

The AFSA Labour Relations Conflict Resolution Service

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A FSA is a leading exponent of private conflict resolution in Southern Africa. Its founding members comprise of every Bar in South Africa, 29 leading attorney and accountancy firms, SACOB and the Corporate Lawyers' Association of South Africa (CLASA). As such AFSA is able to draw on the pool of expertise in those professions. Part of AFSA's mission is to provide the broadest and most comprehensive range of conflict resolution services to the people of Southern Africa. In March this year AFSA launched its Labour Relations Service, chaired by Roland Sutherland SC, of the Johannesburg Bar.

The first order of the panel was to broadly identify typical areas of labour-related conflict, which all require different responses in terms of approach, procedure and skills. Generally these disputes are about:

- work performance and discipline of rank and file workers,
- the performance and accountability of senior managers,
- redundancies and retrenchments,
- employment equity, including the practicalities arising from the introduction of affirmative action, staff training schemes, promotions and the like, and
- remuneration, and also other work practices and related industrial action.

Dispute systems design

Included in the standard rules exists the opportunity for parties to have a particular model or procedure tailor-made to the needs of a particular dispute. A Dispute Design Panel has been established to perform this role. The panel will be composed of experienced dispute resolution practitioners, who will either facilitate or advise one or both disputants in designing sets of rules in

anticipation of a class of dispute, or in designing ad hoc procedures to deal with disputes which have already arisen.

To address the different demands of the broad categories of dispute model rules and procedures have been drafted.

The rules

While differentiated rules or models of dispute resolution for the various broad categories of dispute are fitting, rules which are suitable to dismissal cases are, for example, not appropriate to collective bargaining cases. However, there are several characteristics that will be the hallmark of all the rules of the dispute resolution models. They are:

- An absence of pleadings and a minimum of pre-hearing formalities.
- An option of investigative, inquisitorial or adversarial procedures.
- The option of a final and binding award or an award subject to an appeal.
- Maximum conferment of power over procedure to the arbitrator.

All remedies that may be ordered must be consistent with the norms inherent in the Labour Relations Act of 1995.

In response to inevitable changes in market demands, members of the different panels will, by adapting and modernising the various forms of conflict resolution, constantly review the rules. Regular users of the service will also be called upon for their input.

The rules of the various conflict resolution models will be made available by the secretariat of AFSA on request and will be published in the AFSA Rules Manual.

Panels

A number of 'panels' composed of appropriately qualified, independent labour relations practitioners have been established. These are:

- Employment discipline panel
- Executive employment panel
- Employment retrenchment panel
- Employment equity panel
- Collective bargaining arbitration panel.

Each of these panels matches the broad category of disputes identified.

The appeal

Despite the popularity of private dispute resolution in South Africa over the past decade, the use of appeal procedures has been rare. The common law and the Arbitration Act do not provide for appeals from an arbitrator. Generally, the only redress possible to an aggrieved disputant is review. The flagship of the AFSA Labour Service is its appeal panel, which will comprise the country's leading labour lawyers with the required experience and acumen. Chaired by Jeremy Gauntlett SC, membership of this panel is by invitation only.

Different forms of appeal procedure from traditional to an expedited appeal on limited documentation, have been created. The model rules of the appeal tribunal have been drafted to facilitate simple procedures from any of the AFSA panels, but would also accommodate appeals from other arbitrations not initially conducted under the model rules.

The appeal tribunal exercises exclusively an appeal and review jurisdiction. There are two models presently available for the prosecution of appeals:

- (i) *A full or complete appeal*
This is an appeal procedure in the traditional form on the basis of a complete record of proceedings, including a verbatim transcript, and a written award. One or more appeal arbitrators will, at the option of the parties, conduct either an oral hearing or consider the matter without oral argument purely on written heads of argument.
- (ii) *An appeal from an expedited arbitration (expedited appeal)*
This form of appeal caters for circumstances where there is no comprehensive record of proceedings. Often in expedited labour arbitrations no official record is kept, the award being the only document that exists. In such circumstances an appeal must be on a limited basis. Sometimes the findings of fact are not for these reasons open to challenge. The model rules facilitate appeals in respect of what are essentially value judgements and legal opinions of the arbitrator of first instance. >


The arbitrators and facilitators who are accredited to the various panels and the appeal tribunal are all AFSA members, and are independent practitioners from legal, accountancy or industrial relations background. All panelists are bound by a code of conduct, which is published in the AFSA Rules Manual.

The appropriate remedy

When arbitrators resolve disputes under the auspices of the AFSA Labour Service, the labour law of the land must be given effect to. It is not necessary that arbitrators grant remedies which match those provided for in the Labour Relations Act, which are handed down by the Labour courts or the CCMA. Innovative and different remedies may be granted by arbitrators, but the norms of fairness in all labour relations procedures and remedies will be followed, and the jurisprudence of the Labour courts will be respected.

Initiating the process

Disputants to an existing dispute, who choose to use AFSA, must initially address a request in writing to the Chief Executive Officer who will assist in the invoking of the appropriate procedure and directing attention to the appropriate panel or to the appeal tribunal.

Anyone who wishes to incorporate an AFSA clause into a contract prior to any dispute, is advised to seek advice on the most appropriate clause to use. Draft clauses can be obtained on request from the AFSA secretariat. 

Professional Provident Society

Report by Ralph Meyer SC, representative of the General Council of the Bar on the board of the Professional Provident Society

Membership

During the past year, the membership of the PPS increased by some 10%. Over 11 000 new members were en-

rolled, many of them newly qualified and young professionals. The board is currently reconsidering the criteria for membership of the society by reason of the entry into certain professions of graduates from technikons which now confer degrees.

According to statistics published by the management, advocates remain the profession of which the highest proportion are members of the PPS. Advocates are well represented on the board. In addition to my representation on the board, there are two judges (both of whom were formerly GCB representatives on the board) who are elected members of the board and serve on its executive committee.


Funds

In relation to the investment of the society's funds, the board employs the services of two advisors, namely UAL Merchant Bank and Investec Asset Management Ltd to advise on investments.

Core purpose

The board adopted a policy of concentrating on the core purpose of the society, namely that it is a sickness benefit fund, but nevertheless continues to consider additional benefits such as increasing the cover offered to group life members and group life benefits. In addition, members are now offered offshore investment alternatives and more flexible annuities on the retirement annuity scheme. The group life cover offered by the society is, according to statistics, offered at the most favourable rates in the market.

Profmed

In addition to the PPS, the board also administers the affairs of Profmed. During the last year, the benefits offered by Profmed have been reviewed and increased. Profmed is operated on a most effective and efficient basis, although I consider it to be of some concern that its reserves are continuously increasing. I believe that it is necessary to monitor this situation, since this phenomenon may be the result of a policy relating to payment of benefits which is too conservative. 

Placement and subsidy scheme for law graduates

THE Black Lawyers Association, National Association of Democratic Lawyers, the Association of Law Societies, General Council of the Bar of South Africa, Legal Resources Centre and Lawyers for Human Rights ('the participating organisations') have announced the introduction of a scheme to facilitate entry into the profession, especially by disadvantaged law graduates.

Through the assistance of the Department of Justice and a donor agency, USAID, the participating organisations have secured funding which will be utilised to subsidise, either in whole or in part, the salary of law graduates who will be placed in articles of clerkship or pupillage.

The scheme will secure placement of 240 law graduates made up as follows:

- 80 law graduates for the five-month practical law school programme and service of articles of clerkship over a period of 12 months.
- 80 law graduates for service of clerkship over a period of 24 months including a five weeks practical law school programme.
- 80 law graduates for service of pupillage in the advocates' profession for a period of five months.

Interested law graduates should phone the BLA-LEC at (011) 337-1535 and speak to Nonqaba Tshotsho or Tshepo Legodi and ask for application forms.

Note 1: The scheme is for graduates who have never done articles or pupillage before.

Note 2: Incomplete and late application forms will not be considered.