

Arbitration Awards Must Not Be Illogical



There are many different reasons that employers lose at arbitration despite their confidence that they would win. Some of those reasons include:

The case of the employer concerned was weak without him/her realizing it

The employer's case was strong but he/she failed to present it in an understandable and/or convincing manner

The employer presented a strong case in a proper manner but the arbitrator nevertheless failed to make a decision properly based on the case put forward.

It is the third of these three reasons that is unfair to the employer. However, in such a case the disappointed party has the right to challenge the arbitrator via a review at the Labour Court on the grounds that, amongst others, the arbitrator took a bribe, was biased, ignored pertinent evidence or failed to arrive at a properly reasoned award.

Wayne Hutchinson, who has many years of experience as a CCMA arbitrator, has stated that the arbitrator is required to "... weigh up and consider all the evidence, both oral and documentary, prior to embarking upon the process of making factual findings" (May 2007, CLL page 107). In his article Hutchinson cites the decisions of senior judges that reinforce the arbitrator's requirement to provide a properly reasoned award. Specifically he cites the cases of Crown Chickens vs Kapp and Rustenburg Platinum Mines vs CCMA.

As per Hutchinson's report the Court, in the Crown Chickens case found that the award of an arbitrator: must not be arbitrary

must be arrived at by a reasoning process as opposed to conjecture, fantasy, guesswork or hallucination must have applied his mind seriously to the issues at hand

must have conclusions that are justifiable and defensible and logical.

In the Rustenburg Platinum case the Court found that "...the Promotion of Administrative Justice Act (PAJA) applied to CCMA arbitration proceedings." and that "the PAJA was enacted in order to give effect to the right to administrative action that is lawful, reasonable and procedurally fair."

In effect the PAJA requires the decisions of arbitrators to:

Comply with the law

Be rational

Be properly explained via the giving of reasons for the decision.

Thus, the arbitrator must not only have logical and legal reasons for his/her decisions but must also give these reasons at the time of rendering the decisions otherwise it may be assumed that he/she did not

have good reason. The emphasis has been placed on the actual giving of good reasons because:

The parties have the right to know why the arbitrator has found against them so they can decide whether and how to challenge the arbitrator's decision.

This requirement deters the making of faulty decisions by arbitrators. That is, an arbitrator who has to explain his actions will be less likely to ignore or misconstrue relevant evidence and to make bad decisions.

The comprehensive furnishing of reasons by the arbitrator enables anyone questioning the decision to better assess whether the arbitrator has:

Considered all serious objections to and all alternatives to the decision he/she has made

Provided a rational connection between the facts of the case and the decision.

The significance of this for employers is that they must:

themselves have good reason when acting against employees

provide their good reasons clearly and comprehensively to the arbitrator when called to CCMA hearings.

This will pave the way for the arbitrator to accept the employer's reasoning and to follow the same line of reasoning as did the employer. In this way the employer aids the arbitrator to find in its favour.

The above approach requires of employers that they insist on managerial decisions to be made unemotionally, rationally and in line with the law by managers who have been trained labour law and decision making.