



RESCISSION AND REVIEW

EFFECT OF ARBITRATION AWARD

The effect of an arbitration award issued by a commissioner is that the award is final and binding and may be enforced as if it were an order of the Labour Court, unless it is an advisory arbitration award.

If a party fails to comply with an award that orders performance of an act e.g. reinstatement, it may be enforced by way of contempt of court proceedings instituted in the Labour Court. However, awards for payment of money cannot be enforced in this way. Such awards are certified to be orders of court by the Director of the CCMA before a writ of execution is obtained from the Registrar of the Labour Court. (see Arbitration info sheet for details). If an award is for the payment of money, the amount earns interest from the date of the award in terms of the Prescribed Rate of Interest Act, 1975, unless the award states otherwise.

VARIATIONS AND RESCISSIONS

Section 144 deals with the rescission of arbitration awards and rulings. Any award may be varied or rescinded by the commissioner who issued the award or by any other commissioner appointed by the Director to do so.

A party must apply for rescission. Rescission may be applied for only in the following instances:

- If an award was erroneously sought or erroneously made in the absence of any party affected by that award;
- If an award contains an ambiguity, or an obvious error or omission – the award may be rescinded or varied only to the extent of that ambiguity, error or omission;
- If the award was granted as a result of a mistake common to both parties to the proceedings.

The commissioner does not have the power to substitute the award with an entirely new one. It is important to note that the award may be rescinded based merely on the fact that it was issued in the absence of a party, provided that the party was not in wilful default and has good prospects of success in continuing with the matter.

Awards may be rescinded if they were void from the outset.

HOW TO APPLY FOR RESCISSION

The application must be brought on notice to all parties who have an interest in the application. The party applying for rescission must sign the notice of application.

The application must contain:

- The title of the matter
- The case number
- The relief sought
- The address of the party delivering the document, i.e. where he/she will receive all notices and will accept service of all documents in the proceedings
- A notice to the other party that if he / she intends opposing the application, an answering affidavit must be delivered within five days – failure to do so will result in the matter being heard in that party's absence
- A schedule listing all documents that are relevant or material to the application.
- The application must be supported by an affidavit which must set out the details of the parties and addresses, a statement of the material facts on which the application is based, with sufficient details to enable a person opposing the application to reply and a statement of the legal issues arising from the material facts and the relief sought.

A party may oppose the application by serving an answering affidavit within five days and all the requirements as to what it must contain, as set out above, apply.

The applicant may then, within 5 days, respond to the answering affidavit by way of a replying affidavit.

The matter will be set down for hearing and the CCMA will notify the parties of the date, time and place thereof. A ruling made by a

commissioner will have the effect of a final order and be regarded as an arbitration award.

REVIEW

A party is able to take a decision on review for an alleged defect in the arbitration proceedings within six weeks of the date of the award being served on the party. If the alleged defect involves corruption, the application must be made within six weeks of the date that the party discovers the corruption.

As the CCMA is a public body and is concerned with administrative justice, Constitutional obligations bind commissioners to be fair and unbiased. Furthermore, decisions made by commissioners must be justifiable.

A defect means:

- That the commissioner committed misconduct in relation to his/her duties as a commissioner/arbitrator, or that he/she committed a gross irregularity in conducting the proceedings; or the he/she exceeded his/her powers as a commissioner
- That the award was improperly obtained.

EFFECT OF REVIEW PROCEEDINGS

The enforcement of the award may be stayed until a decision regarding the review application has been made. If the award is set aside, the Labour Court may determine the dispute in a manner it deems appropriate and it may make any order that it considers appropriate in relation to the procedure to be followed in determining that dispute. It should be noted that, except if there are flagrant errors in judgement, the court will not easily set aside an award based on subjective issues.

RELEVANT LEGISLATION

The Labour Relations Act, sections 143, 144 and 145.
CCMA Rules, rule 19

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