

A Rescission of an arbitration award is dealt with in terms of Section 144 of the Labour Relations Act 66 of 1995 (LRA), as amended. Section 144 reads as follows:

Any commissioner who had issued an Arbitration Award or ruling, or any other commissioner appointed by the director for that purpose, may on that commissioners own accord, or on the application of any affected party, vary or rescind an arbitration award or ruling-

- (a) erroneously sought or erroneously made in the absence of any party affected by that award;***
- (b) in which there is an ambiguity, or an obvious error or omission, but only to the extent of that ambiguity, error or omission;***
- (c) granted as a result of a mistake common to the parties to the proceedings.***

This is read in conjunction with rule 32 of the rules for the conduct of proceedings before the CCMA which reads:

- (1) An application for the variation of rescission of an arbitration award or ruling must be made within fourteen days of the date on which the applicant became aware of –***
 - (a) the arbitration award or ruling; or***
- (2)***

There is a specific format (my emphasis), which an application in terms of the above mentioned rules must follow. This is dealt with in terms of Rule 31 of the Rules for the Conduct of Proceedings before the CCMA which states:

31. How to bring an application.—

(1) This rule applies to any—

- (a) application for condonation, joinder, substitution, variation or rescission;**
- (b) application in a jurisdictional dispute;**
- (c) other preliminary or interlocutory application.**

(2) An application must be brought on notice to all persons who have an interest in the application.

(3) The party bringing the application must sign the notice of application in accordance with rule 4 and must state—

- (a) the title of the matter;**
- (b) the case number assigned to the matter by the Commission;**
- (c) the relief sought;**
- (d) the address at which the party delivering the document will accept delivery of all documents and proceedings;**
- (e) that any party that intends to oppose the matter must deliver a notice of opposition and answering affidavit within fourteen days after the application has been delivered to it;**
- (f) that the application may be heard in the absence of a party that does not comply with subparagraph (e);**
- (g) that a schedule is included listing the documents that are material and relevant to the application.**

(4) The application must be supported by an affidavit. The affidavit must clearly and concisely set out—

- (a) *the names, description and addresses of the parties;*
 - (b) *a statement of the material facts, in chronological order, on which the application is based, in sufficient detail to enable any person opposing the application to reply to the facts;*
 - (c) *a statement of legal issues that arise from the material facts, in sufficient detail to enable any party to reply to the document;*
 - (d) *if the application is filed outside the relevant time period, grounds for condonation in accordance with rule 9; and*
 - (e) *if the application is brought urgently, the circumstances why the matter is urgent and the reasons why it cannot be dealt with in accordance with the time frames prescribed in these rules.*

- (5)
 - (a) *Any party opposing the application may deliver a notice of Opposition and an answering affidavit within fourteen days from the day on which the application was served on that party.*
 - (b) *A notice of opposition and an answering affidavit must contain, with the changes required by the context, the information required by subrules (3) and (4) respectively.*

- (6)
 - (a) *The party initiating the proceedings may deliver a replying affidavit within seven days from the day on which any notice of opposition and answering affidavit are served on it.*
 - (b) *The replying affidavit must address only issues raised in the answering affidavit and may not introduce new issues of fact or law.*

- (7) *A commissioner may permit the affidavits referred to in this rule to be substituted by a written statement.*

- (8) *In an urgent application, the Commission or a commissioner—*
 - (a) *may dispense with the requirements of this rule; and*
 - (b) *may only grant an order against a party that has had reasonable*

notice of the application.

- (9) (a) The Commission must allocate a date for the hearing of the application once a replying affidavit is delivered, or once the time limit for delivering a replying affidavit has lapsed, whichever occurs first.**
- (b) The Commission must notify the parties of the date, time and place of the hearing of the application.**
- (c) Applications may be heard on a motion roll.**
- (10) Despite this rule, the Commission or a commissioner may determine an application in any manner it deems fit.**

I do not believe that the application for rescission has complied with the above and therefore confirm that I will only deal with the application once it is properly presented to the Hairdressing and Cosmetology Bargaining Council.

In addition to the above, an application for postponement will only be considered once rule 23 has been complied with.