

Disputes about benefits (Part 1)

Employers have been avoiding liability for unfair labour practice claims relating to “benefits” for some time. It has been argued, often successfully, that the CCMA lacks jurisdiction where a dispute about benefits relates to remuneration. This and other barriers have since been eroded significantly.

The CCMA has jurisdiction to entertain disputes, not only about unfair dismissal, but also in relation to “unfair labour practices”. An unfair labour practice is defined in Section 186(2)(a) of the Labour Relations Act as “*unfair conduct by the employer relating to the promotion, demotion, probation (excluding disputes about dismissals for a reason relating to probation) or training of an employee or relating to the provision of benefits to an employee*” (emphasis added). Most of the grounds are fairly clear, but the lack of a further definition of “benefits” has led to much confusion.

For a long time it has been accepted that, as a point of departure, a distinction needs to be drawn between benefits and remuneration - if it could be shown that a dispute about alleged benefits may be regarded as a dispute about remuneration, this would fall within the domain of the civil courts or the Labour Court, and the CCMA would not have jurisdiction.

The Labour Appeal Court cut through much of the confusion in the case of ***Apollo Tyres SA (Pty)Ltd v CCMA and others***. The court found that the “benefits” contemplated in Labour Relations Act include not only those to which employees are contractually entitled, but also those benefits they might expect in terms of policy and where the employer has a discretion. A similar approach was followed in the Labour Court case of ***Trans-Caledon Tunnel Authority v CCMA & others***. In the latter case, the employer introduced a performance bonus which was more favourable to new employees than existing employees. The court found that, while the issue in dispute also fell within the definition of “remuneration” and could well be adjudicated by the civil courts or Labour Court, an employee had the choice of referring the matter to the CCMA as a dispute relating to “benefits” if the employee claimed that the employer had exercised its discretion unfairly. In this case the court upheld the CCMA’s award that the employee was found to be entitled to the bonus he had been seeking.

This principle has also been applied to other forms of remuneration that would previously have been regarded as falling outside the CCMA's jurisdiction.

But what about the argument that disputes about benefits should be regarded as “disputes of interest”, which may not adjudicated by the CCMA or Labour Court? According to this view, the only course of action that employees would have is to exercise their right to strike. This question will be dealt with in a subsequent article.

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www.labourwise.co.za is an on-line labour relations service aimed at assisting employers with the implementation of effective labour relations. They can be contacted via the website or info@labourwise.co.za.