

Employment Law

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In this issue

SOUTH AFRICA

CCMA commissioners' authority to expedite dispute resolution under the LRA: A discussion of *SAA v SACCA and NUMSA*



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CCMA commissioners' authority to expedite dispute resolution under the LRA: A discussion of *SAA v SACCA and NUMSA*

In 2020, South African Airways (SAA) underwent a restructuring exercise, which involved large-scale retrenchments and significant changes to terms and conditions of employment, impacting approximately 4,700 employees.

In August 2021, notably beyond the statutory filing periods within which to refer a dispute to the Commission for Conciliation, Mediation, and Arbitration (CCMA), the South African Cabin Crew Association (SACCA) and the National Union of Metalworkers of South Africa (NUMSA) referred an unfair labour practice dispute to the CCMA. This dispute was grounded on allegations of unjust treatment of their members concerning promotions, demotions, benefits, and training.

Over a period of 19 months, the progression of the matter was consistently impeded by dilatory conduct from the unions. This included their failure to finalise the pre-arbitration minute, neglecting to provide their bundle of documents, and an inability to secure clear instructions on the pertinent issues.

SAA applied *inter alia* for the matter to be dismissed due to a lack of diligent prosecution. However, the commissioner found that he lacked the power to dismiss the case without hearing evidence on the merits. SAA subsequently approached the Labour Court on an urgent basis to review the commissioner's rulings.

SACCA and NUMSA, in their defence, invoked section 158(b) of the Labour Relations Act 66 of 1995 (LRA), aiming to restrain SAA from pursuing relief in the Labour Court while the matter was under consideration in the CCMA. There is an exception to this rule that permits such action if it is deemed just and equitable under the circumstances. The Labour Court affirmed this exception by agreeing to hear the matter based on the merits of SAA's case.

The issues before the Labour Court


SAA challenged three rulings issued by the CCMA commissioner: a condonation ruling, jurisdictional ruling, and dismissal ruling. For the purpose of this alert, we focus solely on the jurisdictional and dismissal rulings, discussed below.

Jurisdictional ruling

In challenging the jurisdiction, SAA asserted that the CCMA lacked jurisdiction for "*general unfairness*". SAA argued that applicants referring to an unfair labour practice dispute must establish that the dispute falls within the purview of section 186(2)(a) of the LRA. In the present case, the dispute emanated from a substantial restructuring exercise, tantamount to a retrenchment, and, as such, should have been directed to the Labour Court. The court reviewed and set aside the jurisdictional ruling on this ground.

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Dismissal ruling

The court was critical of the unions' delay and ultimate failure to proceed with the matter on six occasions over a period of 19 months, concluding that they were simply incapable of pursuing their own case.

The court emphasised that the power to dismiss arises from section 138(1) and 138(9)(b) of the LRA. Section 138(1) refers to the obligation on the commissioner to determine the dispute "*fairly and quickly but must deal with the substantial merits of the dispute with the minimum of legal formalities*". The court further emphasised that section 138(9)(b) enjoins a commissioner to make an award "*that gives effect to the provisions and primary objects of this act*".

One of the key objectives outlined in section 1(d)(iv) of the LRA is the "*effective resolution of disputes*". An essential characteristic of effectiveness is expeditiousness. The court ultimately reviewed and set aside the dismissal ruling, determining that the commissioner had erred in law by concluding that he lacked the authority to dismiss the matter.

The court determined that the commissioner should have exercised the power that he had in favour of SAA, emphasising the prolonged delay by the unions, their lack of diligent case preparation, and the repetitive prejudice suffered by SAA in the course of preparation for an arbitration process that was not ripe for any hearing.

Conclusion

This judgment serves as a timely clarification of the legal position, underscoring that unions should not inaccurately categorise a restructuring exercise as an unfair labour practice where the CCMA would not have the jurisdiction to determine the matter. Additionally, the court explicitly affirmed that commissioners possess the authority to dismiss a dispute on the grounds of dilatory conduct by a referring party.

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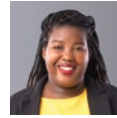
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