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# New labour judgement confirms that the CCMA has teeth

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*CCMA and MBS TRANSPORT CC and Five Others* [J1807/2015] / [JA94/2015]

Since the introduction of the Labour Relations Act, 66 of 1995, ("LRA") the playing field of South African labour relations has been fundamentally affected by not only the new statutory protection of employees' rights recognised in the LRA, but also by the dispute resolution mechanisms created, for the first time, by the LRA.

## INTRODUCTION

Fundamentally, the Commission for Conciliation, Mediation and Arbitration ("the CCMA") was established by the LRA, in order to conciliate and arbitrate employment related disputes, as an efficient and cost effective forum within which employees and employers can resolve their disputes. The CCMA, in this regard, has been a success story; since its establishment in 1995, the CCMA has become one of the busiest dispute resolution forums in the world, and according to its own 2014/2015 figures, the CCMA –

- received 171 854 referrals;
- performed 59 268 con/arbs (on average 237 per day);
- performed a total of 127 997 conciliations, including con-arbs, (on average 512 per day);
- performed 43 975 arbitrations (on average 176 per day);
- certified 5 423 CCMA awards.

Adding to the ability of the CCMA to be a one-stop shop for the first stage of the resolution of labour disputes, a new case from the Labour Appeal Court ("LAC") recognizes the right of the CCMA to enforce arbitration awards issued by it, through its own process of certifying awards, and without having to revert to the Labour Court to issue the writ of execution. Accordingly, the new case law has the effect that once the CCMA has certified an arbitration award, such an award is enforceable as if it were an order of the Labour Court in respect of which a writ had been issued.

This approach is quite novel and allows for parties in the CCMA process to continue to use the CCMA to finality in executing against a CCMA award. In the past, a party with a CCMA award in its favour would approach the registrar of the Labour Court to issue a writ of execution. However, approaching a different forum to enable the CCMA award to be executed, detracted from the ability of the CCMA to provide an independent and expeditious mechanism for its awards to be enforced.

## THE LABOUR APPEAL COURT'S FINDINGS

In the case of *CCMA and MBS TRANSPORT CC and Five Others* [J1807/2015] / [JA94/2015], the LAC recently decided that an interpretation of section 143 of the LRA, which gives the director of the CCMA the right to certify a CCMA award as an order of court, does not justify the practice that the registrar of the Labour Court should issue a writ of execution in respect of certified CCMA awards.

The LAC took into account the argument of the CCMA that "*employers paid no attention to [CCMA awards] because they were aware of the cumbersome enforcement provisions of the LRA. It is self-evident,"* the LAC found, "*that this procedure was onerous, time consuming and expensive. It created a two stage procedure in cases where the employer failed to comply with an arbitration award*."

The LAC accordingly found that, in order to give effect to the provisions of section 143 of the LRA, and that since the CCMA does not issue writs in the conventional way, there is no legal or practical issue with a CCMA certified award having the equivalent status of a Labour Court order in respect of which a writ has been issued. The court concluded that "*the practical effect of section 143(1) and 143(3) is that a certified arbitration award may be enforced without the need for a writ to be issued by any court or the CCMA*."

This judgement gives effect to the explanatory memorandum to the amendments to section 143 which were introduced in 2015, in which it was stated that changes to section 143 were necessary so that –

"*… an award which has been certified by the Commission can be presented to the Deputy-Sheriff for execution if payment is not made. This removes the need for the current practice in terms of which parties have a writ issued by the Labour Court.*"

As a result of the changes to section 143 and the findings of the LAC in *CCMA v MBS Transport CC*, the process for enforcing an award in the CCMA is now as simple as:

- referring a dispute to the CCMA (within 30 days of the unfair dismissal, or within 90 days of the unfair labour practice);
- receipt of an arbitration award from the CCMA ordering any party to the dispute to pay the other a sum of money (ordinarily an order for the employer to pay the former employee compensation for the commission of the unfair dismissal or unfair labour practice);
- application to the CCMA in terms of section 143 of the LRA (using the form LRA 7.18) to certify the award;
- receipt of the certified award;
- delivery of the award to the Sheriff of the relevant magisterial district having jurisdiction to enforce the award; and
- enforcement by the Sheriff (usually by taking into inventory, or possession of goods to the value of the monetary amount of the award).

The certification process allows a successful party to continue to use the CCMA to finalize the process and move closer towards enforcement. It must also be noted that nothing in this judgement or the procedure enabled by section 143 prevents a party who is aggrieved by the CCMA award and who wishes to challenge it, from doing so. The unsuccessful party is always entitled to launch a review proceeding in the Labour Court under section 145 of the LRA, and can either provide security in terms of section 145(7) and (8) or apply for a stay of the execution of the award pending the review, on the basis that the award is under review.

It must be noted that the above process applies only in respect of CCMA awards ordering the payment of a monetary amount to a party. If the certified award to be enforced is for the performance of an act rather than for the payment of money (for example, reinstatement of the employee), then contempt proceedings may be instituted in the Labour Court if the party which must reinstate refuses to do so.

## CONCLUSION

The consequences of the LAC's decision in *CCMA v MBS Transport CC* will have the practical effect that a party who is successful in the CCMA and who receives an arbitration award sounding in money, in their favour (generally an employee whose employment has been terminated), will have access to justice which is more convenient and affordable than under the old system.

This is in keeping with the overall approach of fairness and equity expounded by the LRA, and supports the concept of an expeditious resolution of labour disputes. The LAC's interpretation of section 143 in the *CCMA v MBS Transport CC* case has brought finality to the question of the status of certified CCMA arbitration awards, which was long outstanding.

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