

Could the CCMA see more legal representation in future?

It is well-known that in terms of the Rules for the Conduct of Proceedings before the Commission for Conciliation, Mediation and Arbitration (CCMA), a legal representative is not permitted to represent a party in disputes pertaining to dismissals for misconduct or incapacity. However, recent developments may possibly impact on the application of the controversial Rule 25 going forward.



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In a recent matter before the Dispute Resolution Centre (DRC) of the Metal and Engineering Industries Bargaining Council, the Commissioner found that the Legal Practice Act 28 of 2014, which came into effect on 1 November 2018, prevails over the rules of the CCMA and the DRC, given that the Act is primary legislation and the Rules only enjoy the status of subordinate legislation. The Commissioner also found that section 25 of the Act has effectively nullified Rule 25 of the CCMA Rules and similar rules in Bargaining Councils. The Commissioner concluded that legal representatives thus no longer need to apply to be permitted to represent parties at proceedings before the CCMA or bargaining councils since legal representation is permitted by the Legal Practice Act.

Legal director at Strata-g Labour Solutions, Advocate Tertius Wessels states that “The DRC and CCMA were never intended to be courts of law, neither was the dispute resolution process meant to be legally complex.”

Wessels also warns that the inclusion of legal representative could risk the dispute resolutions process becoming too formal and legally complex thus resulting in unnecessary delays. However, when both the employer and employee enjoy legal representation, legal practitioners can expediently assist both parties to reach an amicable settlement on the dispute, thus minimising the number of arbitrations which go ahead,” Wessels says.

He says although the Legal Practice Act does not sound the death knell for Rule 25 of CCMA and the Ruling is the subject of some debate.

The CCMA issued a directive stating that the Act has not changed the rights of legal representatives to appear before the CCMA; however, given the recent development, the CCMA will likely experience an increase in the number of applications for legal representation on the basis that the Act states.

“A legal practitioner, whether practising as an advocate or an attorney, has the right to appear on behalf of any person in any court in the Republic or before any board tribunal or seminal institution,” Wessels concludes.

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