

Financial Solutions for
Business Owners



Disputes about benefits (Part 2)

In the previous article we discussed recent developments in case law relating to disputes about 'benefits'. We pointed out that disputes that would previously have been referred to the Labour Court, because it related to 'remuneration' may now be referred to the Commission for Conciliation, Mediation and Arbitration (CCMA) on the basis that the employer has exercised its discretion unfairly. But there is another potential obstacle that needs to be considered – this is the argument that the CCMA does not have the jurisdiction to arbitrate on so-called 'disputes of interest'.

Our labour law dispensation makes a distinction between 'disputes of right' and 'disputes of interest'. In the case of a dispute of right, the basis of an employee's claim is vested in a legal or contractual right. Such a right can be enforced through the civil courts, the Labour Court, or the CCMA (in some instances). A dispute of interest, on the other hand, is not based on any existing right – here employees or their unions approach the employer in order to establish a new right. If the employer does not want to give employees what they want and the matter remains unresolved, then the employees may exercise their right to strike after following certain procedures. They cannot have their wishes enforced through the CCMA or Labour Court. A single employee would have no recourse, because only two or more employees may strike.

So, where an employee alleges that he/she has been unfairly deprived of a 'benefit', could this not perhaps be a dispute of interest? Would the employer not have a valid argument that the CCMA and Labour Court lack jurisdiction, because the employee is not basing his or her claim on a legal right?

In the Labour Court case of *Trans-Caledon Tunnel Authority v CCMA & others* the judge confirmed that the unfair labour practice provisions cannot be used to assert an entitlement to new benefits, new forms of remuneration, or new policies not previously provided by the employer. However, where there is a claim about the unfair conduct of the employer in relation to the existing employment structure, conditions of employment, existing policies or past practice, it could be referred to the CCMA as an unfair labour practice relating to benefits.

In the *Trans-Caledon* case the employee succeeded with a claim in respect of a performance bonus scheme that had been more favourable to existing employees than to new employees. Employees could likewise succeed at the CCMA with claims in respect of other benefits (such as a travel allowance, housing allowance, education allowance, access to social benefit funds, or other schemes) on the basis that the employer has exercised its discretion unfairly in not awarding them those benefits. The fact that they do not necessarily have a legal right to a benefit would not be a bar to their access to the CCMA.

While the removal of barriers and the broader interpretation of the definition of 'benefits' have brought about more clarity, this is likely to lead to a significant increase in unfair labour practice disputes being referred to the CCMA.

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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.