

EMPLOYMENT ALERT

28 October 2013

RE-REFERRAL OF THE SAME DISPUTE TO THE CCMA

In the case of *Edward Lemley v Commission for Conciliation, Mediations and Arbitration and Others* (Case no: P32/12) the Labour Court considered whether the Commission for Conciliation, Mediation and Arbitration (CCMA) has jurisdiction to entertain a dispute which had previously been referred to the CCMA and withdrawn by the applicant. The applicant in the matter sought to review the ruling of the CCMA which barred him from referring a dispute to the CCMA, having referred the same dispute and withdrawn it previously.

The applicant was dismissed by the employer for operational reasons on 25 September 2009. He referred a dispute to the CCMA. On the advice of his union representative he withdrew the case at arbitration with the intention of adding to the relief sought in his claim. The applicant thereafter referred the claim to the CCMA again. The second referral included an amendment to the relief which he sought against the employer by adding a claim for severance benefits. The Commissioner held that the CCMA lacked jurisdiction to hear the dispute as the applicant had earlier withdrawn the very same dispute.

The applicant applied to review and set aside the decisions of the CCMA. The Labour Court found that the Commissioner had erred in finding that the applicant had sought the same relief in the second referral as he had done in the original claim, but held that in any event, disputes which had been referred to the CCMA and withdrawn before they are decided on the merits may be referred to the CCMA afresh.

Employers should therefore be aware that an employee may re-refer a dispute to the CCMA even after it has been withdrawn, so long as the merits of the dispute have not yet been decided. However, if the second referral is outside of the timeframe stipulated in the Labour Relations Act, No 66 of 1995 (for example, 30 days for unfair dismissals relating to misconduct) the employee will have to apply for condonation. If at all possible, it is advisable to attempt to reach settlement on employment related matters whereby the employee waives his or her right to refer a dispute to the CCMA.

Gillian Lumb and Mandlakazi Ngumbela

ANNUAL EMPLOYMENT LAW UPDATE

Look out for more information on our 'Annual Employment Law Update 2013 - Johannesburg' which we will be hosting on 7 November 2013.

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