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LABOUR RELATIONS ACT 66 OF 1995

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RULES FOR THE CONDUCT OF PROCEEDINGS IN THE LABOUR APPEAL COURT

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RULES FOR THE CONDUCT OF PROCEEDINGS IN THE LABOUR APPEAL COURT

The Rules Board has, in terms of section 176 of the Labour Relations Act, 1995 (Act No. 66 of 1995), made the following rules to regulate the conduct of proceedings in the Labour Appeal Court.

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1. Definitions

Any expression in these rules that is defined in the Labour Relations Act 1995 (Act No 66 of 1995), has the same meaning as in that Act and -

“Act” means the Labour Relations Act, 1995 (Act No 66 of 1995);

“court” means the Labour Appeal Court established by section 167 of the Act;

“day” means any day other than a Saturday, Sunday or public holiday, and when any particular number of days is prescribed for the doing of any act, the number of days must be calculated by excluding the first day and including the last day;

(Definition of “day” amended by Rule 1 of Government Notice 1101 dated 4 September 1998)

“deliver” means serve on other parties and file with the registrar;

“Judge President” means the Judge President of the court;

“party” means any party to court proceedings and includes a person representing a party in terms of section 161 of the Act;

“petition” means the petition referred to in section 166(2) of the Act; and

“public holiday” means a public holiday referred to in section 1 of the Public Holidays Act, 1994 (Act No. 36 of 1994), or a day proclaimed as a public holiday under section 2 of that Act;

(Definition of “public holiday” inserted by Rule 2(a) of Government Notice R962 dated 11 July 1997)

“registrar” means the registrar of the Labour Appeal Court as contemplated in section 171 of the Act;

“serve” means to send by registered post, telegram, telex or fax, or to deliver by hand.

(Definition of “serve” inserted by Rule 2(b) of Government Notice R962 dated 11 July 1997)

2. Sittings of the court

- (1) There will be four terms each year:

1 February to 31 March, inclusive;

1 May to 30 June, inclusive;

1 August to 30 September, inclusive; and

1 November to 15 December, inclusive.

- (2) If the day fixed for the commencement of a term is a Saturday, Sunday or public holiday, the term will commence on the next succeeding day and, if the day fixed for the end of a term is a Saturday, Sunday or public holiday, the term will end on the preceding day.
- (3) Despite subrules (1) and (2), the Judge President may direct that an appeal be heard on any day that does not fall within a term.

3. Registrar's office hours

- (1) The office of the registrar will be the office of the registrar of the Labour Court.
- (2) The office of the registrar will be open every Monday to Friday, excluding public holidays, from 08:00 to 13:00 and from 14:00 to 15:30.
- (3) Despite subrule (2), the Judge President may direct that any document be filed at any time.

4. Petitions for leave to appeal¹

- (1) A petition for leave to appeal must be addressed to the Judge President, and must include a notice of motion and supporting affidavits.
- (2) Every petition must be accompanied by -
 - (a) a copy of the judgment of the Labour Court against which leave to appeal is sought; and
 - (b) a copy of the judgment refusing leave to appeal.
- (3) A petition must set out succinctly the grounds on which leave to appeal is sought.
- (4) A petition must not include the record of the proceedings in the Labour Court, unless the judges considering the petition direct otherwise.

¹ Section 166 of the Act regulates appeals against judgments or orders of the Labour Court. Applications to the Labour Court for leave to appeal are dealt with in rule 30 of the Rules of the Labour Court. If an application for leave to appeal is refused, a party can petition the Labour Appeal Court. This rule regulates those petitions.

- (5) A petition must be delivered within 10 days of the date on which leave to appeal is refused. The original petition plus two copies must be filed with the registrar and must be accompanied by proof of service on all other parties.
(Rule 4(5) amended by Rule 2(a) and (b) of Government Notice 1101 dated 4 September 1998).
- (6) The respondent may deliver an answering affidavit within 10 days of delivery of a copy of the petition. The original plus two copies of the answering affidavit must be filed with the registrar.
(Rule 4(6) amended by Rule 2(c) of Government Notice 1101 dated 4 September 1998).
- (7) A petition must be considered by three judges of the court designated by the Judge President.
- (8) The decision of the majority of the judges to grant or refuse the petition is final.
- (9) If the court grants leave to appeal it must, at the same time, make an order fixing the date by which the record must be delivered.
- (10)
(Rule 4(10) deleted by Rule 2(d) of Government Notice 1101 dated 4 September 1998).

5. Procedure on appeal

- (1) Every appellant who has a right of appeal must deliver a notice of appeal within 15 days, or any longer period that may be allowed by the court, on good cause shown, after leave to appeal has been granted.
(Rule 5(1) amended by Rule 3(a) of Government Notice 1101 dated 4 September 1998).
- (2) The order granting leave to appeal must be delivered with the notice of appeal.
- (3) The notice of appeal must state whether the whole or only part of the judgment or order of the Labour Court is appealed against. If only part of a judgment or order is appealed against, the notice must state which part is the subject of the appeal.
- (4) Any respondent who wishes to cross-appeal must deliver a notice of cross-appeal.
- (5) A notice of cross-appeal must be delivered within 10 days, or such longer period as may on good cause be allowed, after receiving notice of appeal from the appellant.
(Rule 5(5) amended by Rule 3(b) of Government Notice 1101 dated 4 September 1998).
- (6) The notice of cross-appeal must state the particulars in respect of which the variation of the judgment or order of the Labour Court is sought.

- (7) After an appeal has been noted, the appellant must serve a copy of the record of the proceedings in the Labour Court on each respondent and file four copies of the record with the registrar.
- (8) The record must be delivered within 60 days of the date of the order granting leave to appeal, unless the appeal is noted after a successful petition for leave to appeal, in which case the record must be delivered within the period fixed by the court under rule 4(9).

(Rule 5(8) amended by Rule 3 of Government Notice R962 dated 11 July 1997)

- (9) One of the copies of the record filed with the registrar must be certified as correct by the registrar of the Labour Court.

- (10) Every copy of the record must -

- (a) be clearly typed or printed in double spacing on A4 standard paper;
- (b) be paginated;
- (c) be numbered on every tenth line;
- (d) be securely bound in suitable covers disclosing the names of the parties and the names of the representatives of the parties;
- (e) be divided into separate, conveniently-sized volumes of approximately 100 pages each: Provided that a volume may consist of a lesser number of pages if it is convenient that such volume consist in a self-contained separate portion of the record;

(Rule 5(10)(e) substituted by Rule 3(c) of Government Notice 1101 dated 4 September 1998).

- (f) include the judgment given by the Labour Court;
- (g) contain a correct and complete index of the evidence and of all the documents and exhibits in the case, the date and nature of the exhibits being briefly stated in the index;

(Rule 5(10)(g) substituted by Rule 3(d) of Government Notice 1101 dated 4 September 1998).

- (h) contain only those documents that were referred to in any proceedings in the Labour Court.

- (11) A document must not be included in the record more than once.

- (12) The record must not contain any of the following documents, unless they affect the merits of the appeal:

- (a) Copies of subpoenas;

- (b) notices of trial;
- (c) consents to postponements;
- (d) schedules of documents;
- (e) notices to produce or to permit inspection;
- (f) other documents of a formal nature;
- (g) opening addresses;
- (h) the record of oral argument; and
- (i) heads of argument.

(Rule 5(12)(i) amended by Rule 3(e) of Government Notice 1101 dated 4 September 1998).

- (13) A list of the documents referred to in subrule (12) must be included in the record with the heading 'List of documents excluded from the record'.

(Rule 5(13) amended by Rule 3(f) of Government Notice 1101 dated 4 September 1998).

- (14) The documents that were referred to in any proceedings in the Labour Court must be arranged in chronological order.

- (15) Any reference in the record of evidence of any witness to any document or exhibit contained in the appeal record must reflect, in brackets in the margin opposite the reference, the page number in the appeal record of such document or exhibit.

(Rule 5(15) substituted by Rule 3(g) of Government Notice 1101 dated 4 September 1998).

- (16) If the decision of a matter on appeal is likely to turn only on a question of law, the parties may agree to submit the question of law to the court in the form of a special case. In that event, only those parts of the record necessary for the decision of the question of law must be lodged with the registrar.

- (17) If the appellant fails to lodge the record within the prescribed period, the appellant will be deemed to have withdrawn the appeal, unless the appellant has within that period applied to the respondent or the respondent's representative for consent to an extension of time and consent has been given. If consent is refused the appellant may, after delivery to the respondent of the notice of motion supported by affidavit, apply to the Judge President in chambers for an extension of time. The application must be accompanied by proof of service on all other parties. Any party wishing to oppose the grant of an extension of time may deliver an answering affidavit within 10 days of service on such party of a copy of the application.

(Rule 5(17) substituted by Rule 3(h) of Government Notice 1101 dated 4 September 1998).

- (18) If an appellant delivers a notice of withdrawal of an appeal, or is deemed, in terms of subrule (17), to have withdrawn an appeal, any respondent who has noted a cross-appeal may, within 10 days of the date on which a notice of withdrawal is delivered by the appellant or the date on which the appellant is deemed to have withdrawn the appeal, deliver a notice of an intention to prosecute the cross-appeal.
(Rule 5(18) amended by Rule 3 (i) and (j) of Government Notice 1101 dated 4 September 1998).
- (19) If the respondent delivers a notice of intention to prosecute a cross-appeal, the respondent is for the purposes of subrule (8) deemed to be the appellant, and the period prescribed in subrule (8) must be calculated as from the date on which the appellant withdrew the appeal or on which the appeal was deemed to have been withdrawn.
- (20) The costs of preparing copies of the record or special case form part of the costs of appeal.
(Rule 5(20) amended by Rule 3(k) of Government Notice 1101 dated 4 September 1998).
- (21) The registrar may refuse to accept copies of records or special cases that do not, in the registrar's opinion, comply with the provisions of this rule.
- (22) A party may on notice to all other parties apply orally or in writing to the Judge President for an appeal to be heard urgently. If the application is successful, the Judge President must give directions as to the future conduct of the appeal.
(Rule 5(22) amended by Rule 3(l) of Government Notice 1101 dated 4 September 1998).

5A. Appeal from the industrial court

- (1) An appeal from the industrial court in terms of section 17(21A) of the Labour Relations Act, 1956 (Act No. 28 of 1956), read with item 22(5) of Schedule 7 to the Act must be noted by delivering a notice of appeal within 15 days of the judgment or order, unless the reasons or the full reasons for the court's order are given on a date later than the date of the judgment or order, in which event the appeal must be noted within 10 days after the date on which the reasons are given: Except that the court may, on good cause shown, extend any period.
(Rule 5A(1) amended by Rule 4(a) of Government Notice 1101 dated 4 September 1998).
- (2) The notice of appeal must state -
- (a) whether the whole or part only of the judgment or order is appealed against; if only part of the judgment or order is appealed against, which part and specify the finding of fact or ruling of law which is appealed against; and
 - (b) the grounds on which the appeal is founded.
- (3)

- (a) Any notice of cross-appeal must be delivered within 10 days of the delivery of the notice of appeal or within any longer period permitted by the court on good cause shown.

(Rule 5A(3)(a) amended by Rule 4(b) of Government Notice 1101 dated 4 September 1998).

- (b) The provisions of this rule with regard to appeals apply, with the changes required by the context, to cross-appeals.

- (4) When an appeal has been noted the provisions of rule 5(7) to (22) apply.

(Rule 5A(4) substituted by Rule 4(c) of Government Notice 1101 dated 4 September 1998).

(Rule 5A inserted by Rule 4 (erroneously numbered "5") of Government Notice R962 dated 11 July 1997)

6. Powers of attorney

- (1) A power of attorney authorising a representative to prosecute the appeal or the cross-appeal must be delivered within 10 days of the delivery of any notice of appeal or cross-appeal.
- (2) If there is no cross-appeal, a power of attorney to oppose an appeal must be filed with the registrar by the respondent's representative when copies of the respondent's main heads of argument are filed under rule 9.
- (3) The State Attorney or any attorney acting on behalf of the Republic of South Africa or the government of any province need not file a power of attorney.

7. Submissions by an *amicus curiae*

- (1) Any person interested in any proceedings before the court may, on application to the Judge President or any judge authorised by the Judge President, be admitted to the proceedings as an *amicus curiae* on the terms and conditions and with the rights and privileges determined by the Judge President or any judge authorised by the Judge President to deal with the matter.
- (2) The terms and conditions and rights and privileges referred to in subrule (1) may be amended in accordance with directions given by the Judge President or the judge authorised by the Judge President to deal with the matter.
- (3) An application in terms of subrule (1) must be made not later than 15 days before the date of hearing.
(Rule 7(3) amended by Rule 5(a) of Government Notice 1101 dated 4 September 1998).
- (4) An application to be admitted as an *amicus curiae* must -
 - (a) briefly describe the interest of the *amicus curiae* in the proceedings;

- (b) briefly identify the position to be adopted by the *amicus curiae* in the proceedings; and
 - (c) clearly, succinctly and without unnecessary elaboration set out the submissions to be advanced by the *amicus curiae*, their relevance to the proceedings and that person's reasons for believing that the submissions will be useful to the court and different from those of the other parties.
- (5) An *amicus curiae* has the right to deliver written argument by the date fixed by the Judge President, provided that the written argument -
- (a) is clear, succinct and without unnecessary elaboration;
 - (b) does not repeat any matter described in the argument of the other parties; and
 - (c) raises new contentions that may be useful to the court.
- (Rule 7(5) amended by Rule 5(b) of Government Notice 1101 dated 4 September 1998).*
- (6) In the event of new matters or arguments being raised by the *amicus curiae*, any other party will have the right to file written argument within 5 days from the date on which the argument of the *amicus curiae* was served on those parties.
- (Rule 7(6) amended by Rule 5(c) of Government Notice 1101 dated 4 September 1998).*
- (7) An order of court dealing with costs may make provision for the payment of the intervention of the *amicus curiae*.

8. Date of hearing

- (1) Once the record on appeal has been delivered, and subject to the directions of the Judge President, the registrar must notify the parties of the date, time and place of the hearing.
- (Rule 8(1) amended by Rule 6 of Government Notice 1101 dated 4 September 1998).*
- (2) The notice required by subrule (1) must be given by fax or registered letter.
- (3) A registered letter or fax that has been forwarded to a party's last-known address or the address of that party's last-known representative will be deemed to be sufficient notice of the date, time and place of the hearing for the purposes of this rule.

9. Heads of argument

- (1) The appellant must deliver a copy of the heads of argument not later than 15 days before the hearing or not later than any earlier date determined by the Judge President. The original plus three copies of the heads of argument must be filed with the registrar.
- (Rule 9(1) amended by Rule 7(a) of Government Notice 1101 dated 4 September 1998).*

- (2) The respondent must deliver a copy of the heads of argument not later than 10 days before the hearing or not later than any earlier date that may be determined by the Judge President. The original plus three copies must be filed with the registrar.

(Rule 9(2) amended by Rule 7(b) of Government Notice 1101 dated 4 September 1998).

- (3) The heads of argument of the appellant and the respondent must -

- (a) include a chronology of the material facts;
- (b) in its first reference to a factual allegation contain a page and paragraph or line reference to the record or bundle of documents;
- (c) include a list of the authorities referred to in the heads of argument;
- (d) in its first reference to a textbook specify the author, title, edition and page number (in that order, for example: Smith Labour Law, 2nd ed, 44); and
- (e) in its first reference to a reported case contain the full name of the case, the year, volume, commencement page, division of the court, and page and margin reference to which specific reference is made (for example: National Union of Hotel Workers a. o. v Smith (Pty) Ltd 1990 1 SA 127 (A) 130D; Jones v Clark (Pty) Ltd a.o. (1990) 15 ILJ 1010 (LAC) 1013D).

(Rule 9(3) substituted by Rule 7(c) of Government Notice 1101 dated 4 September 1998).

10. Labour Appeal Court sitting as a court of first instance in terms of section 175 of the Act

- (1) A party may request the Judge President for a direction that a matter before the Labour Court be heard by the Labour Appeal Court sitting as a court of first instance.
- (2) Notice of a request in terms of subrule (1) must be given to all other parties.
- (3) The request must be made in writing, but need not be supported by an affidavit.
- (4) If the request is opposed, the Judge President must hear the parties in chambers before giving a direction.
- (5) If the request is successful, the Judge President must give directions as to the future conduct of the matter.

11. Failure to appear at an appeal hearing

If the appellant fails to appear in person or through a representative at a hearing, the Court may dismiss the appeal for non-prosecution, or make any other appropriate order.

12. General

- (1) The Court may, for sufficient cause shown, excuse the parties from compliance with any of these rules.
- (2) The Judge President, or any judge authorised by the Judge President, may give any directions that are considered just and expedient in matters of practice and procedure.

(Rule 12 substituted by Rule 5 of Government Notice R962 dated 11 July 1997)

12A.

These Rules, as amended from time to time, are, with the changes required by the context, applicable to appeals from the Defence Special Tribunal, established by section 3 of the Defence Special Tribunal Act, No. 81 of 1998.

(Rule 12A inserted by Rule 1 of Government Notice 264 dated 5 March 1999)

13. Costs and fees

- (1) Rules 9, 10 and 11 (as amended from time to time) of the Rules of the Supreme Court of Appeal of South Africa regarding taxation and attorneys' fees apply, with the changes required by the context.

(Rule 13(1) amended by Rule 6(a) of Government Notice R962 dated 11 July 1997)

(Rule 13(1) amended by Rule 8 of Government Notice 1101 dated 4 September 1998).

- (2) In the event of oral and written argument, a fee for written argument may in appropriate circumstances be allowed as a separate item.
- (3) When the Labour Appeal Court sits as a court of first instance, the provisions of rule 24 of the Labour Court Rules apply.

(Rule 13(3) added by Rule 6(b) of Government Notice R962 dated 11 July 1997)

14. Commencement of rules

These rules will come into operation on the day that the whole of the Act comes into operation.