

D R C

Rules

(As amended in July 2008)

RULES FOR THE CONDUCT OF PROCEEDINGS BEFORE THE DRC

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PART ONE

SERVING AND FILING DOCUMENTS

1. How to contact the DRC

The addresses, telephone and telefax numbers of the offices of the DRC are listed in rule 2.

Documents may only be filed with the DRC at the addresses or telefax numbers listed in rule 2.

2. Addresses of the DRC and office hours

DRC HEAD OFFICE – 08h15 to 16h30

1st Floor – 276 Oak Avenue, RANDBURG
P.O. Box 3717, RANDBURG, 2125
Tel No. (011) 787-9713
Fax No. (011) 787-9736

The addresses of the *Provincial* offices of the DRC are as follows:

DRC – HIGHVELD REGION, NORTHERN CAPE, NORTH WEST AND FREE STATE REGION – 08H15 TO 16H30

1st Floor – 276 Oak Street, RANDBURG
P.O. Box 3717, RANDBURG, 2125
Tel No. (011) 787-9713
Fax No. (011) 787-9736

DRC – NORTHERN REGION - 08H15 TO 16H30

1st Floor, Primo House
Hatfield Square
1119 Burnett Street
Hatfield
Tel No. (012) 362-6397 / 7160
Fax No. (012) 362-3701/086 668 5825

DRC – KWAZULU NATAL REGION - 08H15 TO 16H30

Motor Industry House
5 Renshaw Rd
Congella, 4001
Tel (031) 205-6243/4/5/6 Fax (031) 205-6195

DRC – EASTERN AND WESTERN CAPE REGION - 08H15 TO 16H30

Tyger Terraces 3
Bellville Business Park
Mike Pienaar Boulevard
BELLVILLE, 7530
Tel No. (021) 945-4626
Fax No. (021) 945-6467

3. How to calculate time periods in these rules

1. For the purpose of calculating any period of time in terms of these rules –
 - a) day means calendar day; and
 - b) the first day is excluded and the last day is included, subject to sub-rule 92.
2. The last day of any period must be excluded if it falls on a Saturday, Sunday, public holiday or on a day during the period between 16 December to 7 January.

4. Who must sign documents

1. A document that a party must sign in terms of the Act or these rules may be signed by the party or by a person entitled in terms of the Act or these rules to represent that party in the proceedings.
2. If proceedings are jointly instituted or opposed by more than one employee, documents may be signed by an employee who is mandated by the other employees to sign documents. A list in writing of the employees who have mandated the employee to sign on their behalf must be attached to the referral document.

5. How to serve documents on other parties

- 1) A party must serve a document on the other parties –
 - a. by handing a copy of the document to
 - i) the person concerned;

- ii) a representative authorized in writing to accept service on behalf of the person;
 - iii) a person who appears to be at least 16 years old and in charge of the person's place of residence, business or place of employment premises at the time;
 - (iv) a person identified in sub-rule (2);
 - b. by leaving a copy of the document at –
 - i) the address chosen by the person to receive service;
 - ii) any premises in accordance with sub-rule (3);
 - c. by faxing or telexing a copy of the document to the person's fax or telex number respectively or a number chosen by that person to receive service;
 - d. by sending a copy of the document by registered post or telegram to the last known address of the party or an address chosen by the party to receive service.
- 2) A document may also be served on –
 - a) a company or other body corporate by handing a copy of the document to a responsible employee of the company or body at its registered office, its principal place of business within the Republic or its main place of business within the magisterial district in which the dispute first arose;
 - b) an employer by handing a copy of the document to a responsible employee of the employer at the workplace where the employees involved in the dispute ordinarily work or worked;
 - c) a trade union or employers' organization by handing a copy of the document to a responsible employee or official at the main office of the union or employers' organization or its office in the magisterial district in which the dispute arose or at its address that it provides to the DRC from time to time;
 - d) a partnership, firm or association by handing a copy of the document to a responsible employee or official at the place of business of the partnership, firm or association or, if it has no place of business, by serving a copy of the document on a partner, the owner of the firm or the chairman or secretary

- of the managing or other controlling body of the association, as the case may be;
- e) a statutory body, by handing a copy to the secretary or similar officer or member of the board or committee of that body, or any person acting on behalf of that body;
 - f) the State or a province, a state department or a provincial department, a minister or a member of the executive committee of a province by handing a copy to a responsible employee at the head office of the party or to a responsible employee at any office of the State Attorney.
- 3) If no person identified in sub-rule (2) is willing to accept service, service may be affected by affixing a copy of the document to –
- a) the main door of the premises concerned; or
 - b) if this is not accessible, a postbox or other place to which the public has access.
- 4) The DRC may order service in a manner other than prescribed in this rule.

6. How to prove a document was served in terms of the rules

- 1) A party must prove to the DRC or to a Commissioner that a document was served in terms of the rules, by providing the DRC or a Commissioner with:
- a) a copy of proof of mailing the document by registered post to the other party;
 - b) a copy of the telegram or telex communicating the document to the other party;
 - c) a copy of the telefax transmission report indicating the successful transmission to the other party of the whole document;
 - d) if a document was served by hand –
 - i) a copy of a receipt signed by, or on behalf of, the other party clearly indicating the name and designation of the recipient and the place, time and date of service; or

- ii) a statement confirming service signed by the person who delivered a copy of or other document to the other party or left it at any premises.
- 2) If proof of service in accordance with sub-rule (1) is provided, it is presumed, until the contrary is proved, that the party on whom it was served has knowledge of the contents of the document.
- 3) The DRC may accept proof of service in a manner other than prescribed in this rule as sufficient.

7. How to file documents with the DRC

- 1) A party must file documents with the DRC –
 - a) by handing the document to the office of the Managing Commissioner at the address listed in rule 2;
 - b) by sending a copy of the document by registered post to the office of the Managing Commissioner at the address listed in rule 2; or
 - c) by faxing the document to the office of the Managing Commissioner at a number listed in rule 2.
- 2) A document is filed with the DRC when –
 - a) the document is handed to the office of the Managing Commissioner;
 - b) a document sent by registered post is received by the office of the Managing Commissioner; or
 - c) the transmission of a fax is completed.
- 3) A party must only file the original of a document filed by fax, if requested to do so by the DRC or by a Commissioner. A party must comply with a request to file an original document within seven days of the request.

8. Documents and notices sent by registered post

Any document or notice sent by registered post by a party or the DRC is presumed, until the contrary is proved, to have been received by the person to whom it was sent seven days after it was posted.

9. How to seek condonation for documents delivered late

- 1) This rule applies to any referral document delivered outside of the applicable time period prescribed in the Act of these rules.
- 2) A party must apply for condonation, in terms of Rule 32, when filing the document with the DRC.
- 3) An application for condonation must set out the grounds for seeking condonation and must include details of the following:
 - a) the degree of lateness;
 - b) the reasons for the lateness;
 - c) the referring parties' prospects of succeeding with the referral and obtaining the relief sought against the other party;
 - d) any prejudice to the other party; and
 - e) any other relevant factors.
- 4) The DRC may assist a referring party to comply with this rule.

PART TWO

CONCILIATION OF DISPUTES

10. How to refer a dispute to the DRC for conciliation

- 1) A party must refer a dispute to the DRC for conciliation by delivering a completed LRA Form 7.11 or, in relation to an agreement enforcement dispute, a form prescribed by the DRC ("the referral document"). Such forms must be signed by the referring party who is authorized to do so in terms of the Act, or, in respect of an agreement enforcement dispute, by the Council, subject to the provisions of rule 4(2).
- 2) The referring party must –
 - a) sign the referral document in accordance with rule 4;
 - b) attach to the referral document written proof, in accordance with rule 6, that the referral document was served on the other parties to the dispute;
 - c) if the referral document is filed out of time, an application for condonation in accordance with rule 9 **must be** attached to the referral in order to constitute a complete and proper referral.
- 3) The DRC **must refuse** to accept a referral document until sub-rule (2) has been complied with.
- 4) Rules 10(2)(a) infra and 15 supra do not apply to the con-arb procedure i.r.o. agreement enforcement disputes.

11. What notice must the DRC give of a conciliation

The DRC must give the parties at least 14 days notice in writing of a conciliation hearing, unless the parties agree to a shorter period of notice, provided that in the event of notice by registered post, the fourteen day period shall be deemed to commence from the 8th day of the posting of such notice.

12. DRC may seek to resolve a dispute before conciliation

- 12.1 The DRC or a Commissioner may contact the parties by telephone or other means prior to the commencement of the conciliation in order to seek to resolve a dispute.
- 12.2 The Managing Commissioner may make a determination that the DRC lacks jurisdiction to hear a dispute without holding a hearing if in the opinion of the Managing Commissioner it is unnecessary to hold a hearing for the purpose.

13. What happens if a party fails to attend at conciliation

- 1) If a party to a dispute fails to attend in person or to be represented, the Commissioner must issue a certificate in terms of Section 135 of Act 66 of 1995.
- 2) A copy of the aforesaid certificate must be sent to the parties and the referring party must be informed of its right to refer the matter to arbitration within 90 days

14. How to determine whether a Commissioner may conciliate a dispute

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 DRC has the jurisdiction to conciliate the dispute through conciliation.

15. Issuing of a certificate in terms of Section 135(5)

A certificate issued in terms of Section 135(5) that the dispute has or has not been resolved, must identify the nature of the dispute as described in the referral document or as identified by the Commissioner during the conciliation process.

16. Conciliation proceedings may not be disclosed

- 1) Conciliation proceedings are private and confidential and are conducted on a without prejudice basis. No person may refer to anything said at conciliation proceedings during any subsequent proceedings unless the parties agree in writing.
- 2) No person, including a Commissioner, may be called as a witness during any subsequent proceedings in the DRC or in any court to give evidence about what transpired during conciliation.

PART THREE

CON-ARBS IN TERMS OF SECTION 191(5A) OF ACT 66 OF 1995

17. Conduct of con-arb in terms of Section 191(5A)

1. The DRC must give the parties at least fourteen days notice in writing that a matter has been scheduled for a con-arb in terms of Section 191(5A) of the Act.
- 2.1 A Party that intends to object to a dispute concerning a dismissal being dealt with in terms of Section 191(5A) must deliver a written notice to the DRC and the other party at least seven days prior to the scheduled date in terms of sub-rule (1).
- 2.2 In the event of an objection having been delivered under sub-rule (2) (i) and conciliation failing a LRA 7.13 (request for arbitration) must be filed.
3. Sub-rule (2)(i) does not apply to a dispute concerning the dismissal of an employer for any reason related to probation or an unfair labour practice relating to probation.
4. If a party fails to appear or be represented at a hearing scheduled in terms of sub-rule (1), the Commissioner must conduct the **con-arb** on the date specified in the notice issued in sub-rule (1).
5. Sub-rule (4) only applies where no notice of object to arbitration has been lodged in terms of sub-rule (2).
6. In con-arb proceedings in terms of 191(5A) a party to the dispute may appear in person or be represented only by –
 - 6.1 A legal practitioner subject to Rule 43;
 - 6.2 A director or employer of that party and if a close corporation also a member thereof; or
 - 6.3 Any office bearer or official of that party's registered trade union or registered employer's organization
7. If the dispute concerns an unfair dismissal and the referring party has alleged the reason for the dismissal relates to the employee's conduct or capacity a party may only be represented by a legal practitioner in the circumstances contemplated in Rule 43.
8. The provisions of the Act and these rules that are applicable to conciliation and arbitration respectively apply, with the changes required by the context, to con-arb proceedings.

18. Con-arb proceedings in terms of Section 33A of Act 66 of 1995

- 1) The DRC may enroll and/or set down any unresolved dispute concerning compliance with any provision of a collective agreement for resolve by way of con-arb proceedings (provided that the referral to the DRC is supported by an affidavit which set out clearly and concisely –
 - (a) the names, description and addresses of the parties;
 - (b) a statement of the material facts, in chronological order, on which the application is based, in sufficient detail to enable any person opposing the application to reply to the facts;
 - (c) a statement of legal issues that arise from the material facts, in sufficient detail to enable any party to reply to the document).
- 2) The DRC must give the parties at least fourteen days notice in writing that a mater has been scheduled for a con-arb in terms of Section 33(A) of the Act.
- 3)
 - (i) A party that intends to object that the dispute under this Section being dealt with in terms of con-arb proceedings must deliver a written notice to the DRC and the other party at least seven days prior to the scheduled date in terms of sub-rule (2).
 - (ii) In the event of an objection having been delivered under sub-rule (3) (i) and conciliation failing a LRA 7.13 (request for arbitration) must be filed.
- (4) If a party fails to appear or be represented at a hearing scheduled in terms of sub-rule (1), the Commissioner must conduct the **con-arb** on the date specified in the notice issued in sub-rule (2).
- (5) Sub-rule (4) only applies where no notice of objection to arbitration has been lodged in terms of sub-rule (2).
- (6) In con-arb proceedings in terms of Section 33A, a party to the dispute may appear in person or be represented only by –
 - (a) a legal practitioner subject to Rule 43;
 - (b) a director or employee of that party and if a close corporation also a member thereof; or

- (c) any office bearer or official or that party's registered trade union or registered employers' organization; or
 - (d) a designated agent, official or employee of the Council.
- (7) The provisions of the Act and the rules that are applicable to conciliation and arbitration respectively apply, with the changes required by the context, to con-arb proceedings.
- (8) If the con-arb does not commence on the date specified in terms of the notice in sub-rule (1), the DRC must schedule the matter for arbitration either in the presence of the parties or by issuing a notice in terms of rule 21.

PART FOUR
ARBITRATIONS

19. How to request an arbitration

- 1) A party may request the DRC to arbitrate a dispute by delivering a document in the form of Annexure LRA 7.13 (“the referral document”) or, in the case of an agreement enforcement dispute, a form prescribed by the DRC. Such forms must be signed by the referring party who is authorized to do so in terms of the Act, subject to the provisions of rule 4(2) or in respect of an agreement enforcement dispute, by the Council.
- 2) The referring party must –
 - a) sign the referral documents in accordance with rule 4;
 - b) attach to the referral document written proof that the referral document was served on the other parties to the dispute in accordance with rule 6; and
 - c) if the referral document is filed out of time, it must be supported by an application for condonation in accordance with rule 9¹.
- 3) The DRC must refuse to accept a referral document until sub-rule (2) has been complied with.
- 4) Rule 19 only apply in con-arb proceedings in the event of an objection having been received in terms of sub-rules 17(2) and 18(3) from the referring party.

20. When must the parties file statements

- 1) The DRC or a Commissioner may direct –
 - a) the referring party in an arbitration to deliver a statement of case: and
 - b) the other parties to deliver an answering statement.

¹ In terms of Section 136(1)(b) a party must request the Commission to arbitrate a dispute within 90 days after the Commission has issued a certificate that the dispute has not been resolved. A request made outside of this time-period may be condoned on good cause shown.

- 2) A statement and answering statement in terms of sub-rule (1) must set out the material facts upon which the party relies and the legal issues that arise from the material facts.

21. When the parties must hold a pre-arbitration conference

- 1) The parties to an arbitration must hold a pre-arbitration conference dealing with the matters referred to in sub-rule (2) if directed to do so by the director or a Provincial Commissioner.
- 2) In a pre-arbitration conference, the parties must attempt to reach consensus on the following:
 - a) any means by which the dispute may be settled;
 - b) facts that are agreed between the parties;
 - c) facts that are in dispute;
 - d) the issues that the DRC is required to decide;
 - e) the precise relief claimed and if compensation is claimed, the amount of the compensation and how it is calculated;
 - f) the sharing and exchange of relevant documents, and the preparation of a bundle of documents in chronological order with each page numbered;
 - g) the manner in which documentary evidence is to be dealt with, including any agreement on the status of documents and whether documents, or part of documents, will serve as evidence of what they appear to be;
 - h) whether evidence on affidavit will be admitted with or without the right of any party to cross-examine the person who made the affidavit;
 - i) which party must begin;
 - j) the necessity for any on-the-spot inspection;
 - k) securing the presence at the DRC of any witness;

- l) the resolution of any preliminary points that are intended to be taken;
 - m) the exchange of witness statements;
 - n) expert evidence;
 - o) any other means by which the proceedings may be shortened;
 - p) an estimate of the time required for the hearing;
 - q) the right of representation; and
 - r) whether an interpreter is required and, if so, for how long and for which languages.
- 3) Unless a dispute is settled, the parties must draw up and sign a minute setting out the facts on which the parties agree or disagree.
- 4) A minute in terms of sub-rule (3) may also deal with any other matter listed in sub-rule (2).
- 5) The referring party must ensure that a copy of the pre-arbitration conference minute is delivered to the appointed commissioner within seven days of the conclusion of the pre-arbitration conference.
- 6) The commissioner may after receiving a pre-arbitration minute –
- a) enroll the matter for arbitration;
 - b) direct the parties to hold a further pre-arbitration conference; or
 - c) make any other direction to the parties concerning the conduct of the arbitration.
- 7) If a party that has referred a matter to arbitration fails to attend a pre-arbitration conference, the commissioner may deal with the matter in terms of rule 31.
- 8) If any other party fails to attend a pre-arbitration conference without a justifiable reason, the commissioner may make an order of costs against that party.

- 9) The parties to an arbitration may agree to hold a pre-arbitration conference in terms of sub-rule 92).

22. What notice must the DRC give of an arbitration

The DRC must give the parties at least 21 days notice, in writing, of an arbitration hearing, unless the parties agree to a shorter period, provided that in the event of notice by registered post the twenty-one day period shall be deemed to commence from the 8th day of the posting of such notice.

23. How to determine whether a Commissioner may arbitrate a dispute

If during the arbitration proceedings it appears that a jurisdictional issue has not been determined, the Commissioner must require the referring party to prove that the DRC has jurisdiction to arbitrate the dispute.

24. How to postpone an arbitration

- 1) An arbitration may be postponed –
 - a) by agreement between the parties in terms of sub-rule (2); or
 - b) by application and on notice to the other parties in terms of sub-rule (3).
- 2) The DRC must postpone an arbitration without the parties appearing if –
 - a) all the parties to the dispute agree in writing to the postponement; and
 - b) the written agreement for the postponement is received by the DRC more than seven days prior to the scheduled date of the arbitration.
- 3) If the conditions of sub-rule (2) are not met, any party may apply in terms of rule 32 to postpone an arbitration by delivering an application to the other parties to the dispute and filing a copy with the DRC before the scheduled date of the arbitration.

- 4) After considering the written application, the DRC may –
 - a) without convening a hearing, postpone the matter; or
 - b) convene a hearing to determine whether to postpone the matter.

PART FIVE

RULES THAT APPLY TO CONCILIATIONS, ARBITRATIONS AND CON-ARBS

25. Where a conciliation, arbitration or con-arb will take place

- 1) A dispute must be conciliated, arbitrated or the con-arb process held in the province in which the cause of action arose unless a Managing Commissioner directs otherwise.
- 2) The Managing Commissioner determines the venue for proceedings.

26. Objections to a representative appearing before the DRC

- 1) If a party to the dispute objects to the representation of another party to the dispute or the Commissioner suspects that the representative of a party does not qualify in terms of the Act, the Commissioner seized with the matter must determine the issue².
- 2) The Commissioner may call upon the representative to establish why the representative should be permitted to appear in terms of the Act.
- 3) A representative must tender any documents requested by the Commissioner, in terms of sub-rule (2), including constitutions, pay-slips, contracts of employment, documents and forms, recognition agreements and proof of membership of a trade union or employers' organization.

27. How to join or substitute parties to proceedings

- 1) The DRC or a Commissioner may join any number of persons as parties in proceedings in their right to relief depends on substantially the same question of law or fact.

² The representation of parties at the DRC is determined with reference to Rule 43.

- 2) A Commissioner may make an order joining any person as a party in the proceedings if the party to be joined has a substantial interest in the subject matter of the proceedings.
- 3) A Commissioner may make an order in terms of sub-rule (2) –
 - a) of its own accord;
 - b) on application by a party; or
 - c) if a person entitled to join the proceedings applies at any time during the proceedings to intervene as a party.
- 4) An application in terms of this rule must be made in terms of rule 32.
- 5) When making an order in terms of sub-rule (2), a Commissioner may –
 - a) give appropriate directions as to the further procedure in the proceedings; and
 - b) make an order of costs in accordance with these rules.
- 6) If in any proceedings, it becomes necessary to substitute a person for an existing party, any party to the proceedings may apply to the DRC for an order substituting that party for an existing party and a Commissioner may make such order or give appropriate directions as to the further procedure in the proceedings.
- 7) An application to join any person as a party to proceedings or to be substituted for an existing party must be accompanied by copies of all documents previously delivered, unless the person concerned or that person's representative is already in possession of the documents.
- 8) Subject to any order made in terms of sub-rules (5) and (6), a joinder or substitution in terms of this rule does not affect any steps already taken in the proceedings.

28. How to correct the citation of a party

If a party to any proceedings has been incorrectly or defectively cited, the DRC may, on application and on notice to the parties concerned, correct the error or defect.

29. When the DRC may consolidate disputes or separate hearings

The DRC or a Commissioner, of its own accord or on application, may consolidate more than one dispute so that the disputes may be dealt with in the same proceedings or it may order separate hearings to be held in respect of separate disputes.

30. Disclosure of documents

- 1) Either party may request a Commissioner to make an order as to the disclosure of relevant documents.
- 2) The parties may agree on the disclosure of documents.

31. What happens if a party fails to attend proceedings before the DRC

- 1) If a party to the dispute fails to attend or be represented at arbitration proceedings before the DRC, and that party –
 - a) had referred the dispute to the DRC, a Commissioner may dismiss the matter by issuing a written ruling; or
 - b) had not referred the matter to the DRC, the Commissioner may –
 - i) continue with the proceedings in the absence of the party: or
 - ii) adjourn the proceedings to a later date.
- 2) A Commissioner must be satisfied that the party had been properly notified of the date, time and venue of the proceedings, before making any decision in terms of sub-rule (1).
- 3) If a matter is dismissed, the DRC must send a copy of the ruling to the parties.

PART SIX
APPLICATIONS

32. How to bring an application

- 1) This rule applies to any –
 - a) application for condonation, joinder, substitution, variation or rescission;
 - b) application in a jurisdictional dispute;
 - c) other preliminary or interlocutory application.
- 2) An application must be brought on notice to all persons who have an interest in the application.
- 3) The party bringing the application must sign the notice of application in accordance with rule four and must state –
 - a) the title of the matter;
 - b) the case number assigned to the matter by the DRC;
 - c) the relief sought;
 - d) the address at which the party delivering the documents will accept delivery of all documents and proceedings;
 - e) that any party that intends to oppose the matter must deliver a notice of opposition and answering affidavit within fourteen days after the application has been delivered to it;
 - f) that the application may be heard in the absence of a party that does not comply with sub-paragraph (e);
 - g) that a schedule is included listing the documents that are material and relevant to the application.
- 4) The application must be supported by an affidavit. The affidavit must clearly and concisely set out –
 - a) the names, description and addresses of the parties;

- b) a statement of the material facts, in chronological order on which the application is based, in sufficient detail to enable any person opposing the application re reply to the facts;
 - c) a statement of legal issues that arise from the material facts, in sufficient detail to enable any party to reply to the document;
 - d) if the application is filed outside the relevant time period grounds for condonation in accordance with rule 9; and
 - e) if the application is brought urgently, the circumstances why the matter is urgent and the reasons why it cannot be dealt with in accordance with the time frames prescribed in these rules.
- (5) (a) Any party opposing the application may deliver a notice of opposition and an answering affidavit within fourteen days from the day on which the application was served on that party;
- (b) A notice of opposition and an answering affidavit must contain, with the changes required by the context, the information required by sub-rules (3) and (4) respectively.
- (6) (a) The party initiating the proceedings may deliver a replying affidavit within seven days from the day on which any notice of opposition and answering affidavit are served to it;
- (b) The replying affidavit must address only issues raised in the answering affidavit and may not introduce new issues of fact of law.
- 7) In an argument application, the DRC or a Commissioner –
- a) may dispense with the requirements of this rule; and
 - b) may only grant an order against a party that has had reasonable notice of the application.
- (8) (a) The DRC must allocate a date for the hearing of the application once a replying affidavit is delivered, or once the time limit for delivering a replying affidavit has lapsed, whichever occurs first;

- (b) The DRC must notify the parties of the date, time and place of the hearing of the application;
 - (c) Applications may be heard on a motion roll.
- (9) Despite the provisions of this rule, the DRC may determine an application in any manner it deems fit, provided that the DRC shall hold a hearing in the event that it receives written notification from a party in a particular matter that such party requires a hearing.

33. Variation or rescission of arbitration awards or rulings

- 1) An application for the variation or rescission of an arbitration award or ruling must be made within fourteen days of the date on which the applicant became aware of –
 - a) the arbitration award or ruling: or
 - b) a mistake common to the parties to the proceedings.
- 2) A ruling made by a Commissioner which has the effect of a final order will be regarded as an arbitration award.

PART SEVEN

GENERAL

34. Condonation of failure to comply with rules

The DRC or a Commissioner may condone any failure to comply with the time frames in these rules, on good cause shown.

35. Recordings of DRC proceedings

- 1) The DRC must keep record of –
 - a) any evidence given in an arbitration hearing;
 - b) any sworn testimony given in any proceedings before the DRC; and
 - c) any arbitration award or ruling made by a Commissioner.
- 2) The record must be kept by legible hand-written notes or by means of an electronic recording.
- 3) A party may request a copy of the record or a portion of a record kept in terms of sub-rule (2). Such party would be required to make an audio recording of the tapes concerned at the relevant premises of the DRC, utilizing the party's own equipment.

36. How to have a subpoena issued

- 1) Any party who requires the DRC or a Commissioner to subpoena a person in terms of Section 142(1) of the Act must file a completed LRA Form 7.16 together with a written motivation setting out why the evidence of the person to be subpoenaed is necessary.
- 2) An application in terms of sub-rule (1) must be filed with the DRC at least fourteen days before the arbitration hearing or as directed by the Managing Commissioner.
- 3) A subpoena must be served on the witness subpoenaed at least fourteen days before the scheduled date of the arbitration.

37. Payment of witness fees

- 1) In order to compensate witnesses for any loss of earnings that they may incur as a result of giving evidence at an arbitration hearing, the DRC will pay witness fees to the witnesses who qualify therefor.
- 2) An application for such witness fees must be made in writing, and the applicant must motivate in his or her application why his or her evidence had been relevant to the proceedings.
- 3) A Commissioner shall not grant witness fees unless it is established at the end of the arbitration hearing that:
 - a) the evidence given by the applicant witness had been specifically relevant to the arbitration case;
 - b) the applicant witness had actually testified; and
 - c) the applicant witness will lose one or more days' wages or salary by virtue of the fact that he or she had testified at the particular hearing.

38. Taxation of bills of cost

- 1) The basis on which a Commissioner may make an order as to costs in any arbitration, is regulated by Section 138(10) of the Act.³
- 2) The Director may appoint taxing officers to perform the functions of a taxing officer in terms of these rules.
- 3) The taxing officer must tax any bill of costs for services rendered in connection with proceedings in the DRC on Schedule One attached.
- 4) At the taxation of any bill of costs, the taxing officer may call for any book, document, paper or account that, in the taxing officer's opinion, is necessary to properly determine any matter arising from the taxation.

³ Section 138(10) of the Act provides: "The Commissioner may make an order for the payment of costs according to the requirements of law and fairness in accordance with rules made by the DRC having regard to –

any relevant Code of Good Practice issued by NEDLAC in terms of Section 203;
any relevant guidelines issued by the DRC.

- 5) Any person requesting a taxation must complete the LRA Form 7.17 and must satisfy the taxing officer –
 - (a) of that party's entitlement to be present at the taxation; and
 - (b) that the party liable to pay the bill has received notice of the date, time and place of the taxation.
- 6) Despite sub-rule (4), notice need not be given to a party –
 - a) who failed to appear or to be represented at the hearing; or
 - b) who consented in writing to the taxation taking place in that party's absence.
- 7) Any decision by a taxing officer is subject to review by the Labour Court.

39. Certification and enforcement of arbitration awards

- 1) An application to have an arbitration award certified must be made on or contain the information in –
 - a) LRA Form 7.18 in respect of an award by a Commissioner;
 - b) LRA Form 7.18A in respect of an award in arbitration conducted under the auspices of a Bargaining Council.
- 2) Any arbitration award that has been certified in terms of Section 143 of the Act that orders the payment of an amount of money, may be executed:
 - a) by using the warrant of execution in the LRA Form 7.18 or LRA Form 7.18A; or
 - b) the warrant of execution prescribed in the Rules for the Conduct of Proceedings in the High Court.
- 3) For the purpose of sub-rule (2), an arbitration award includes an award of costs in terms of Section 138(10), a taxed bill of costs in respect of an award of costs and an arbitration fee charged in terms of Section 140(2).

40. What words mean in these rules

Any expression in these rules that is defined in the Labour Relations Act⁴ 1995 (No. 66 of 1995) has the same meaning as in the Act and

“**Act**” means the Labour Relations Act, 1995 (Act No. 66 of 1995), and includes any regulation made in terms of the Act;

“**Agreement enforcement disputes**” refer to those disputes emanating from the Council’s Collective Agreements;

“**Arbitration Act**” means the Arbitration Act, No. 42 of 1965, as amended;

“**association**” means any unincorporated body of persons;

“**commissioner**” means a Commissioner appointed by the Management Board of the DRC and trained by the CCMA and includes a Commissioner who is undergoing such training;

“**council**” means the Motor Industry Bargaining Council;

“**deliver**” means serve on other parties and file with the DRC;

“**director**” means the Director of the DRC appointed by the Management Board of the DRC;

“**DRC**” means the Dispute Resolution Centre of the Motor Industry Bargaining Council (MIBCO);

“**file**” means to lodge with the DRC in terms of rule 7;

“**Labour Court**” means the Labour Court established by Section 151 of the Act and includes any judge of the Labour Court;

“**party**” means any party to proceedings before the DRC;

“**practicing lawyer**” means a practicing advocate, a practicing attorney and a candidate attorney;

“**Managing Commissioner**” means the Managing Commissioner of the DRC who is the head of a particular region. The four regions are represented by the following offices;

⁴ The following words used in the rules are defined in the Act: (s213): “dispute, dismissal, employee, employer’s organisation, essential service, legal practitioner, lock-out, strike, trade union, workplace, this Act, workplace forum”.

- The DRC provincial offices in Randburg (Johannesburg), that administers matters emanating from Gauteng south of Pretoria (including the West- and East Rand), the North West Province, the Free State and the Northern Cape;
- The DRC provincial office in Pretoria, that administers matters emanating from Gauteng North of Johannesburg, the Northern Province and Mpumalanga;
- The DRC provincial office in Cape Town, that administers matters emanating from the Western- and Eastern Cape;
- The DRC provincial office in Durban, that administers matters emanating from Kwa-Zulu Natal.

“**public holiday**” means a public holiday referred to in Section 1 of the Public Holidays Act, 1994 (Act No. 36 of 1994);

“**rules**” means these rules and includes any footnote to a rule;

“**serve**” means to serve in accordance with rule five and “service” has a corresponding meaning; and

“**taxing officer**” means any suitably qualified person appointed by the Director in terms of Rule 38.

41. Repeal of old DRC Rules

These rules repeal the old DRC rules that have been effective since August 2002.

42. Interpretation

These rules also apply to the conciliation and arbitration of agreement enforcement disputes unless they are specifically, or by implication, excluded.

PART EIGHT

LEGAL REPRESENTATION

43. Representation before the DRC

- (1)(a) In conciliation proceedings a party to the dispute may appear in person or be represented only by-
- 1) a director or employee of that party and if a close corporation also a member thereof;
 - 2) any office bearer or official of that party's registered *trade union* or registered employer's organisation; or
 - 3) by a designated agent, an official or employee of the Council.
- (b) In any arbitration proceedings, a party to the dispute may appear in person or be represented only by-
- 1) a legal practitioner;
 - 2) a director or employee of that party and if a close corporation also a member thereof;
 - 3) any office bearer or official of that party's registered trade union or a registered employers' organisation; or
 - 4) by a designated agent, an official or employee of the Council.
- (c) If the dispute being arbitrated is about the fairness of a dismissal and a party has alleged that the reason for the dismissal relates to the employee's conduct or capacity, the parties, despite subrule (1)(b) are not entitled to be represented by a legal practitioner in the proceedings unless-
- 1) the commissioner and all the other parties consent;
 - 2) the commissioner concludes that it is unreasonable to expect a party to deal with the dispute without legal representation, after considering-

- a) the nature of the questions of law raised by the dispute;
 - b) the complexity of the dispute;
 - c) the public interest; and
 - d) the comparative ability of the opposing parties or their representatives to deal with the dispute.
- (2) If the party to the dispute objects to the representation of another party to the dispute or the commissioner suspects that the representative of a party does not qualify in terms of this rule, the commissioner must determine the issue.
- (3) The commissioner may call upon the representative to establish why the representative should be permitted to appear in terms of this rule.
- (4) A representative must tender any documents requested by the commissioner in terms of sub-rule (3), including constitutions, pay slips, contracts of employment, documents and forms, recognition agreements and proof of membership of a trade union or employers' organisation.

SCHEDULE ONE – GUIDELINES FOR DISBURSEMENTS

	DESCRIPTIONS OF FEES AND DISBURSEMENTS	FEES & DISBURSEMENTS APPLICABLE TO LEGAL PRACTITIONERS	DISBURSEMENTS APPLICABLE TO TRADE UNION OFFICIALS, OFFICIALS OF EMPLOYERS' ORGANISATIONS & EMPLOYEES ACTING ON BEHALF OF THEIR EMPLOYERS AND TO THE COUNCIL
1.	Taking instructions to refer or to defend a disputed.	R150,00	R150,00 or an amount equal to the salary of the official or the authorised person, who was tasked to attend to the matter, converted to an hourly rate whichever is the lowest.
2.	Completion of "referral document".	R60,00	R60,00 or an amount equal to the salary of the official or the authorised person, who was tasked to attend to the matter, converted to an half hourly rate whichever is the lowest.
3.	Service and filing of "referral document".	Any disbursement reasonably incurred to give effect to the provisions of Rules 5, 6 & 7.	Any disbursement reasonably incurred to give effect to the provisions of Rules 5, 6 & 7.
4.	Attending conciliation meeting.	R200,00 per hour or part thereof.	R200,00 per hour, or an amount equal to the salary of the official or the authorised person, who was tasked to attend to the matter, converted to an hourly rate whichever is the lowest.
5.	Taking instructions to request arbitration.	R75,00	R75,00 or an amount equal to the salary of the official or the authorised person, who was tasked to attend to the matter, converted to a half hourly rate whichever is the lowest.
6.	Completion of the "referral document".	R30,00	R30,00 or an amount equal to the salary of the official or the authorised person, who was tasked to attend to the matter, converted to a half hourly rate whichever is the lowest.
7.	Making copies of the certificate issued in terms of Section 135 of the Act for service and filing.	R1,00 per page	R1,00 per page
8.	Service and filing of "referral document".	Any disbursement reasonably incurred to give effect to the provisions of Rules 5, 6 & 7.	Any disbursement reasonably incurred to give effect to the provisions of Rules 5, 6 & 7.

9.	Taking instructions to make or to oppose any other application as provided in Rule 29.	R150,00	R150,00 or an amount equal to the salary of the official or the authorised person, who was tasked to attend to the matter, converted to an hourly rate whichever is the lowest.
10.	Drafting and drawing documents in support of or in opposition of any	R20,00 per folio	R20,00 per folio or an amount equal to the salary of the official or the authorised person, who was tasked to attend to the matter, converted to a quarter hourly rate per folio whichever is the lowest.
11.	Service and filing of any application made or opposed in terms of Rule 29.	Any disbursement reasonably incurred to give effect to the provisions of Rules 5, 6 & 7.	Any disbursement reasonably incurred to give effect to the provision of Rules 5, 6 & 7.
12.	Making copies of documents to be filed and served for purposes of Rule 29.	R1,00 per page	R1,00 per page
13.	Attending on signature of any affidavit drafted in support or in opposition of an application in terms of Rule 29.	R60,00	R60,00 or an amount equal to the salary of the official or the authorised person, who was tasked to attend to the matter, converted to an half hourly rate whichever is the lowest.
14.	Drafting and drawing subpoena in terms of Rule 32.	R60,00	R60,00 or an amount equal to the salary of the official or the authorised person, who was tasked to attend to the matter, converted to an half hourly rate whichever is the lowest.
15.	Service and filing of any subpoena.	Any disbursement reasonably incurred to give effect the provisions of Rules 5, 6 & 7.	Any disbursement reasonably incurred to give effect to the provisions of Rules 5, 6 & 7.
16.	Preparation for arbitration hearing and consulting with witnesses.	R300,00 per hour	R300,00 per hour, or an amount equal to the salary of the official or the authorised person, who was tasked to attend to the matter, converted to an hourly rate whichever is the lowest.
17.	Attending arbitration hearing or section 191(5A) hearing, including waiting time, time spent on attending inspection in loco and travelling time to and from the arbitration venue.	R100,00 per quarter hour or part thereof.	R100,00 per quarter hour, or an amount equal to the salary fo the official or the authorised person, who was tasked to attend to the matter, converted to a quarter hourly rate whichever is the lowest.

18.	Sorting, arranging and pagination of documents and compiling index for purposes of an arbitration hearing.	R100,00	R100,00 or an amount equal to the salary of the official or the authorised person, who was tasked to attend to the matter, converted to an hourly rate whichever is the lowest.
19.	Any necessary telephone call for purposes of the orderly process of determining the dispute between the parties, including the disbursements incurred in making or receiving the telephone call.	R2,00	R2,00
20.	Any necessary letter written or received for purpose of the orderly process of determining the dispute between the parties, including any disbursement incurred in sending or receiving the letter.	R3,00	R3,00
21.	Attending pre-arbitration conference as provided for in terms of Rule 20, including waiting time and travelling time to and from the conference venue.	R300,00 per hour or part thereof.	R300,00 per hour or part thereof, or an amount equal to the salary of the official or the authorised person, who was tasked to attend to the matter, converted to an hourly rate whichever is the lowest.
22.	Travelling costs for the purposes of attending conciliation, con-arb, pre-arbitration conference, arbitration hearing and taxation.	R1,50 per kilometer.	R1,50 per kilometer.
23.	Drawing bill of costs.	R75,00	R75,00 or an amount equal to the salary of the official or the authorised person, who was tasked to attend to the matter, converted to an hourly rate whichever is the lowest.
24.	Attending to taxation.	R75,00	R75,00 or an amount equal to the salary of the official or the authorised person, who was tasked to attend to the matter, converted to an hourly rate whichever is the lowest.

GENERAL

Instead of specifying and motivating each and every letter written or received a party may elect to claim a maximum amount of R60,00 in terms of item 20.

Instead of specifying and motivating each and every telephone call made and received a party may elect to claim a maximum of R40,00 in terms of item 19.

One folio consists of two hundred and fifty (250) words or part thereof.

SCHEDULE TWO – GUIDELINES FOR THE LEVYING OF FINES

- 1) Until such time as the *Minister* promulgates a notice in terms of Section 33A (13) of the Act, an arbitrator conducting an arbitration in terms of section 33A of the Act may impose a fine in terms of section 33A (8) (b) of the Act subject to the maximum fines set out in Table one and Two of this item.

- 2) The maximum fine that may be imposed by an arbitrator in terms of section 33 A (8) (b) of the Act –
 - a) for a failure to comply with a provision of a *collective agreement* not involving a failure to pay any amount of money, is the fine determined in terms of Table One; and

 - b) involving a failure to pay an amount due in terms of a *collective agreement*, is the greater of the amounts determined in terms of Table One and Table Two.

TABLE ONE : MAXIMUM PERMISSIBLE FINE NOT INVOLVING AN UNDERPAYMENT

No previous failure to comply	R100 per employee in respect of whom the failure to comply occurs
A previous failure to comply in respect of the same provision	R200 per employee in respect of whom the failure to comply occurs
A previous failure to comply within the previous 12 months or two previous failures to comply in respect of the same provisions within three years	R300 per employee in respect of whom the failure to comply occurs
Three previous failures to comply in respect of the same provision within three years	R400 per employee in respect of whom the failure to comply occurs
Four or more previous failures to comply in respect of the same provision within three years	R500 per employee in respect of whom the failure to comply occurs

TABLE TWO : MAXIMUM PERMISSIBLE FINE INVOLVING AN UNDERPAYMENT

No previous failure to comply	25% of the amount due, including any interest owing on the amount at the date of the order
A previous failure to comply in respect of the same provision within three years	50% of the amount due, including any interest owing on the amount at the date of the order
A previous failure to comply in respect of the same provision within a year, or two previous failures to comply in respect of the same provision within three years	75% of the amount due, including any interest owing on the amount at the date of the order
Three previous failures to comply in respect of the same provision within three years	100% of the amount due, including any interest owing on the amount at the date of the order
Four or more previous failures to comply in respect of the same provision within three years	200% of the amount due, including any interest owing on the amount at the date of the order