

Short Notes on:

Enforcing CCMA Awards Without Further Referrals Explained

Employees already have to endure a lengthy and often protracted journey to reach the oasis of a Commission for Conciliation, Mediation and Arbitration (herein after 'CCMA') award in their favour, only to have to begin the tiresome journey of receiving such award after succeeding with their claim. This plight was recognised in in the Labour Courts and resulted in the amendment of the Basic Conditions of Employment Act 75 of 1997 (herein after the 'BCEA') as read with the Labour Relations Act 66 of 1995 as amended (herein after the 'Act') to extend the CCMA's authority to the compliance process of awards as well.

Prior to this, the CCMA only had the authority to grant awards and not to further follow through with ensuring compliance by the Employer. This meant that victories were often for the most part pointless for successful Employees as they had to expend themselves further if the Employer chose to simply not comply with instructions to pay over compensation awarded by the CCMA.

The Process Previously

Previously, if the Employer chose not to pay any amounts awarded after being liable for same as determined by the CCMA, Employees would then have to approach the Labour Court to execute a writ for enforcement once the Employer is deemed to be in default. This process, although self-explanatory and easy to navigate for the layman with the help of the clerk of the Court, carried the burden of additional costs for the Employee and further dragged out the process of being compensated timeously. The application for the writ would have had to be considered by a Registrar and if approved, be sent to the relevant Sheriff for execution. The Sheriff would proceed in opening an account in the name of the Employee and then charge to that account for any work done in attaching and realizing property of the Employer in satisfaction of an amount equal to the award.

The further difficulty here is that the Sheriff would often request security equal to the amount to be claimed in respect of the award prior to executing his or her duties as a Sheriff in respect of attachment. Quite clearly, Employees with CCMA awards in their favour would very obviously be prejudiced and therefore less likely to be able to claim awards rightfully due to them.

The Labour Appeal Court

The Labour Appeal Court heard the matter of *CCMA versus MBS Transport CC and Five Others* [J1807/2015] which would set precedent for how S143 of the Act, as amended, would be interpreted and executed. In terms of the Act, the Labour Court enjoys status similar to that of a High Court in the province of its operation.¹ Therefore, its decisions would be equivalent to that of a High Court judgment in its jurisdiction of operation.

For this discussion, S143(1) and S143(5) of the Act are relevant, in that it states that '*An arbitration award issued by a commissioner is final and binding and it may be enforced as if it were an order of the Labour Court in respect of which a writ has been issued.*'² Furthermore, that '*Despite subsection (1), an arbitration award in terms of which a party is required to pay an amount of money must be treated for the purpose of enforcing or executing that award as if it were an order of the Magistrate's Court.*'³

In this matter, the CCMA argued that, essentially, Employers were ignoring CCMA awards and not making payment as they were fully aware of the laborious process involved with holding them accountable. The status and weight of a CCMA ruling was, therefore, heavily undermined.

The Interpretation of S143 of the Act

The Labour Court in the above matter ruled in accordance with the sections above and gave authority to its intention. The Court stated 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.*'

It is now possible for Employees to circumvent the practice explained above of obtaining a writ from Court. The effects of this ruling mean that, as it stands, once Employers do not make payment to Employees as awarded, the Employee can approach the CCMA and apply to have the award certified. If all is in order, the CCMA will then submit the certified award to the Sheriff or his/her Deputy for execution.

¹ S151 of the Labour Relations Act.

² S143(1) of the Act.

³ S143(5) of the Act.

Conclusion

In further support of Employees claiming awards, the CCMA now also provides financial assistance to those seeking to institute the collection process. To qualify, individuals need to earn below R 205 433.30 per annum. In the appropriate circumstance the CCMA may recover such costs from an Employee who has successfully enforced their order but even then, this is once execution is effected, meaning that it would place less of a prejudice on the Employee.

The above process ensures that emphasis is placed on not putting the Employee at a disadvantage once an award is granted in their favour. It further allows for a less disjointed and unified process in dealing with CCMA matters, hopefully providing encouragement to individuals who feel they might never be compensated even if successful with their disputes.

