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*The last time these Rules were reviewed for updates.

LABOUR APPEAL COURT RULES

RULES REGULATING THE CONDUCT OF THE PROCEEDINGS OF THE LABOUR APPEAL COURT

[Updated to 17 July 2024.**]

** Date of last changes incorporated into these Rules.

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The Rules Board has, in terms of section 176 of the Labour Relations Act, 1995 (Act 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 66 of 1995), has the same meaning as in that Act and:

“**Act**” means the Labour Relations Act, 1995 (Act 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, public holiday, or the period between 16 December to 15 January (both dates inclusive), 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;

“**deliver**” means serve on other parties and file with the registrar; serve has a similar meaning;

“**Judge President**” means the Judge President of the court and in the absence of the Judge President, the Deputy 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;

“**public holiday**” means a public holiday referred to in section 1 of the Public Holidays Act, 1994 (Act 36 of 1994), or a day proclaimed as a public holiday under section 2 of that Act;

“**registrar**” means registrar of the Labour Appeal Court and includes any person acting as or assisting the registrar of the Court;

“**serve**” means to send by email or to deliver by hand subject to proof of service as required in terms of the rule.

2. Sittings of the court

(1) There will be four terms each year:

(a) 15 February to 31 March, inclusive;

(b) 1 May to 30 May, inclusive;

- (c) 15 August to 30 September, inclusive; and
 - (d) 1 November to 30 November, 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

- (1) The office of the registrar will be the office of the registrar of the Labour Appeal 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 15:00.
- (3) Despite subrule (2), the Judge President may direct that any document be delivered at any specific date and/or time.
- (4) Any communication directed to the Judge President, his Deputy or any judge of the Court must be done through the office of the registrar.
- (5) A case number in the Labour Appeal Court will only be allocated and issued upon presentation of a petition for leave to appeal or a notice of appeal which complies with rules 4 and 6 respectively.

4. Petitions for leave to appeal

- (1) A petition for leave to appeal must be addressed to the Judge President, by way of 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.
- (5) A petition must be delivered within 15 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.
- (6) The petitioner's affidavit must not exceed 20 pages or it may not be considered.
- (7) 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.
- (8) The petitioner who applied for leave to appeal shall, within 10 days after the answering affidavit referred to in subrule (7) has been received, be entitled to lodge a replying affidavit dealing strictly with any new matters raised in the answering affidavit.
- (9) A petition must be considered by three judges of the court designated by the Judge President.
- (10) The judges considering the petition may call for further information, submissions or portion of the record. A failure to provide same within the period stipulated, may result in the petition being deemed to have been withdrawn.
- (11) The decision of the majority of the judges to grant wholly, or in part, or to refuse the petition is final.
- (12) 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.
- (13) If the petition is refused no reason need be provided for such refusal.

5. Cross-appeal

- (1) Any respondent who wishes to cross-appeal has an automatic right to do so and must deliver a notice of cross-appeal within 15 days of the receipt of the notice of appeal.

6. Procedure on appeal

- (1) A notice of appeal must be delivered within 15 days of leave being granted.

- (2) The order granting leave to appeal must accompany 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) 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.
- (5) 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, together with an electronic version of the record in a format that will be easily accessible.
- (6) 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.
- (7) One of the copies of the record filed with the registrar must be certified as correct by the appellant, and the respondent/s must, within 5 days before the heads of argument of the appellant are due, raise any issue/s concerning the correctness of the record.
- (8) Where the appellant has a limited appeal not requiring the whole of the record and there is a cross-appeal, the respondent must file the record necessary for the cross-appeal.
- (9) 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 and contact numbers 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 consists in a self-contained separate portion of the record;

- (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;
 - (h) contain only those documents that were referred to in any proceedings in the Labour Court.
- (10) A document must not be included in the record more than once.
- (11) 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 or closing addresses unless it is relevant to the appeal;
 - (h) the record of oral argument; and
 - (i) heads of argument.
- (12) The documents that were referred to in any proceedings in the Labour Court must be arranged in chronological order.
- (13) Failure to file a proper record may result in the matter being struck from the roll, with or without costs.
- (14) If the record has not been filed timeously, the registrar will nevertheless set the matter down for hearing. The Court will then decide whether it will hear the appeal, dismiss the appeal, or strike it off the roll, with or without an order for costs. If condonation or an application to reinstate the appeal is sought for the late filing of the record, it will be considered with the appeal.

- (15) If the appellant fails to lodge the record within the prescribed period or within the period as agreed to between it and the respondents, the appellant will be deemed to have withdrawn the appeal and it will, ipso facto, be archived.
- (16) An archived file may only be retrieved on application to be filed once the appeal record is filed and the matter is appeal ready.
- (17) 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.
- (18) If the parties agree that the decision of a matter on appeal is likely to turn only on a question of law, the parties must 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.
- (19) An indigent party may be excused from these rules, save that such a party may write to the Judge President who may direct how, what and to what extent must the rules herein set out must be complied with.
- (20) If an appellant delivers a notice of withdrawal of an appeal or is deemed to have done so in terms of subrule (15) 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.
- (21) If the respondent delivers a notice of intention to prosecute a cross-appeal, the respondent is for the purposes of subrule (6) deemed to be the appellant, and the period prescribed in subrule (6) must be calculated as from the date on which the appellant withdrew the appeal.
- (22) Acceptance by the registrar of the record does not indicate that the record complies with these rules. If the record does not comply with the rules or if the time limits prescribed herein for the filing of the record or other documents are not complied with, the court may on the date of the hearing dismiss the appeal or strike it off the roll with such orders, including an order as to costs, as it deems expedient.
- (23) Where there is an application to condone non-compliance with any provision of this rule such an application will be heard simultaneously with the appeal.
- (24) The costs of preparing copies of the record or special case form part of the costs of appeal.

7. Urgent appeals

- (1) A party may on notice to all other parties apply to the Judge President for an appeal to be heard urgently. The application must be supported by an affidavit setting out reasons for urgency.
- (2) The respondent may file an answering affidavit within 10 days of receipt of the application set out in subrule (1).
- (3) No reply from the applicant will be permitted. The Judge President, or any other appeal judge designated for the purposes of deciding the application for an urgent appeal, will decide the application in chambers.
- (4) If the application is successful, the Judge President must give directions as to the future conduct of the appeal.

8. 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 11.
- (3) The State Attorney or any attorney acting on behalf of the Republic of South Africa, its executive or the government of any province need not file a power of attorney.

9. Submissions by an *amicus curiae*

- (1) Any person interested in any proceedings before the court may, on notice to all parties apply to the Judge President or any judge authorised by the Judge President to 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 less than 15 days before the date of hearing.
- (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.
- (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.
- (7) An order of court dealing with costs may make provision for the payment of the intervention of the *amicus curiae*.

10. 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.
- (2) The notice required by subrule (1) must be given by electronic means or by messaging app if details are provided to give notice by such means.

11. Heads of argument

- (1) The appellant must deliver a copy of the heads of argument not less than 30 days after the record has been filed 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.
- (2) The respondent must deliver a copy of its heads of argument not later than 15 days after the date on which the appellant's heads of argument are filed or were due, 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.
- (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) not exceed 20 pages excluding the chronology referred to in subrule (a) and the list of authorities referred to in subrule (c) above;
 - (e) 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);
 - (f) 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); and
 - (g) have as an attachment, the practice note.

12. Practice note

- (1) The heads of argument for each party must be accompanied by:
 - (a) A brief typed practice note indicating:

- (i) the name and case number of the matter;
- (ii) the names and contact numbers of each party's representative;
- (iii) the nature of the appeal;
- (iv) the issues on appeal succinctly stated;
- (v) an estimate of the duration of the argument;
- (vi) which portions or pages of the record are in a language other than English;
- (vii) a list reflecting those parts of the record that, in the opinion of counsel, are necessary for the determination of the appeal;
- (viii) a summary of the argument, not exceeding 100 words.

13. Powers of the Judge President

- (1) The Judge President, may on request or application, or on the Judge President's own initiative:
 - (a) extend or reduce any time period prescribed in these rules and may condone non-compliance with these rules;
 - (b) give such directions in matters of practice, procedure and the disposal of any appeal, application or interlocutory matter as the Judge President or the Court may consider just and expedient.
- (2) Any power or authority vesting in the Judge President in terms of these rules may be exercised by a judge or judges designated by the Judge President for that purpose.

14. 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.

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

- (1) If a matter is of national importance or affects all or a majority of employers and/or employees within a single or multiple industries, 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.
- (6) The decision of the Judge President is final and reasons for the decision need not be provided.

16. 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.

17. Appeals from Defence Special Tribunal

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, 81 of 1998.

18. 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.

- (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 56 of the Labour Court Rules apply.

19. Media access to proceedings

Representatives of the media shall have access to proceedings of the Labour Appeal Court subject to the provisions of rule 72 of the Labour Court Rules.

20. Commencement of rules

These rules replace all previously applicable rules and will come into operation on a day announced in the Government Gazette.

[Date of commencement: 17 July 2024. GN 5038, G. 50929 of 12 July 2024.]