

EMPLOYMENT

Claims by employee for costs of Covid-19 tests cannot be referred to the CCMA

8 February 2022 4 min read

Basic Conditions of Employment Act ("BCEA") threshold

by Jacques van Wyk, Director and Andre van Heerden, Senior Associate

Issue

Whether the Commission for Conciliation, Mediation and Arbitration ("CCMA") is able to determine whether an employee is entitled to, among others, be reimbursed the costs for Covid-19 tests.

Facts

Any person who earns under the prescribed Basic Conditions of Employment Act ("[BCEA](#)") threshold, currently being an amount of R211 596.30 per annum may refer a dispute to the CCMA in terms of section 73A of the BCEA. This section allows an employee to make a claim for any amount owing to him/her in terms of the BCEA, the National Minimum Wage Act, a contract of employment, a sectoral determination and/or a collective agreement. On the facts of the matter, it was held that the employee's claim for, among others, the costs of Covid-19 tests did not fall within the ambit of section 73A and as such, could not be heard by the CCMA.

Section 73A of the BCEA

Summary

The CCMA had to consider the above issue in the case of *Cousins / Bill Buchanan Association (2022) 31 CCMA 6.7.1*. The facts of this case are briefly as follows. The employee referred a claims dispute in terms of section 73A of the BCEA alleging that the employer owed her monies for deductions from the employee's unpaid leave of R11 718.50; R8500 for Covid-19 tests and R27 000 for loss of income for her private business which operated at the employer's premises. The employer submitted that the CCMA lacked jurisdiction (i.e., was unable) to deal with such a dispute because the employee's claims were not covered by section 73A of the BCEA.

The relevant portions of section 73A of the BCEA provide the following:

73A. Claims for failure to pay any amount.—

(1) Despite section 77, any employee or worker as defined in section 1 of the National Minimum Wage Act, 2018, may refer a dispute to the CCMA concerning the failure to pay any amount owing to that employee or worker in terms of this Act, the National Minimum Wage Act, 2018, a contract of employment, a sectoral determination or a collective agreement.

(2) Subsection (1) does not apply to employees or workers earning in excess of the threshold prescribed by the Minister in terms of section 6 (3).

In relation to the amount claimed for Covid-19 tests, it was the employee's case that she was required to submit the Covid-19 test results in order to be allowed to return to work after she had been sick.

In response, the employer referred to section 27 of the Directions which obligates employers not to permit employees to enter the workplace if the employee presents with Covid-19 related symptoms. It was protocol for employees of the respondent to be screened when they report for duty and to undergo a Covid-19 test if they were required to do so.

Legal provisions considered by the CCMA

The Commissioner reiterated that section 73A of the BCEA applies to the referral of disputes relating to any failure to pay an amount owing to a person, who earns below the BCEA threshold, in terms of the BCEA, the National Minimum Wage Act, a contract of employment, a sectoral determination or a collective agreement. Section 73A, the Commissioner held, does not cover payments due to employees other than payments expressly provided for in the section.

In the circumstances, it was held that the applicant was not entitled to claim for the costs of the Covid-19 test in terms of section 73A of the BCEA. The CCMA also dismissed the employee's other claims with specific regard to the facts of the matter.

Importance of the case

This award confirms that an employee may only make specific claims in terms of section 73A in the CCMA. Employees may not, for instance, make a claim for the costs of Covid-19 tests.



Andre van Heerden

Director

[View Profile](#)



Jacques van Wyk

Director

[View Profile](#)