

**DO THE CCMA'S ARBITRATION PROCEDURES REQUIRE
AMENDMENT?**

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1. Overview of CCMA's operation

- **High level of referral (120 000 dismissal disputes in 2009-2010)**
- **Improved efficiency**
- **Conciliation – 29 days**
- **Arbitration – 38 days**
- **High level of absenteeism at conciliation/ default awards**
- **Settlement rate – 60 %**
- **Review rate – 10%**
- **High number of employees seeking certification**

2. Conciliation issues

Determining jurisdiction at conciliation stage

- Conciliator should be satisfied that referring party has referred an “alleged dispute” within the jurisdiction of the CCMA/ BC.
- **Test:** has the party alleged that the dispute is one contemplated by LRA
- Conciliator cannot be expected to investigate merits of dispute
- Referral should only be rejected if party could not reasonably allege that a dispute exists

Does rule 14 need to be amended?

“If it appears during conciliation proceedings that a jurisdictional issue has not been determined, the commissioner must require the referring party to prove that the Commission has the jurisdiction to conciliate the dispute through conciliation.”

Impact of *Ramabulana* decision –

Rule that requires an employee to attend conciliation proceedings is *ultra vires*

3.Con-arb

Purpose – to speed up resolution of disputes by allowing for arb to commence immediately after conciliation phase finishes

Either party may object – one party (usually employer) in 40% of cases)

Possible reforms

- Party should have to specify reason for objecting and unsubstantiated objections could result in costs other
- Test for Commissioner to permit postponement should be similar to test for legal representation
 - Agreement
 - Complex matter

4.Reviews

Problem

Reviews during conciliation and/ or in the course of arbitration becoming increasingly common

- Proposal: Review should only be permitted after arbitration award made

Problem

Reviews not proceeded with – use to delay enforcement

Option(s)

- Reviewing party should be required to put up security for award
- Labour Court rules to provide for lapsing if steps not taken

Rescission/ review

Error in certificate can only be corrected by review (and not review/ rescission)

5.Enforcement of awards – putting a sting in the tail

Shortcomings –

- Need to have certified award made a writ
- Unrepresented employees required to put up security by Sheriff
- Sherrifs costs at the High Court scale
- Possibility of rescission/ review if service cannot be proved/ incorrect citation etc
- Employer may have been wound up

Consequence – many employers ignoring awards

Options

- CCMA to serve
- CCMA to cover costs of unsuccessful executions
- Higher interest on outstanding amounts
- SARS to collect
- LRA compliance required for tenders etc