

**SOUTH AFRICAN ROAD PASSENGER BARGAINING COUNCIL**

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**CODE OF CONDUCT FOR CONCILIATORS & ARBITRATORS**

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**PURPOSE**

1. Purpose of this code is to:
  - 1.1 Assist in maintaining the good repute of the conciliation and arbitration processes.
  - 1.2 provide guidance to Council Commissioners/Arbitrators on matters of professional conduct and practice generally.
  - 1.3 ensure compliance with the requirements prescribed in section 127(4) of the Labour Relations Act, 66 of 1995 (as amended).

**GENERAL CONDUCT OF CONCILIATORS AND ARBITRATORS**

2. In order for conciliation and arbitration proceedings to be seen to be fair and just, and to gain the confidence of the industry, conciliators/arbitrators shall:
  - 2.1 Act with honesty, impartially, due diligence and independent of any outside pressure in the discharge of their statutory functions;
  - 2.2 Conduct themselves in a manner that is fair to all parties and shall not be swayed by fear of criticism or by self-interest;
  - 2.3 Not solicit appointment for themselves;
  - 2.4 Accept appointments only if they believe that they are available to conduct the process promptly and are competent to undertake the assignment;

- 2.5 Avoid entering into any financial, business or social relationship which is likely to affect their impartially or which might reasonably create a perception of partiality or bias.

### **CONFLICT OF INTEREST AND DISCLOSURE**

3. Conciliators/Arbitrators should disclose any interest or relationship that is likely to affect their impartially or which might create a perception of partiality. The duty to disclose rests on the Conciliators and Arbitrators.

Conciliators and Arbitrators appointed to conciliate and or arbitrate in any matter should, before accepting, disclose directly to the Council:

- 3.1 Any direct or indirect financial or personal interest in the matter; and

- 3.2 Any existing or past financial, business, professional, family or social relationship which is likely to affect impartiality or may lead to a reasonable perception of partiality or bias:-

- 3.2.1 if the circumstances requiring disclosure are unknown to conciliators and arbitrators prior to accepting appointments, disclosure must be made when such circumstances become known to the conciliators/arbitrators. The disclosure in this regard could include witnesses who may have a relationship with the Conciliators/Arbitrators;

- 3.2.2 after appropriate disclosure Conciliators/Arbitrators may serve if both parties so desire, but should withdraw if they believe that a conflict of interest exist, irrespective of the view expressed by the parties;

- 3.2.3 in the event where there is no consensus on whether Conciliators/Arbitrators should withdraw or not, Conciliators/Arbitrators should not withdraw if after carefully considering the matter, conciliators/arbitrators determine that the reason for the challenge is not substantial and that they can nevertheless act impartially and fairly, and that the withdrawal would cause unfair delay or would be contrary to the ends of justice.

## **HEARING CONDUCT**

4. At hearings:
  - 4.1 Conciliators/Arbitrators should conduct proceedings fairly, diligently and in an even-handed manner.
  - 4.2 Conciliators/Arbitrators should have no casual contact with any of the parties or their representatives while handling a matter, without the presence or consent of the other.
  - 4.3 Conciliators/Arbitrators should be patient and courteous to the parties and their representatives or witnesses and should encourage similar behavior by all participants in the proceedings.
  - 4.4 On completion of the hearing, the Commissioner/Arbitrator must adhere to the time limits for issuing and award/ruling as provided for in Council's Dispute Resolution Agreement and Rules.

## **CONFIDENTIALITY**

5. Information disclosed to Conciliators/Arbitrators in confidence by a party during the course of conciliation, should be kept by Conciliators/Arbitrators in the strictest confidence and should not be disclosed to the other party, or to third parties, unless authority is obtained for such disclosure.

## **JURISDICTION**

6. Conciliators/Arbitrators must observe faithfully both the limitations and inclusions of the jurisdiction conferred by Council's Scope of Registration. A direct settlement by the parties of some or all issues in a case, at any stage of the proceedings, must be accepted by a Conciliator/Arbitrator as relieving him or her of further jurisdiction in respect of such issues.

## **COMPETENCEY**

7. Conciliators/Arbitrators should decline appointment, withdraw or request technical assistance when they decide that a matter is beyond their competence.

Conciliators/Arbitrators acting as such should understand the issues which form part of the dispute before endeavoring to assist the parties with the settlement of that dispute. In this regard, Conciliators/Arbitrators should spend time at the beginning of the proceedings to make sure that they understand the positions, the needs and expectations of the parties.

## **ENFORCEMENT**

8. In terms of Section 127(4)(e) & (f) of the Labour Relations Act, 66 of 1995 (as amended) –

8.1 The Council will report contraventions by an accredited Commissioner/Arbitrator of the Code of Conduct to the Commissioner for Conciliation Mediation and Arbitration.

8.2 The Council may remove an accredited Commissioner/Arbitrator from its panel in terms of the procedure stipulated in its Constitution.

**SOUTH AFRICAN ROAD PASSENGER BARGAINING COUNCIL**

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**RULES FOR THE CONDUCT OF PROCESSES AND PROCEEDINGS BEFORE THE  
SARPBAC – DISPUTE RESOLUTION**

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In accordance with the Exemptions and Dispute Resolution Collective Agreement of the South African Road Passenger Bargaining Council, the Council adopts the following rules to regulate the practice and procedures for resolving disputes referred to the Council (other than enforcement disputes).

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## 1. Definitions

What words mean in these rules. –Any expression in these rules that is defined in the Labour Relations Act, (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), and includes any regulation made in terms of that Act;

“**association**” means any unincorporated body of persons;

“**Commissioner**” means a CCMA accredited Conciliator and/or Arbitrator appointed by the Council who acts as a Conciliator and/or Arbitrator for the purposes of resolving disputes in terms of these rules;

“**Council**” means the South African Road Passenger Bargaining Council registered in accordance with Section 29 of the Act;

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

“**file**” means to lodge with the Council in terms of rule 7;

“**Labour Court**” means the Labour Court established by section 151 of the Act and includes any judge of the Labour Court;

“**party**” means any party to proceedings before the Council;

“**public holiday**” means a public holiday referred to in section 1 of the Public Holidays Act, 1994 (Act No. 36 of 1994);

“**rules**” means these rules;

“**Secretary**” means the General Secretary of the Council appointed by the Council from time to time and includes any person delegated by the Council or the Secretary to perform any of the functions of the Secretary.

“**senior Commissioner**” means a CCMA accredited Conciliator and/or Arbitrator appointed and recognized by the Council as being a senior practitioner in relation to labour issues.

“**serve**” means to serve in accordance with rule 5 and “service” has a corresponding meaning



**2. Address of the Council**

**HEAD OFFICE – CAPE TOWN**

First Floor

Stonefountain House

95 Klipfontein Road

Rondebosch

**Postal Address**

PO Box 13238

MOWBRAY

7705

**PART ONE**

**SERVING AND FILING DOCUMENTS**

**3. How to contact the Council**

3.1 The addresses, telephone and telefax numbers of the office of the Council is listed in Rule 2.

3.2 Documents may only be filed with the Council at the addresses or telefax numbers listed in Rule 2.

**4. When are the office of the Council open**

4.1 The head office of the Council will be open every day excluding Saturdays, Sundays and public holidays from Monday to Friday between 08h30 and 16h30.

4.2 Documents may only be filed with the Council during the hours referred to in sub rule 4.1.

4.3 Notwithstanding sub rule 4.2, documents may be faxed at any time to the Council.

**5. How to calculate time periods in these rules**

5.1 For the purpose of calculating any period of time in terms of these rules–

- (a) day means a calendar day; and
- (b) the first day is excluded and the last day is included, subject to sub rule 5.2.

5.2 The last day of any period must be excluded if it falls on a Saturday, Sunday, public holiday or on a day during the period between 16 December to 7 January.

**6. Who must sign documents**

6.1 A document that a party must sign in terms of the Act or these rules must be signed by the party or by a person entitled in terms of the Act or these rules to represent that party in the proceedings.

6.2 If proceedings are jointly instituted or opposed by more than one employee, documents may be signed by an employee who is mandated by the other employees to sign documents. A list in writing, of the employees who have mandated the employee to sign on their behalf must be attached to the referral document.

**7. How to serve documents on other parties**

7.1 A party must serve a document on the other parties–

- (a) by handing a copy of the document to–
  - (i) the person concerned;
  - (ii) a representative authorized in writing to accept service on behalf of the person;
  - (iii) a person who appears to be at least 16 years old and in charge of the person's place of residence, business or place of employment premises at the time;
  - (iv) a person identified in sub rule 7.2;
- (b) by leaving a copy of the document at–

- (i) an address chosen by the person to receive service;
- (ii) any premises in accordance with sub rule 7.3;
- (c) by faxing a copy of the document to the person's fax number or a number chosen by that person to receive service;
- (d) by sending a copy of the document by registered post or telegram to the last known address of the party or an address chosen by the party to receive service.

7.2 A document may also be served—

- (a) on a company or other body corporate by handing a copy of the document to a responsible employee of the company or body at its registered office, its principal place of business within the Republic or its main place of business within the magisterial district in which the dispute first arose;
- (b) on an employer by handing a copy of the document to a responsible employee of the employer at the workplace where the employees involved in the dispute ordinarily or worked;
- (c) on a trade union or employer's organization by handing a copy of the document to a responsible employee or official at the main office of the trade union or employer's organization or its office in the magisterial district in which the dispute arose;
- (d) on a partnership, firm or association by handing a copy of the document to a responsible employee or official at the place of business of the partnership, firm or association or, if it has no place of business, by serving a copy of the document on a partner, the owner of the firm or the chairman or secretary of the managing or other controlling body of the association, as the case may be;
- (e) on a statutory body, by handing a copy to the secretary or similar officer or member of the board or committee of that body, or any person acting on behalf of that body;
- (f) on a State or a province, a state department or a provincial department, a minister, premier or a member of the executive committee of a province by handing a copy to a responsible

employee at the head office of the party or to a responsible employee at any office of the State Attorney.

- 7.3 if no person identified in sub rule 7.2 is willing to accept service, service may be effected by affixing a copy of the document to—
- (a) the main door of the premises concerned; or
  - (b) if this is not acceptable, a post-box or other place to which the public has access.
- 7.4 The Council or a Commissioner may order service in a manner other than prescribed in this rule.
- 7.5 The Council may give any notice it is required to give in terms of these rules, the Act or the Exemptions and Dispute Resolution Collective Agreement in accordance with this rule.

## **8. How to prove that documents were served in terms of the rules**

- 8.1 A party must prove to the Council or a Commissioner that a document was served on terms of these Rules, by providing the Council or a Commissioner:
- (a) with a copy of proof of mailing the document by registered post to the other party
  - (b) with a copy of the telegram communicating the document to the other party;
  - (c) with a copy of the telefax transmission report indicating the successful transmission to the other party of the whole document; or
  - (d) if a document was served by hand –
    - (i) with a copy of a receipt signed by, or on behalf of, the other party clearly indicating the name and designation of the recipient and the place, time and date of service; or
    - (ii) with a statement confirming service signed by the person who delivered a copy of the document to the other party or left it at any premises.

- 8.2 If proof of service in accordance with sub rule (1) is provided, it is presumed, until the contrary is proved, that the party on whom it was served has knowledge of the contents of the document.
- 8.3 The Council or a Commissioner may accept proof of service in a manner other than prescribed in this rule, as sufficient.

**9. How to file documents with the Council**

- 9.1 A party must file documents with the Council –
- (a) by handing the document to an office of the Council as listed in Rule 2;
  - (b) by sending a copy of the document by registered post to the office of the SARPAC at the address listed in Rule 2; or
  - (c) by faxing the documents to an office of the Council at a number listed in Rule 2.
- 9.2 A document is filed with the Council when –
- (a) the document is handed to an office of the Council;
  - (b) a document sent by registered post is received by an office of the Council; or
  - (c) the transmission of a fax is completed.
- 9.3 A party must only file the original of a document filed by fax, if requested to do so by the SARPAC or a Commissioner. A party must comply with a request to file an original document within seven days of the request.

**10. Documents and notices sent by registered post**

Any document or notice sent by registered post by a party or the Council is presumed, until the contrary is proved, to have been received by the person to whom it was sent seven days after it was posted.

**11. How to seek condonation for documents delivered late**

- 11.1 This Rule applies to any referral document or application delivered outside of the applicable time period prescribed in the Act or these rules.
- 11.2 A party must apply for condonation, in terms of Rule 33, when delivering the document to the Council.

11.3 An application for condonation must set out the grounds for seeking condonation and must include details of the following:

- (a) the degree of lateness;
- (b) the reasons for lateness;
- (c) the referring party's, prospects of succeeding with the referral and obtaining the relief sought against the other party;
- (d) any prejudice to the other party; and
- (e) any other relevant factors.

11.4 The Council may assist a referring party to comply with this rule.

## **PART TWO**

### **CONCILIATION OF DISPUTES**

#### **12. How to refer a dispute to the Council for conciliation**

12.1 A party must refer a dispute to the Council for conciliation by delivering a properly completed Form LRA 7.11 ("the referral document").

12.2 The referring party must –

- (a) sign the referral document in accordance with rule 6;
- (b) attach to the referral document written proof, in accordance with Rule 7, that the referral document was served on the other parties to the dispute;
- (c) if the referral document is filed out of time, attach an application for condonation in accordance with Rule 11.

12.3 The Council must refuse to accept a referral document until sub rule (2) has been complied with.

#### **13. What notice must the Council give of a conciliation**

The Council must give the parties at least fourteen days' notice in writing of a conciliation hearing, unless the parties agree to a shorter period of notice.

**14. Council may seek to resolve dispute before conciliation**

The Council or a Commissioner may contact the parties by telephone or other means, prior to the commencement of the conciliation, in order to seek to resolve the dispute.

**15. What happens if a party fails to attend or is not represented at conciliation**

15.1 All parties to a dispute must attend conciliation in person, irrespective of whether they are represented.

15.2 If a party is represented at the conciliation but fails to attend in person, the Commissioner must –

- (a) continue with the proceedings;
- (b) adjourn the proceedings; or
- (c) issue a certificate of outcome, in terms of Section 135(5) of the LRA, that the dispute remains unresolved.

15.3 In exercising discretion in terms sub rule 15.2, a Commissioner should take into account, amongst other things–

- (a) whether the party has previously failed to attend a conciliation in respect of that dispute;
- (b) any reason given for that party's failure to attend;
- (c) whether conciliation can take place effectively in the absence of that party;
- (d) the likely prejudice to the other party of the Commissioner's ruling;
- (e) any other relevant factors.

15.4 If a party to a dispute fails to attend in person or to be represented at a conciliation, the Commissioner may deal with it in terms of Rule 32.

**16. How to determine whether a Commissioner may conciliate a dispute**

If it appears during conciliation proceedings that a jurisdictional issue has not been determined, the Commissioner must require the referring party to prove that the Council has the jurisdiction to conciliate the dispute through conciliation.

**17. Issuing of a certificate of outcome of conciliation**

A certificate of outcome of conciliation that the dispute has or has not been resolved, must identify the nature of the dispute as described in the referral document or as identified by the Commissioner during the conciliation process. (Annexure COC1).

**18. Conciliation proceedings may not be disclosed**

18.1 Conciliation proceedings are private and confidential and are conducted on a without prejudice basis. No person may refer to anything said at conciliation proceedings during any subsequent proceedings, unless the parties agree in writing.

18.2 No person, including a Commissioner, may be called as a witness during any subsequent proceedings in the Council or in any court to give evidence about what transpired during conciliation.

**PART THREE**

**CON-ARB IN TERMS OF APPENDIX “B” CLAUSE 19**

**19. Conduct of Con-Arb**

All unresolved Disputes of Right, including disputes about the fairness of a dismissal or a dispute about an unfair labour practice, may be referred to SARPBAC. In regard to such referrals, the following shall apply:

19.1 All unresolved Disputes of Right that are referred to SARPBAC in terms of Clause 4 of this appendix will be scheduled for Conciliation/Arbitration subject to Clause 19.2 below

19.2 Where a Party objects to the Conciliation/Arbitration process, the matter will proceed directly to arbitration on the day that it is scheduled for the Conciliation/Arbitration proceedings

19.3 SARPBAC must give the Parties at least twenty-one (21) Days notice in writing that a matter has been scheduled for Conciliation/Arbitration, unless the Parties agree to a shorter period of notice.



19.4 The provisions of the Act and the provisions set out in this appendix that are applicable to conciliation and arbitration respectively apply, with the changes required by the context, to Conciliation/Arbitration Proceedings.

19.5 If the arbitration does not commence on the dates specified in terms of the notice in Clause 19(3) above, SARPBAC must, subject to clause 14 above, reschedule the matter.

## **PART FOUR**

### **ARBITRATIONS**

#### **20. How to request arbitration**

20.1 A party may request the Council to arbitrate a dispute by delivering a document in the form of Form LRA 7.13 (“the referral document”).

20.2 The referring party must–

- (a) sign the referral document in accordance with rule 6;
- (b) attach to the referral document written proof that the referral document was served on the other parties to the dispute in accordance with Rule 7; and
- (c) if the referral document is served out of time, attach an application for condonation in accordance with rule 11.

20.3 The Council must refuse to accept a referral document until sub rule 20.2 has been complied with.

#### **21. When must the parties file statements**

21.1 The Council or a Commissioner may direct–

- (a) the referring party in an arbitration to deliver a statement of case; and
- (b) the other party to deliver an answering statement.

21.2 A statement in terms of 21.1 must–

- (a) set out the material facts upon which the party relies and the legal issues that arise from the material facts;

- (b) be delivered within the time-period directed by the Council or Commissioner.

**22. When the parties must hold a pre-arbitration conference**

22.1 The Parties to an arbitration shall hold a pre-arbitration conference dealing with the relevant matters prior to the Conciliation/Arbitration or arbitration proceedings taking place.

22.2 The Parties should endeavour to hold a pre-arbitration conference at least seven (7) Days before the scheduled date for the commencement of the conciliation/arbitration or arbitration proceedings.

**23. What notice for an arbitration must the Council give**

The Council must give the parties at least 21 days' notice, in writing, of an arbitration hearing, unless the parties agree to a shorter period.

**24. How to determine whether a Commissioner may arbitrate a dispute**

If during the arbitration proceedings it appears that a jurisdictional issue has not been determined, the Commissioner must require the referring party to prove that the Council has jurisdiction to arbitrate the dispute.

**25. How to postpone an arbitration**

25.1 Any Party may apply for a postponement of conciliation, Conciliation/Arbitration or arbitration proceedings by serving an application for postponement on the other Parties to the dispute and lodging a copy with SARPBAC at least seven (7) Days before the scheduled date of such proceedings.

25.2 SARPBAC must postpone proceedings without the Parties appearing if

25.2.1 all the Parties to the dispute agree in writing to the postponement and the written agreement for the postponement is received by SARPBAC at least seven (7) Days prior to the scheduled date of the such proceedings; or

25.2.2 there are compelling reasons to postpone.

21.3 Upon postponement of any proceedings, the Commissioner must reschedule such proceedings to a later date not more than sixty (60) Days from such postponement.

21.4 Any Party who seeks or causes a postponement in circumstances other than those provided for in clauses 21.1 or 21.2 above shall bear the costs of the postponement regardless of the cause.

## **PART FIVE**

### **RULES THAT APPLY TO CONCILIATIONS AND ARBITRATIONS**

#### **26. Where a conciliation or arbitration will take place**

26.1 A dispute must be conciliated or arbitrated at the Council's office nearest to where the cause of action arose, unless the Secretary directs otherwise.

26.2 The Council determines the venue for conciliation or arbitration proceedings.

#### **27. Representation before the Council**

27.1 In conciliation proceedings, a party to the dispute may appear in person or be represented only by-

- (a) a *director* or *employee* of that party and if a close corporation also a member thereof; or
- (b) any *member, office bearer* or *official* of that party's registered *trade union* or *registered employers' organization*.

27.2 In any arbitration proceedings, a party to the dispute may appear in person or be represented only by-

- (a) a *legal practitioner*,
- (b) a *director* or *employee* of the party and if a close corporation also a *member* thereof; or
- (c) any *member, office bearer* or *official* of that party's registered *trade union* or *registered employers' organization*.

27.3 If the dispute being arbitrated is about the fairness of a dismissal and a party has alleged that the reason for the dismissal relates to the employee's conduct or capacity, the parties, despite subrule 27.2(a), are not entitled to be represented by a *legal practitioner* in the proceedings unless –

27.3.1 all the other parties consent; or

27.3.2 the Commissioner concludes that it is unreasonable to expect a party to deal with the dispute, without legal representation, after considering –

(a) the nature of the questions of law raised by the dispute;

(b) the complexity of the dispute;

(c) the public interest; and

(d) the comparative ability of the opposing parties or their representatives to deal with the dispute.

27.4 If the party to the dispute objects to the representation of another party to the dispute or the Commissioner suspects that the representative party of a party does not qualify in terms of this rule, the commissioner must determine the issue.

27.5 The Commissioner may call upon the representative to establish why the representative should be permitted to appear in terms of this rule.

27.6 A representative must tender any documents requested by the Commissioner in terms of subrule 27.2, including constitutions, payslips, contracts of employment, documents and forms, recognition agreements and proof of membership of a trade union or employers' organization.

## **28. How to join or substitute parties to proceedings**

28.1 The Council or a Commissioner may join any number of persons as parties in proceedings if their right to relief depends on substantially the same question of law or fact.

28.2 A Commissioner may make an order joining any person as a party in the proceedings if the party to be joined has a substantial interest in the subject matter of the proceedings.

28.3 A Commissioner may make an order in terms of sub rule 28.2–

- (a) of its own accord;
- (d) on application by a party; or
- (e) If, a person entitled to join the proceedings, applies at any time during the proceedings to intervene as a party.

28.4 An application in terms of this rule must be made in terms of Rule 33.

28.5 When making an order in terms of sub rule 28.2, a Commissioner may–

- (a) give appropriate directions as to the further procedure in the proceedings; and
- (f) make an order of costs in accordance with these rules.

28.6 If in any proceedings it becomes necessary to substitute a person for an existing party, any party to the proceedings may apply to the Council for an order substituting that party for an existing party, and a Commissioner may make such order or give appropriate directions as to the further procedure in the proceedings.

28.7 An application to join any person as a party to proceedings or to be substituted for an existing party must be accompanied by copies of all documents previously delivered, unless the person concerned or that person's representative is already in possession of the documents.

28.8 Subject to any order made in terms of sub rules 28.5 and 6, a joiner or substitution in terms of this rule does not affect any steps already taken in the proceedings.

**29. How to correct the citation of a party**

If a party to any proceedings has been incorrectly or defectively cited, a SARPAC may, on application and on notice to the parties concerned, correct the error or defect.

**30. When the Council may consolidate disputes**

The Council or a Commissioner, of its own accord or on application, may if appropriate and after notice to the parties consolidate more than one dispute so that the disputes may be dealt with in the same proceedings.

**31. Disclosure of documents**

31.1 Either party may request a Commissioner to make an order as to the disclosure of relevant documents.

31.2 The parties may agree on the disclosure of documents

**32. What happens if a party fails to attend arbitration proceedings before the Council**

32.1. The Parties to a dispute must attend the conciliation, Conciliation/Arbitration or arbitration in person, irrespective of whether or not they are represented by third parties.

32.2. If a Party to a dispute fails to attend the dispute proceedings before SARPBAC, and that part

32.2.1. has referred the dispute to SARPBAC, a Commissioner may dismiss the matter by issuing a written ruling or

32.2.2. has not referred the matter to SARPBAC, the Commissioner may:-

32.2.2.1. continue with the proceedings in the absence of that Party or

32.2.2.2. adjourn the proceedings to a later date not more than sixty (60) Days from such adjourned proceedings

32.3. A Commissioner must be satisfied that all Parties have been properly notified of the date, time and venue of the proceedings, before making any decision in terms of Clause 32(2).

32.4. If a Party or Parties fail to appear at the time scheduled for commencement of the arbitration hearing the Commissioner will postpone the proceedings for thirty (30) minutes. If a Party or Parties, after expiry of thirty (30) minutes, still fail to appear, the Commissioner will make a decision in terms of Clause 32(2).

32.5. If a matter is dismissed, SARPBAC must send a copy of the ruling to the parties.

32.6. The Commissioner may award costs in accordance with the provisions of Section 138(10) of the LRA, and shall be obliged to award costs against the Party whose non-attendance results in the matter being postponed, in

the absence of such party providing compelling reasons for non-attendance

**PART SIX**  
**APPLICATIONS**

**33. How to bring an application**

33.1 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.

33.2 An application must be brought on notice to all person who have an interest in the application.

33.3 The party bringing the application must sign the notice of application in accordance with Rule 6 and must state–

- (a) the title of the matter;
- (b) the case number assigned to the matter by the Council;
- (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 33.3 (e);
- (g) that a schedule is included listing the documents that are material and relevant to the application.

33.4 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.
- 33.5 (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 sub rules 33.3 and 33.4 respectively.
- 33.6 (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.
- 33.7 A Commissioner may permit the affidavits referred to in this rule to be substituted by a written statement.
- 33.8 In an urgent application, the Council or a Commissioner may—
- (a) dispense with the requirements of this rule; and
  - (b) only grant an order against a party that has had reasonable notice of the application.
- 33.9 (a) The Council 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 Council must notify the parties of the date, time and place of the hearing of the application.

(c) Applications must be heard on a motion roll.

33.10 Despite this rule, the Commissioner may determine an application in any manner it deems fit and, in particular, may have applications determined on the papers as delivered with hearing and agreement.

**34. How apply to vary or rescind arbitration awards or rulings**

34.1 An application for the variation or 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

(b) a mistake common to the proceedings.

34.2 A ruling made by a Commissioner which has the effect of a final order, will be regarded as a ruling for the purposes of this rule.

**35. How to apply to refer a dismissal or unfair labour practice dispute to the Labour Court**

35.1 An application in terms of section 191(6) of the Act to refer a matter to the Labour Court, must be made to the Director of the Commission for Conciliation, Mediation and Arbitration in terms of its rules.

**PART SEVEN**

**GENERAL**

**37. Condonation for failure to comply with the rules**

The Commissioner may condone any failure to comply with the time frames in these rules, on good cause shown.

**38. Recordings of Council proceedings**

38.1 The Council must keep a record of—

(a) any evidence given in an arbitration hearing;

- (b) any sworn testimony given in any proceedings before the Council;  
and
  - (c) any arbitration award or ruling made by a Commissioner.
- 38.2 The record may be kept by legible hand-written notes or by means of an electronic recording.
- 38.3 A party may request a copy of the transcript of a record or a portion of a record kept in terms of sub rule 38.2, on payment of the costs of the transcription.
- 38.4 After the person who makes the transcript of the record has certified that it is correct, the record must be returned to the Secretary.
- 38.5 The transcript of a record certified as correct in terms of sub rule 38.4 is presumed to be correct, unless the Labour Court decides otherwise.

**39. How to have a subpoena issued**

- 39.1 Any Party, who requires SARPBAC or a Commissioner to subpoena a person in terms of section 142(1) of the Act, must file a completed subpoena form, requesting a subpoena together with a written motivation setting out why the evidence of the person to be subpoenaed is necessary
- 39.2. An application in terms of Clause 17(1) above must be lodged with SARPBAC at least ten (10) Days before the arbitration hearing, or as directed by the Commissioner hearing the arbitration
- 39.3 SARPBAC or a Commissioner may refuse to issue a subpoena if:-
- 39.3.1. the Party does not establish why the evidence of the person is necessary or
  - 39.3.2. the Party subpoenaed does not have a reasonable period in which to comply with the subpoena
  - 39.3.3. SARPBAC or a Commissioner is not satisfied that the Party has made arrangements to pay the reasonable travel costs of the person subpoenaed
- 39.4. A subpoena must be served on the witness that is subpoenaed:-
- 39.4.1 by the person who has requested the subpoena or by the Sheriff at least seven (7) Days before the scheduled date of the arbitration and

39.4.2 if so directed by SARPBAC, accompanied by payment of the prescribed witness fees for one day in accordance with the tariff of allowances published by notice in the Gazette in terms of section 142(7) of the Act and the witnesses' reasonable travel costs

39.4.3. Clauses 17.3.3 and 17.4.2 above do not apply if SARPBAC in terms of section 142(7)(c) of the Act has waived the requirement for the Party to pay witness fees

#### **40. Payment of witness fees**

40.1 A witness subpoenaed in any proceedings in the Council must be paid a witness fee in accordance with the tariff of allowances published by notice in the Government Gazette in terms of section 142(7) of the Act.

40.2 The witness fee must be paid by–

- (a) the party who requested the Council to issue the subpoena; or
- (b) the Council, if the issue of the subpoena was not requested by a party or if the Council waives the requirement to pay witness fees in terms of section 142(7)(c) of the Act.

40.3 Despite sub rule 40.1 the Commissioner may, in appropriate circumstances, order that a witness receive no fee or only part of the prescribed fee.

#### **41. Taxation of bills of cost**

41.1 The basis on which a Commissioner may make an order as to costs against any party or representative of any party in any arbitration, is regulated by section 138(10) of the Act. If a Commissioner finds a dismissal or an unfair labour practice is procedurally unfair, that proceedings before the Council have been vexatious or frivolously conducted or that the postponement of proceedings has been unreasonably caused by a party that failed to comply with Rule 31, the Commissioner may order the employer or the party that caused such proceedings or postponement as the case may be to pay an arbitration fee to the Council.

#### **42. Certification and enforcement of arbitration awards**

42.1 An application to have an arbitration award certified must be made to the Commission for Conciliation, Mediation and Arbitration in accordance with its rules.

**PANELLIST AWARD**

**South African  
Road Passenger  
Bargaining Council**

**SARPBAC**

*PO Box 13238, Mowbray, 7705  
First floor, Stonefountain House,  
95 Klipfontein Road, Rondebosch, 7705  
Tel: (021) 685 8036 / 0769  
Fax: (021) 685 8048*

**In the matter between:**

\_\_\_\_\_ **Union/Employee party**  
**and**  
\_\_\_\_\_ **Employer party**

**Union/Employee's representative:** \_\_\_\_\_

**Union/Employees' address:**

**Telephone:** \_\_\_\_\_ **fax:** \_\_\_\_\_

**Employer's representative:** \_\_\_\_\_

**Employer's address:**

Telephone: \_\_\_\_\_ fax: \_\_\_\_\_

**DETAILS OF HEARING AND REPRESENTATION:**

**ISSUE IN DISPUTE:**

**BACKGROUND OF THE DISPUTE:**

**SURVEY OF ARGUMENTS & EVIDENCE:**

**ANALYSIS OF ARGUMENTS & EVIDENCE:**

**AWARD:**

Signed and dated at ..... on.....

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**SARPBAC Panelist.**

<b>DESCRIPTION AND DETAILS</b>					
<b>Date</b>	<b>Time</b>	<b>Case No.</b>	<b>Process</b>	<b>Outcome</b>	<b>Fee</b>
<b>SUB-TOTAL</b>					
<b>VAT</b>					
<b>TOTAL</b>					

<b>BANK DETAILS</b>		
<b>Bank Name</b>	<b>Branch Name</b>	<b>Branch Code</b>
<b>Account Number</b>	<b>Account Name</b>	<b>Account type</b>

**ONLY ORIGINAL COPY OF INVOICES WILL BE ACCEPTED**