

Labour (Settlement of Disputes) Regulations, 2003

IT is hereby notified that the Minister of Public Service, Labour and Social Welfare has, in terms of section 17 of the Labour Relations Act [*Chapter 28:01*], made the following regulations:—

1. Title

These regulations may be cited as the Labour (Settlement of Disputes) Regulations, 2003.

2. Interpretation

In these regulations—

“form” means the appropriate form prescribed in the Schedule.

3. Powers of labour officers to settle disputes or unfair labour practices

(1) For the purposes of this section and section *ninety-three* of the Act, “attempt to settle” shall refer to—

- (a) any form of communication by the labour officer to either party in respect of the dispute or unfair labour practice; or
- (b) any form of notification for the parties to attend any proceedings in respect of the dispute or unfair labour practice; or
- (c) any hearing that the labour officer may conduct in respect of the dispute or unfair labour practice.

(2) After due inquiry, a labour officer shall, in respect of any matter arising from a dispute or unfair labour practice, attempt to settle the matter through conciliation, and if the parties come to an agreement on the matter, set down, in writing, the terms of the agreement in form LR 1.

(3) If within thirty days from the date the labour officer attempted to settle the dispute or unfair labour practice, the parties have failed to come to an agreement, the labour officer shall issue a certificate of no settlement in form LR 2.

(4) Where a labour officer has issued a certificate of no settlement, the parties to the dispute may, notwithstanding the issuance of the certificate, agree to extend the period of conciliation, which agreement shall be in form LR 3.

(5) The agreement specified in subsection (4) shall be communicated to the labour officer who shall not refer the dispute or unfair labour practice to arbitration but shall continue in his or her attempt to settle the matter through conciliation.

(6) A labour officer to whom a dispute or unfair labour practice has been referred, or to whose attention it has come, shall not spend more than ninety days before attempting to settle it.

4. Representation of parties

A party to a matter before a labour officer may be represented by a fellow employee, an official of a registered trade union, employers organization or a legal practitioner.

5. Reference to arbitration

(1) After a labour officer has issued a certificate of no settlement and the parties to the dispute have not agreed to extend the period of conciliation, the labour officer shall, in terms of subsection (5) of section 93 of the Act, refer the dispute to compulsory arbitration in form LR 4.

(2) Before referring a dispute to arbitration, the labour officer shall afford the parties a reasonable opportunity of making representations either orally or in writing on the matter:

Provided that the labour officer shall refer the dispute to compulsory arbitration not later than fourteen days from the expiry of the thirty days referred to in subsection (3) of section 93 of the Act.

(3) The labour officer upon consulting any labour officer who is senior to him or her and to whom he or she is responsible in the area in which he attempted to conciliate the dispute, may appoint an arbitrator in form LR 5.

(4) In referring a dispute to compulsory arbitration, the labour officer may determine the share of costs of the arbitration to be borne by each party:

Provided that the labour officer shall as much as possible endeavour to ensure equity between the parties.

6. Procedure after reference to arbitration

(1) Upon reference of a dispute to arbitration, an arbitrator shall notify parties to the dispute of the date, time and place of hearing of the dispute in form LR 6.

(2) After hearing both parties the arbitrator shall make an appropriate award in form LR 7 to settle the matter which award shall be served on both parties.

(3) An appeal on a question of law from any award by an arbitrator shall lie with the Labour Court and shall be made in form LR 8.

(4) An appeal in terms of subsection (3) shall be made not later than fourteen days from the date the appellant becomes aware of the award.

(5) Any party to whom an arbitral award relates may submit for registration a copy of the award together with a certificate specified in form LR 9 to the court of any magistrate which would have jurisdiction to make an order corresponding to the award had the matter been determined by it, or if the arbitral award exceeds the jurisdiction of the Magistrates Court, to the High Court.

(6) Where the arbitral award has been registered in terms of subsection (5) it shall have the effect, for purposes of enforcement, of a civil judgment of the appropriate court.

7. Absence of party to dispute

If a party to a dispute referred to arbitration fails to appear at the hearing, the arbitrator may nevertheless proceed with the hearing in his or her absence.

8. Voting by secret ballot

(1) Where employees or employers intend to resort to collective job action to resolve disputes in terms of section 104 of the Act, and the collective job action is to be engaged in after voting by secret ballot in terms of paragraph (e) of subsection (3) of section 104 of the Act, the chairman and the secretary of the workers' committee, trade union or employers' organization, as the case may be, shall, before the secret ballot is conducted, inform the employees or employers concerned, in writing, of the reasons for the ballot and the proposed collective job action.

(2) The secret ballot shall be conducted at the work place, before the expiry of the period of notice of the intention to resort to collective job action, and inside working hours:

Provided that this shall not be disruptive to normal production processes or will not interfere with the efficient running of the undertaking or industry.

(3) The chairman or secretary of the workers' committee, trade union or employers' organization, as the case may be, shall provide each person with a voting slip to be placed in the ballot box.

(4) The voting shall proceed in the presence of a labour officer or designated agent and each person shall be entitled to one vote only.

(5) The counting shall be done openly by the labour officer or designated agent, one of whom shall record the result of the ballot.

(6) The simple majority outcome shall prevail and in the case of a deadlock there shall not be a collective job action.

(7) In the case of an industry-wide action the secret ballot shall be conducted at the different establishments or enterprises and the Secretary General of the trade union or employers' organization, as the case may be, shall collect all the results of the ballot from the chairmen of the respective workers' committees or employers' organizations, as the case may be, in the different enterprises.

(8) The Secretary General shall record the results of the ballot which result shall be binding on every person in the industry concerned.

(9) The result of the ballot shall be of those who actually cast their vote and not of the total membership of the trade union or employers' organization, and those who do not vote shall forfeit their right to vote.

(10) The trade union or employers' organization shall as much as possible endeavour to organize the ballot to cover all undertakings within their scope of coverage in the industry concerned and to make sure that all eligible employees or employers take part in the balloting.

(11) The trade union or employers' organization, as the case may be, shall keep records of the ballot for three years from the date of closure of the ballot.

9. Picketing authority

Where a registered trade union or workers' committee authorises a picket in terms of section 104A of the Act, the authorization shall be in form LR 10.

10. Transitional provisions

Any case pending before a labour officer or a senior labour officer immediately before the date of commencement of the Labour Relations Act, 2002, No. 17 of 2002, shall be proceeded with in terms of these regulations.

11. Repeals

The Labour Relations (Settlement of Disputes) Regulations, 1993 published in Statutory Instrument 30 of 1993, are repealed.

SCHEDULE (Section 2)

LABOUR RELATIONS ACT [CHAPTER 28:01]

Certificate of Settlement

N.B.: Three copies of this form shall be completed by the officer concerned, of which one shall be retained by him and the others shall be given to the parties in the matter.

Case number

PART I

CERTIFICATE BY CONCILIATING AUTHORITY

I, , certify that the dispute between:
(conciliating authority)

..... and
(employee party) (employer party)

referred to conciliation on:

.....
(date)

concerning

.....
.....
.....
(issues in dispute)

was resolved by agreement of the parties on the and further
(date)
that the terms of the agreement are as follows:.....

.....
.....
.....
(annex agreement if necessary)

Name of officer:

Signature of officer:

Date and place:

PART II

CONFIRMATION BY PARTIES

We, the undersigned, being parties to the above dispute do hereby confirm
having agreed as indicated above.

Signed: Date:
(employee party)

Signed: Date:
(employer party)

LABOUR RELATIONS ACT [CHAPTER 28:01]

Certificate of No Settlement

N.B.: Three copies of this form shall be completed by the officer concerned, of which one shall be retained by him and the others shall be given to the parties in the matter.

Case number

I, , certify that the dispute between:
(conciliating authority)

..... and
(employee party) (employer party)

referred to conciliation on:

.....
(date)

concerning

.....

.....
.....
.....
(issues in dispute)
remains unresolved as at
(date)

Name of officer:
Signature of officer:
Date and place:

Form L.R. 3

LABOUR RELATIONS ACT [CHAPTER 28:01]

Agreement of Parties to Extend Period for Conciliation

N.B.: Three copies of this form shall be completed by the parties concerned, of which one shall be retained by each of the parties and one sent to the conciliation authority.

Case number

We, the undersigned, being parties to the dispute referred to:
..... on hereby agree to
(conciliating authority) (date)

extend the conciliation period for a further days to give ourselves more time to endeavour to reach an agreement.

Signed: Date:
(employer party)

Witnessed by: Date:

Signed: Date:
(employee party)

Witnessed by: Date:

Form L.R. 4

LABOUR RELATIONS ACT [CHAPTER 28:01]

Reference to Arbitration

Three copies of this form shall be completed by conciliating authority or designated agent concerned, of which—

- (i) one copy shall be delivered by hand or by post to the arbitrator;
- (ii) one copy each shall be given to the parties to the arbitration.

Compulsory/Voluntary Arbitration

To:
.....
(name and address of person/body arbitrating)

I, , being
(name of referring authority) (designation)

hereby refer to arbitration by
(name of arbitrating authority)

the matter between:
..... and
(name of parties)

concerning
(subject matter for arbitration)

in accordance with the wishes of the parties/in accordance with the arbitration clause contained in terms of section 93 (5) (a) and 93 (5) (c).

.....
(specify collective bargaining agreement, or other agreement or contract in which contained and relevant section of Labour Act)

The issue(s) to be arbitrated upon is/are as follows:

.....

.....

.....

.....

Signed:
(referring authority)

Form L.R. 5

LABOUR RELATIONS ACT [CHAPTER 28:01]

Appointment of Arbitrator

TO:

.....

.....
(name and address of person/body arbitrating)

You are hereby appointed in terms of section 98 (5) as an arbitrator in the matter of
(name of aggrieved party)

and

.....
(name of other party)

and the following shall be the terms of reference:

.....

.....

Signed:
(labour officer/designated agent)

Form L.R. 6

LABOUR RELATIONS ACT [CHAPTER 28:01]

Notification to Party to Attend Proceedings

TO:

.....

.....
(name and address of party)

You are hereby notified that the matter concerning:

.....
(subject matter)

in respect of which reference was made on the and to

which you are a party shall be heard before
(specify the name of the arbitrator or arbitration board)

at
(place)

on
(date)

at a.m./p.m.

N.B.: If as a party, you fail to attend the hearing at the time and place notified, the hearing may proceed without you to the possible detriment of your interest.

GIVEN under my hand at this day of 20

.....
(arbitrating authority)

LABOUR RELATIONS ACT [CHAPTER 28:01]

Arbitration Award

Three copies of this form shall be completed by the arbitrator concerned, of which—

- (i) one copy shall be retained by the arbitrator;
(ii) the others shall be served on the parties to the arbitration.

Name, designation and address of arbitrator

.....
.....
.....

Name and address of parties to matter in dispute:

.....
.....

Dates on which matter heard

Issue(s) in dispute:

.....
.....
.....
.....

award by arbitrator[s]:

.....
.....
.....
.....

(name of arbitrator(s))

(signature of arbitrator)

Date: and place:

LABOUR RELATIONS ACT [CHAPTER 28:01]

Appeal Against Arbitration Award

In the matter between

(name and address of aggrieved party)

and

(name of other party)

NOTICE OF APPEAL AGAINST ARBITRATION AWARD

Please take note that.....(name of aggrieved party) hereby notes an appeal on a question of law in terms of section 98 (10) of the Labour Relations Act, against the Award handed down by.....(name of arbitrator) on.....(date) and the following are the grounds of Appeal—

- 1.
2.
3.

Signed:

(name and address of aggrieved party)

To:
(name of arbitrator)

And to:

.....
(name and address of other party)

And to:

.....
(Registrar of Labour Court)

Form L.R. 9

LABOUR RELATIONS ACT [CHAPTER 28:01]

Certificate in Terms of Section 98 (13) of the Labour Relations Act

In terms of section 98 (13) of the Labour Relations Act, I hereby certify that the attached arbitration award is a true copy of the award issued by me on.....

.....
(date)

In the matter involving and
(parties to the dispute)

and that the award is registrable with the Magistrate's/High Court

.....
(name of arbitrator)

.....
(signature of arbitrator)

Date: Place:

Form L.R. 10

LABOUR RELATIONS ACT [CHAPTER 28:01]

Picketing Authority

To:
(members or supporters of a trade union or workers' committee)

WHEREAS
is engaged in/is to be engaged in a Lawful Collective Job Action/Lock out as from

.....
(date)

This serves as authority for you to picket in respect of the said Collective Job Action/Lock out, in terms of section 104A (2) of the Labour Relations Act [Chapter 28:01].

Picketing shall be conducted by
e.g. (placards, song, dance etc.)

as from (time and date) to (date)

At/Along (venue)

Peacefully and (without obstructing traffic users/shoppers etc.)

Issued by (name of trade union)

A duly registered Trade Union/Workers' Committee Register number

Date: 20 at (place)

Signed:
(Secretary-General)