

PHSDSBC WORKSHOPS: CCMA CONTRIBUTION



5; 7 & 9 OCTOBER 2015

PURPOSE



The purpose of this presentation is two-fold. It is intended to communicate the CCMA's perspective on:

- ❑ Legally compliant awards; and
- ❑ Legally compliant settlement agreements.

LEGALLY COMPLIANT AWARDS



The requirements of legal compliance can be summed as follows:

- The award should be structured (format).
- The award should be grammatically sound.
- The award should show a reasoned nexus between the outcome and the totality of evidence.
- The award should be enforceable.

AWARD STRUCTURE



The recommended structure, with changes required by the context, is as follows:

- Details of hearing and representation.
- Issue/s to be decided.
- Background to the dispute.
- Survey of evidence and argument.
- Analysis of evidence and argument.
- Award.

DETAILS OF HEARING AND REP.



The details of hearing and representation should reflect the following:

- Nature of the arbitration (UD or ULP etc).
- The representatives and their status.
- The true identity of the parties (where these are not on a cover page. Acronyms should be avoided)

ISSUE TO BE DECIDED



The issue to be decided should reflect the following:

- ❑ The issue in dispute.

- ❑ Pre-arbitration summary broken into:
 - Substantive issues.

 - Procedural issues.

 - The relief sought by the parties respectively.

BACKGROUND TO DISPUTE



The background facts to the dispute should entail a brief synopsis of:

- The workplace.
- Procedures and agreements.
- The employment relationship.
- The history of the dispute.

SURVEY OF EVIDENCE & ARGUMENT



The survey of evidence should reflect **only**:

- ❑ The salient features of the evidence and argument focusing on:
 - Chronology of the evidence (Parties sequence witnesses for a reason).
 - Evidence material to resolution of disputed facts.
 - Legal principles argued and not parties' rehash of evidence.
 - Relief agitated by the parties.
 - (Avoid peripheral evidence and argument).

ANALYSIS OF EVIDENCE & ARGUMENT



The analysis of evidence and argument should concentrate on:

- Findings of fact.
- Reasons to accompany each finding of fact.
- Assessment of the probabilities.
- Application of rules and the law to the facts.
- Assessment of credibility.
- Assessment of reliability.
- Where relief is awarded, its extent, how it is calculated and the reasons for the relief should be fully explained.
- Plain language and short sentences.

AWARD



The award should reflect:

- The specific identity of parties (not applicant or respondent).
- A clear relief
- Clear instructions as to actions to be taken and when.
- Effective date of re-instatement/ re-employment.
- Correctly quantified quantum of compensation.
- That the award accrues interest from a specified time.
- That tax will apply to any quantified amounts

LEGALLY COMPLIANT AGREEMENTS



The requirements of legal compliance can be summed up as follows:

- The dispute to be settled must be validly referred.

- The settlement agreement should clearly spell out the terms of settlement.

VALID REFERRAL



A valid referral implies that:

- There is a live dispute between the parties.
- The referring party has complied with the procedure for referral.
- The dispute must be one over which the forum has jurisdiction.

SETTLEMENT TERMS



The settlement agreement should reflect the following:

- The case number.
- The proper names of the parties.
- A separate clause to record each issue agreed.
- What should be done, when and by whom.
- Legal/ Latin terms should be avoided. Plain language.
- Short sentences.

SETTLEMENT TERMS (Cont.)



- Self-containment (no reference to annexures).
- No conditionalities.
- Specify implementation date/s.
- Date of agreement.
- Date agreement will take effect.
- Tax.
- No settlement on entitlements.
- Signature.
- Enforceability.

THANK YOU

