGHT
GENERAL

37. Condonation for failure to comply with the rules

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

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 subrule (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 Secretary.
- 38.5 The transcript of a record certified as correct in terms of subrule (4) is presumed to be correct, unless the Labour Court decides otherwise.

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. (Annexure S1).
- 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 subrule (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 a reasonable period 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.
- 39.6 Subrules (4) (c) and (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.

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 subrule (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.

- 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 (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. Certification and enforcement of arbitration awards

- 42.1 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

- RCI – referral to conciliation form.
- RA1 - referral to arbitration form.
- COC1 – certificate of outcome of conciliation form.
- S1 – subpoena form.