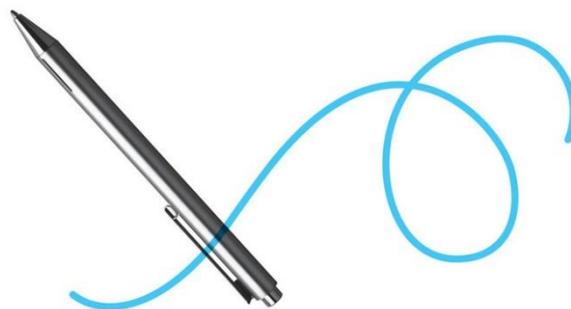


Employment Law update



Sign on the dotted line

Employees wanting to pursue cases for unfair dismissal in either the CCMA or various Bargaining Councils typically kick-start the process by completing and signing the requisite dispute referral forms. While this process has been simplified for the purposes of a quick and easy dispute referral, it is not uncommon for employees to enlist the help of attorneys. Often attorneys will sign dispute referral forms on behalf of expectant employees. However, doing so may be tantamount to signing the proverbial death warrant for that unfair dismissal dispute.

In the recent decision of *Adams v National Bargaining Council for the Road Freight and Logistics Industry and 2 Others* (judgment handed down on 7 September 2018), the Labour Court had an opportunity to weigh in on this scenario and dealt with, specifically, whether an attorney has a right to sign the dispute referral forms on behalf of the employee concerned in an unfair dismissal case. In the learned Judge Snyman's own words, "*this case illustrates the importance of properly following prescribed procedures*" and what consequences might follow in the event of non-compliance.

The facts of the judgment are simple. An employee referred a case for unfair dismissal to the National Bargaining Council for the Road Freight and Logistics Industry (NBRFLI). The dispute referral form was signed by an attorney on the employee's behalf. The dispute was unresolved at the conciliation stage and the subsequent dispute referral form to arbitration was also signed by the same attorney. The attorney did not appear at either stage of the process and the employee continued unrepresented.

At the arbitration proceedings, the employers' organisation official representing the employer craftily raised a preliminary objection that the dispute referral forms had been "*signed by someone else other than the employee*". Long story short, the arbitrator found that the referral forms signed by the attorney were irregular and, as a consequence thereof, the Bargaining Council did not have jurisdiction to entertain the dispute.

The Bargaining Council rules, which mirror those of the CCMA, prescribe who must sign referral forms. In short, referral forms must be signed either by the party or a person who is entitled to represent that person. Applying "*a textual, a logical and common sense reading*" of the Bargaining Council rules, the learned Judge held that the employee's attorney was not entitled to represent the employee in either the conciliation or arbitration proceedings.

In unfair dismissal disputes where the reason for the dismissal relates to misconduct or incapacity, an employee does not have an automatic right of legal representation and an attorney wanting to represent the employee must apply for this right. It was observed by the Court that the arbitrator had

already, of her own accord, applied her mind to the issue of legal representation and found that it was not necessary.

It follows that the attorney was not entitled to sign the referral forms on behalf of the employee. In this regard, the Court concluded that all the employee “*needed to do was just append his signature to the referral forms. His failure to do so rendered the referrals to conciliation and arbitration invalid, and thus null and void*”. The arbitrator’s ruling was held to be unassailable and the Court application was, therefore, dismissed.

Authors:



Sandro Milo
*Partner,
Head of Employment Law*

T: +27 87 358 9884

sandromilo@
eversheds-
sutherland.co.za



Rowan Bauer
*Associate,
Employment law*

T: +27 87 358 9880

rowanbauer@
eversheds-
sutherland.co.za

eversheds-sutherland.com

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