

JURISDICTION ON DISPUTES OF RIGHT

ELRC PRESENTATION
ON JURISDICTION



CLAUSE 14 INTRODUCTION

In this clause 14, a dispute means any dispute other than a mutual interest dispute that a party must or may elect to refer to the General Secretary in terms of a statute (e.g. LRA) or in terms of this Collective Agreement No. 1 of 2006 (e.g. 14.2-14.3 of the ELRC Constitution).



DISPUTE PROCESSES

1. CONCILIATION
2. ARBITRATION
3. CONCILIATION PRE-ARBITRATION
4. CONCILIATION-ARBITRATION
5. EXPEDITED JOINT CONCILIATION AND ARBITRATION
6. DISCIPLINARY HEARINGS IN THE FORM OF ARBITRATION





NATURE OF DISPUTES

- a) Automatically Unfair Dismissals (Sec 5 & 187)
- b) Retrenchment (Sec 189 & 189A)
- c) Disclosure of Information (Sec 16 & 189)
- d) Organisational Rights (Part III part A)
- e) An Agency Shop (Sec 25)
- f) Picketing (Sec 69)
- g) Alleged Unfair Discrimination (EEA)
- h) Dispute concerning contract of employment
- i) Alleged non-compliance with BCEA provision

UNFAIR DISMISSALS

LRA, S. 186(1)

- a) An employer has terminated a contract of employment with or without notice;
- b) An employee reasonably expected the employer to renew a fixed term contract of employment on the same or similar terms but...
- c) An employer refused to allow an employee to resume work after she took maternity leave in terms of any law...





UNFAIR DISMISSALS

continued

- d. An employer who dismissed a number of employees for the same or similar reasons has offered to re-employ one or more of them but...
- e. An employee terminated a contract of employment with or without notice because the employer made continued employment intolerable for the employee.
- f. An employee terminated a contract of employment because the new employer offered a different contract after transfer in terms of sections 197 or 197A of the LRA...

UNFAR LABOUR PRACTICE

LRA S. 186 (2)

“ULP” means any unfair act or omission that arises between an employer and an employee involving:

- a) Promotion, demotion, probation or training of an employee or relating to the provision of benefits to an employee
- b) The unfair suspension of an employee or any other unfair disciplinary action short of dismissal in relation to an employee



UNFAIR LABOUR PRACTICE

Continued

- c) A failure or refusal by an employer to reinstate or re-employ a former employee in terms of any agreement; and
- d) An occupational detriment, other than dismissal, in contravention of the Protected Disclosure Act (Act No. 26 of 2000), on account of an employee having made a protected disclosure defined in the Act



ADDITIONAL PROVISIONS

1. If the dispute has already been referred to another forum with jurisdiction, it cannot be referred to the ELRC for the same process unless it is referred by that forum.
2. If it is referred to a forum with no jurisdiction, it can be referred to the ELRC thereafter provided that it is withdrawn from that forum or the forum determined that it has no jurisdiction.



ADDITIONAL PROVISIONS

Continued

3. If a complaint with the non-compliance with a provision of the BCEA has already been referred to the Department of Labour, it cannot thereafter be referred to the ELRC
4. The parties to and a non-party to the ELRC that refers unfair discrimination dispute to the General Secretary for conciliation and arbitration hereby waives their right to have the dispute referred to the Labour Court





EXHAUSTING INTERNAL PROCEDURES

1. A party may not refer a dismissal dispute where there is an appeal except where 45 days lapsed and the employer had been served with 7 days written notice to remedy the situation.
2. A party may not refer a dispute without invoking the grievance procedure and allowing 45 days for its resolution.
3. Grievance procedure doesn't apply to the dismissals, promotions, appointment and transfer disputes.

TIME FRAMES (PERIODS)

1. DISMISSAL DISPUTE

- ▣ Within 45 days of day of dismissal or if it's a later date, within 45 days of the employer upholding the decision to dismiss.
- ▣ Within 52 days of the date on which the employee served on the employer written notice to conclude an appeal lodged against dismissal.



TIME FRAMES (PERIODS)

2. UNFAIR LABOUR PRACTICE

- ▣ Within 90 days of the act or omission which allegedly constitute the ULP or if it's a later date, 90 days of that date of the act or omission.
- ▣ In the case of promotions, appointments and transfers, within 30 days from the date on which the employee became aware of the promotion, appointment or transfer.



TIME FRAMES (PERIODS)

3. PROMOTIONS, APPOINTMENTS AND TRANSFERS

- ❑ No compulsion to invoke the grievance procedure.
- ❑ Within 30 days on which the grievance arose.
- ❑ If the applicant lodged the grievance, within 30 days of the date the applicant terminated his participation in the grievance procedure.



TIME FRAMES (PERIODS)

4. ANY OTHER DISPUTE

- ▣ 45 days from the date an outcome has been rendered on the grievance of an employee and if there is no outcome, at least 45 days from the date on which the grievance was lodged.
- ▣ In the case of any other dispute within 45 days of the date on which the dispute arose.



JURISDICTION TO CONCILIATE

If it appears during conciliation that there are still jurisdictional issues outstanding the commissioner must:

1. Require the applicant to prove that council has jurisdiction.
2. Give the other party to the dispute an opportunity to present its case.
3. Decide all jurisdictional issues that came to light.





JURISDICTION TO CONCILIATE (cont.)

4. In case of promotion disputes the Council must first determine if there is an appointment done by the employer after the recommendation of the SGB for the commissioner to have jurisdiction to conciliate the dispute.

5. The above is contrary to section 14.3 of the ELRC Constitution

REDDY V KZN DEPARTMENT OF
EDUCATION & CULTURE & OTHERS (2003) 12
LAC 6.9.2

INTERPRETATION AND APPLICATION OF CA'S

- A party to a dispute about the interpretation or application of a Collective Agreement may refer such dispute to conciliation and arbitration in terms of these procedures, even if the agreement did not make such provisions.



SECTION 142A OF THE LRA

- In terms of Clause 67.1 of the ELRC Constitution, Council may by agreement between the parties or on application by a party, make any settlement agreement in respect of any dispute that has been referred to Council, an arbitration award as in terms as in terms of Section 142A of the LRA.



CERTIFICATION AND ENFORCEMENT:143 (3) LRA

- ▣ In terms of Clause 68.1 of the ELRC , Council can certify an arbitration award on application by a party to such proceedings in terms of section 143(3) read together with section 51(8) of the LRA.
- ▣ The above function has been put on hold until further notice by the CCMA on recommendation by the Labour Court Judge President.
- ▣ Section 143(4) seem to be the only option available to parties to date.



▣ END
▣ KE A LEBOGA!!!!

