



COLLECTIVE AGREEMENT ON THE RULES AND PROCEDURES FOR THE RESOLUTIONS OF DISPUTES IN THE TRANSNET BARGAINING COUNCIL

The Transnet Bargaining Council hereby adopts these *Rules for the Conduct of Proceedings Before the Transnet Bargaining Council*, in terms of section 51(9) of the Labour Relations Act 66 of 1995 read with clause 14 of its Constitution effective from 1 January 2020.

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PART ONE
SERVING AND FILING DOCUMENTS

1 How to contact the Council

- 1) The addresses, telephone telefax numbers and e-mail addresses of the offices of the Council are listed in Schedule One to these Rules.
- 2) Subject to Rule 7, documents may only be filed with the Council at the addresses, telefax numbers and e-mail addresses listed in Schedule One.

2 When are the offices of the Council open

- 1) The office of the Council will be open every day from Monday to Friday, excluding public holidays, between the hours of 07h30 and 16h00, or as determined by the Council.
- 2) Documents may be filed with the Council during the hours referred to in sub-rule (1).
- 3) Notwithstanding sub-rule (2), documents may be faxed and e-mailed at any time to the Council.

3 How to calculate time periods in these Rules

- 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 (2).
- 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 January¹.

4 Who must sign documents

- 1) A document that a party must sign in terms of the Act or these Rules may 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.
- 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

¹ This Rule is not applicable to timelines regulated by the Labour Relations Act, Employment Equity Act and/or the Basic Conditions of Employment Act and/or the National Minimum Wage Act, which timelines shall be governed by the provisions of the relevant legislation, alternatively, the Interpretation Act.

mandated the employee to sign on their behalf must be attached to the referral document.

5 How to serve documents on other parties

- 1) Unless otherwise provided for in these Rules, 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 authorised in writing to accept service on behalf of the person;
 - iii) a person who appears to be at least 16 years old and apparently in charge of the person's place of residence, business or place of employment premises at the time; or
 - iv) a person identified in sub-rule (2);
 - b) by leaving a copy of the document at -
 - i) an address chosen by the person to receive service; or
 - ii) any premises in accordance with sub-rule (3);
 - c) by e-mailing, faxing or telexing a copy of the document to the person's e-mail, fax or telex number respectively, or an e-mail address, fax or telefax 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.
- 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 employee(s) involved in the dispute ordinarily work or worked;
 - c) on a trade union or employers' organisation by handing a copy of the document to a responsible employee or official at the main office of the union or employers' organisation 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 partnership, firm or 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.
- 3) If no person identified in sub-rule (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 accessible, a post-box or other place to which the public has access.
- 4) The Council or a Commissioner may order service in a manner other than prescribed in this Rule.

5A Notice of proceedings before the Council

The Council may provide notice of a conciliation or arbitration hearing, or any other proceedings before it, by means of any of the methods prescribed in Rule 5_and/or by means of short message service.

6 How to prove that a document was served in terms of the Rules

- 1) A party must prove to the Council or a Commissioner that a document was served in terms of these Rules, by providing the Council or a Commissioner -
- a) with a copy of proof that the document has been mailed by registered post to the other party;
 - b) with a copy of the telegram or telex transmitting 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;
 - 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; and
 - e) if a document was served by e-mail, with a copy of the sent e-mail indicating the successful dispatch to the other party of the e-mail and any attachments concerned.
- 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. The relevant provisions of the Electronic Communications and Transactions Act 25 of 2002 are applicable in respect of any issue concerning service by e-mail or the service of a notice of proceedings by short message service as permitted by rule 5A.
- 3) The Council may accept proof of service in a manner other than prescribed in this Rule, as sufficient.

7 How to file documents with the Council

- 1) A party must file documents with the Council -
- a) by handing the document to the office of the Council at the address listed in Schedule One;
 - b) by sending a copy of the document by registered post to the Council at the address listed in Schedule One; or
 - c) by faxing or e-mailing the document to the Council using a fax number or an email address listed in Schedule One. Documents filed by means of e-mail must be transmitted in MS Word or PDF a ²format.
- 2) A document is filed with the Council when -
- a) the document is handed to the office of the Council listed in Schedule One;
 - b) a document sent by registered post is received, or presumed to be received as provided for in Rule 8, by the Council;
 - c) the transmission of a fax is completed; or
 - d) the e-mail is received by the Council as provided for in the Electronics Communications and Transactions Act 25 of 2002.

² Microsoft Word or MS-Word (often called Word) is a graphical word processing program that allows users to type and save documents. Portable Document Format (PDF) is a file format used to present and exchange documents reliably.

- 3) A party must only file the original of a document, if requested to do so by the Council or a Commissioner. A party must comply with a request to file an original document within seven (7) days of the request.

8 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 (7) days after it was posted.

9 How to seek condonation for documents delivered late

- 1) This Rule applies to any referral document or application delivered outside of the applicable time period prescribed in the Act or these Rules.
- 2) A party must apply for condonation, in terms of Rule 31, when delivering the document late to the Council.
- 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 the lateness;
 - c) the referring parties' 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.
- 4) The Council may assist a referring party to comply with this Rule.



PART TWO CONCILIATION OF DISPUTES

10 How to refer a dispute to the Council for conciliation

- 1) A party must refer a dispute to the Council for conciliation by delivering a completed LRA Form 7.11 ('the referral document').
- 2) The referring party must -
 - a) sign the referral document in accordance with Rule 4; and
 - b) attach to the referral document, written proof, in accordance with Rule 6, that the referral document was served on the other parties to the dispute;

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- c) if the referral document is filed out of time, attach an application for condonation in accordance with Rule 9(3) read with Rules 31 and 35.
- 3) The Council must accept, but may refuse to process a referral document until sub-rule (2) has been complied with.

11 When must the Council notify parties of a conciliation

1. The Council must notify the parties in writing of a conciliation hearing at least -
 - a) seven days (7) prior to the scheduled date in matters relating to section 64, Section 65(2)(a) or Section 189A(8) of the Act;
 - b) fourteen (14) days prior to the scheduled date, in the case of any other matter.
2. Despite sub-rule (1), the Council may give the parties a shorter notice period, if the parties have agreed or, reasonable circumstances require a shorter notice period.
3. An additional seven (7) days must be provided, if a notice of conciliation in terms this rule is sent by registered mail only.

12 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.

13 What happens if a party fails to attend at conciliation

- 1) If a party who has referred a dispute fails to attend or to be represented at conciliation as contemplated in Rule 25(1)(a), the Commissioner may -
 - a) continue with the proceedings;
 - b) adjourn the conciliation to a later date within the 30-day period; or
 - c) conclude the proceedings by issuing a certificate that the dispute remains unresolved.
- 2) In exercising a discretion in terms of sub-rule (1), 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 one or more of the parties;

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- d) the likely prejudice to the other party of the Commissioner's ruling; and
- e) any other relevant factors.

14 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.

14A Extension of conciliation period in terms of Section 135 (2A) of the Act

- 1) The conciliating Commissioner or a party to a conciliation process may request an extension of the conciliation period referred to in Section 135.
- 2) The request must be made on the prescribed form³ and before the expiry of the conciliation period as determined in terms of Section 135.
- 3) The Secretary must within two (2) days of receipt of the request -
 - a) Consider whether
 - (i) An extension is necessary to ensure a meaningful conciliation process;
 - (ii) The refusal to agree to the extension is unreasonable; and
 - (iii) There are reasonable prospects of reaching agreement; and
 - b) Advise the parties on whether or not the extension is granted and where the extension is granted, the period of such extension.

15 Issuing of a certificate in terms of Section 135(5)

A certificate issued in terms of Section 135(5) that the dispute has or has not been resolved, must identify the nature of the dispute and the parties as described in the referral document or as identified by the Commissioner during the conciliation proceedings.

16 Conciliation proceedings may not be disclosed

- 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 or as ordered otherwise by a court of law.

³ LRA FORM 7.23

- 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 unless as ordered by a court of law or a Commissioner conducting an arbitration.

**PART THREE
CON-ARB IN TERMS OF SECTION 191(5A)**

17 Conduct of con-arb in terms of Section 191(5A)

- 1) The Council must notify the parties in writing of a con-arb hearing at least fourteen (14) days prior the scheduled date, unless the parties agree to a shorter period or reasonable circumstances require a shorter period. If a notification is sent by registered mail an additional seven (7) days must be allowed.
- 2) A party that intends to object to a dispute being dealt with in terms of Section 191(5A), must deliver a written notice to the Council and the other party, giving compelling reasons for the objection at least seven (7) days prior to the scheduled date in terms of sub-rule (1).
- 3) Sub-rule (2) does not apply to:
 - (a) a dispute relating to the dismissal of an employee for any reason related to probation or an unfair labour practice relating to probation;
 - (b) a dispute relating to a compliance order referred in terms of section 69(5) of the BCEA; or
 - (c) a claim for failure to pay any amount owing referred in terms of section 73A of the BCEA
- 4) If a party fails to appear or be represented at a hearing scheduled in terms of sub-rule (1):
 - (a) the Commissioner must conduct the conciliation on the date specified in the notification issued in terms of sub-rule (1), irrespective of whether a party has lodged a notice of objection in terms of sub-rule (2).
 - (b) Where the provisions of sub-rule 3 are applicable or no notice of objection has been lodged in terms of sub-rule (2), the Commissioner must commence immediately after certifying that the dispute remains unresolved.

- (c) Notwithstanding sub-rule (4)(b), the Commissioner having commenced the arbitration, retains a discretion, as contemplated in section 138(5) of the Act, to adjourn the proceedings to a later date.

- 5) The provisions of these Rules that are applicable to conciliation and arbitration respectively, including rules on representation, apply with the changes required by the context, to the conciliation and arbitration parts of con-arb proceedings, respectively.

- 6) If the arbitration does not proceed or is not concluded on the date specified in terms of the notice in sub-rule (1), the Council must schedule the matter for arbitration either in the presence of the parties or by notifying the parties in terms of Rule 21.

PART FOUR ARBITRATIONS

18 How to request arbitration

- 1) A party may request the Council to arbitrate a dispute by delivering a duly completed LRA 7.13.

- 2) The referring party must -
 - a) sign the request in accordance with Rule 4;

 - b) attach to the request written proof that the request was served on the other parties to the dispute in accordance with Rule 6; and

 - c) if the request is served out of time, attach an application for condonation in accordance with Rule 9(3).

- 3) The Council must accept, but may refuse to process a request until the provisions of sub-rule (2) has been complied with.

- 4) This Rule does not apply to con-arb proceedings held in terms of Section 191(5A).

19 When must the parties file statements

- 1) The Council or a Commissioner may direct -
 - a) the requesting party in an arbitration to deliver a statement of case; and

 - b) the other parties to deliver an answering statement.

- 2) A statement in terms of sub-rule (1) must -

- a) set out the material facts upon which the party relies and the legal issues that arise from the material facts; and
 - b) be delivered within the time-period specified by the Council or Commissioner.
- 3) The Commissioner has a discretion to continue with the matter despite non-compliance with the directive of the Council or Commissioner in terms of sub-rule (1). However, any non-compliance may be taken into account when considering costs at the conclusion of the arbitration hearing.

20 When the parties must hold a pre-arbitration conference

- 1) The parties to an arbitration must hold a pre-arbitration conference dealing with the matters referred to in sub-rule (3), if:
 - (a) both parties are represented by a trade union, employer and/or employer's organization, legal practitioner and/or candidate attorney.
 - (b) both parties agree to hold a pre-arbitration conference; or
 - (c) directed to do so by the Secretary or the presiding Commissioner.
- 2) A pre arbitration conference convened in terms of sub-rule (1)(a) and (b) must be convened at least fourteen (14) days prior to the date of the scheduled arbitration.
- 3) In a pre-arbitration conference, the parties must attempt to reach consensus on the following:
 - a) any means by which the dispute may be settled;
 - b) facts that are agreed between the parties;
 - c) facts that are in dispute;
 - d) the issues that the Council is required to decide;
 - e) the precise relief claimed and if compensation is claimed, the amount of the compensation and how it is calculated;
 - f) the sharing and exchange of relevant documents, and the preparation of a bundle of documents in chronological order with each page numbered;
 - g) the manner in which documentary evidence is to be dealt with, including any agreement on the status of documents and whether documents, or parts of documents, will serve as evidence of what they appear to be;

- h) whether evidence on affidavit will be admitted with or without the right of any party to cross-examine the person who made the affidavit;
 - i) which party must begin;
 - j) the necessity for any on-the-spot inspection;
 - k) securing the presence at the Council of any witness;
 - l) the resolution of any preliminary points that are intended to be taken;
 - m) the exchange of witness statements;
 - n) expert evidence;
 - o) any other means by which the proceedings may be shortened;
 - p) an estimate of the time required for the hearing;
 - q) the right of representation; and
 - r) whether an interpreter is required and, if so, for how long and for which languages.
- 4) Unless a dispute is settled, the parties must draw up and sign a minute setting out the facts on which the parties agree or disagree.
 - 5) A minute in terms of sub-rule (4) may also deal with any other matter listed in sub-rule (3).
 - 6) The referring party must ensure that a copy of the pre-arbitration conference minute is delivered to the appointed Commissioner within seven (7) days of the conclusion of the pre-arbitration conference.
 - 7) The Commissioner may, after receiving a pre-arbitration minute -
 - a) direct the parties to hold a further pre-arbitration conference; and/or
 - b) issue any other directive to the parties concerning the conduct of the arbitration, including rescheduling the matter for hearing on another date.
 - 8) The Commissioner has a discretion to continue with the arbitration proceedings despite non-compliance with the provisions of sub-rule (1), (4) (5) and/or (6). However, any non-compliance may be taken into account when considering costs at the conclusion of the arbitration hearing.

21 When must the Council notify parties of an arbitration

The Council must notify the parties in writing of an arbitration hearing at least twenty-one (21) days prior to the scheduled date, unless the parties agree to a shorter period

or reasonable circumstances require a shorter period. If the notification is sent by registered mail only, an additional seven (7) days must be allowed.

22 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.

23 How to postpone an arbitration

- 1) An arbitration may be postponed -
 - a) by written agreement between the parties; or
 - b) by application to the Council and on notice to the other parties in terms of sub-rule (3).
- 2) The Council must postpone an arbitration without the parties appearing if -
 - a) all the parties to the dispute agree in writing to the postponement; and
 - b) the written agreement for the postponement is received by the Council at least seven (7) days prior to the scheduled date of the arbitration.
- 3) If the conditions of sub-rule (2) are not met, any party may apply in terms of Rule 31 to postpone an arbitration by delivering an application to the other parties to the dispute and filing a copy with the Council before the scheduled date of the arbitration.
- 4) After considering the written application, the Council may -
 - a) without convening a hearing, postpone the matter; or
 - b) convene a hearing to determine whether to postpone the matter.

PART FIVE

RULES THAT APPLY TO CONCILIATIONS AND ARBITRATIONS AND CON-ARBS

24 Where a conciliation or arbitration will take place

- 1) A dispute must be conciliated or arbitrated in the region in which the cause of action arose, the ordinary place of work of the employee or the employer's principal place of business is located, unless the Secretary directs otherwise.
- 2) The Council will determine the venue for conciliation or arbitration proceedings.

25 Representation before the Council

- (1) (a) In conciliation proceedings a party to the dispute may appear in person or be represented only by -

- i) if the party is an employer, a *director or employee* of that party and, in addition, if it is a close corporation, a member of that close corporation;
 - ii) any member of that party's registered *trade union or registered employers' organization or an office bearer or official* as defined in the Act
 - iii) if the party is a registered *trade union*, any member of that trade union or any *office bearer or official* as defined in the Act and authorized to represent that party; or
 - iv) if the party is a registered *employers' organization*, any *director or employee* of an employer that is a member of that employers' organisation *or official or office bearer* as defined in the Act and authorized to represent that party.
- (b) Subject to paragraph (c), in any arbitration proceedings a party to the *dispute* may appear in person or be represented only by -
- i) a *legal practitioner*;
 - ii) a *candidate attorney*; or
 - ii) an individual entitled to represent the party at conciliation proceedings in terms of sub-rule (1)(a).
- (c) If the *dispute* being arbitrated is referred in terms of section 69(5), 73 or 73A of the BCEA or 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, a party is not entitled to be represented by a *legal practitioner or candidate attorney* in the proceedings unless -
- i) the Commissioner and all the other parties consent;
 - ii) 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*.
- (d) In any facilitation of large scale retrenchments as contemplated in section 189A(3) of the Act, a party may appear in person or be represented by:

- (i) If the party is the employer, a director or employee of the party, and, if a close corporation, a member of that close corporation;
 - (ii) any member of that party's registered trade union or employers' organization or office-bearer or official as defined in the Act and authorized to represent the party
 - (e) No representation by a legal practitioner or candidate attorney shall be allowed in facilitations of large scale retrenchments as contemplated in section 189A(3).
 - (f) No person representing a party in proceedings before the Council in a capacity contemplated in sub-rule (1) (a) or (b), other than a legal practitioner contemplated in sub-rule (1) (b)(i) and (ii), may charge a fee or receive a financial benefit in consideration for agreeing to represent that party.
- (2) If the party to the dispute objects to the representation of another party to the dispute or the Commissioner suspects that the representative of a party does not qualify in terms of this Rule, the Commissioner must determine the issue.
 - (3) The Commissioner may call upon the representative to establish why the representative should be permitted to appear in terms of this Rule.
 - (4) A representative must tender any documents requested by the Commissioner for the purposes of sub-rule (3), including constitutions, payslips, contracts of employment, documents and forms, recognition agreements and proof of membership of a trade union or employers' organization.
 - 5) Despite the provisions of sub-rule (1), a Commissioner may exclude any person who is representing a party in any proceedings on the basis that they are a member of the same employers' organization as an employer party, or a member of an employers' organization that is a party to proceedings, if the Commissioner, after enquiring into the matter and considering relevant representations, believes that –
 - (a) the representative joined the employer's organization for the purpose of representing parties in the Council; or
 - (b) the representative's participation in the dispute resolution process –
 - (i) would be contrary to the purpose of the rule which is to promote inexpensive and expeditious dispute resolution in a manner that is equitable to all parties;
 - (ii) is not in keeping with the objectives of the Labour Relations Act 66 of 1995; or
 - (iii) may have the consequence of unfairly disadvantaging another party to the dispute.”

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26 How to join or substitute parties to proceedings

- 1) The Council or a Commissioner may, at any stage prior to the conclusion of an arbitration hearing, join any number of persons as parties in proceedings if:
 - (a) The right of the referring party to relief depends on substantially the same question of law or fact, which, if a dispute were to be referred separately against the person sought to be joined, it would arise in a separate claim.
 - (b) The party to be joined has a substantial interest in the subject matter of the proceedings; or
 - (c) The party to be joined may be prejudicially affected by the outcome of the proceedings.
- 2) The Council or a Commissioner may make an order in terms of sub-rule (1) -
 - a) of its own accord;
 - b) on application by a party; or
 - c) if a person entitled to join the proceedings applies at any time during the proceedings to intervene as a party.
- 3) An application in terms of this Rule must be made in terms of Rule 31.
- 4) When making an order in terms of sub-rule (1), a Commissioner may -
 - a) give appropriate directions as to the further procedure in the proceedings; and
 - b) make an order of costs in accordance with these Rules.
- 5) 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 or a Commissioner 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.
- 6) 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. The application may be made at any stage prior to the conclusion of an arbitration hearing.
- 7) Subject to any order made in terms of sub-rules (5) and (6), a joinder or substitution in terms of this Rule does not affect any steps already taken in the proceedings.

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27 How to correct the citation of a party

If a party to any proceedings has been incorrectly or defectively cited, the Council may of its own accord, by consent of the parties or on application and on notice to the parties concerned, correct the error or defect.

28 When the Council may consolidate disputes

- (1) The Council or a Commissioner may, of its own accord, by consent of the parties or on application, and on notice to the parties concerned, consolidate more than one (1) dispute so that the disputes may be dealt with in the same proceedings.
- (2) The Council or a Commissioner may order consolidation of separate disputes of right, where –
 - (a) the relief sought in each of the separate disputes to be consolidated depends on the determination of similar or substantially the same questions of law and fact.
 - (b) there will be no substantial prejudice on the party or parties sought to be joined through a consolidation order;
 - (c) the balance of convenience favours such consolidation; and
 - (d) the Council; has jurisdiction on all disputes sought to be consolidated.

29 Disclosure of documents

- 1) At any time after the request for arbitration, but not not less than fourteen (14) days prior to the hearing date, either party may request that the other party to disclose any document or material relevant to the dispute.
- 2) The party to whom the request is made must respond to the request within five (5) days from the date on which the request was received.
- 3) A Commissioner may either before or during the proceedings on his/her own accord, or on application, make an order as to the disclosure of relevant documents or other evidence.
- 4) Notwithstanding the above, the parties may agree on the disclosure of documents or other relevant evidence.

30 What happens if a party fails to attend arbitration proceedings before the Council

- 1) If a party to the dispute fails to attend or be represented at any arbitration proceedings before the Council, and that party-

- a) had referred the dispute to the Council, a Commissioner may dismiss the matter by issuing a written ruling; or
- b) had not referred the matter to the Council, the Commissioner may -
 - i) continue with the proceedings in the absence of that party; or
 - ii) adjourn the proceedings to a later date.
- 2) A Commissioner must be satisfied that the party has been properly notified of the date, time and venue of the proceedings, before making any decision in terms of sub-rule (1).
- 3) If a matter is dismissed, the Council must send a copy of the ruling to the parties within fourteen (14) days.

30A Appointment of Arbitrator By Agreement Between Parties to the Council

Parties to the Council may by agreement in complex legal disputes request the Secretary to appoint an Arbitrator, including Senior Counsel, who may not necessarily be an accredited CCMA Commissioner to preside over such dispute between the Parties to the Council.

PART SIX APPLICATIONS

31 How to bring an application

- 1) This Rule applies to any -
 - a) application for condonation, joinder, substitution, variation, rescission, or postponement;
 - b) application in a jurisdictional dispute; and
 - c) other preliminary or interlocutory application.
- 2) Subject to Rule 32, an application must be brought at least fourteen (14) days prior to the date of the hearing on notice to all persons who have an interest in the application.
- 3) The party bringing the application must sign the notice of application in accordance with Rule 4 and must state -
 - a) the title of the matter;
 - b) the case number assigned to the matter by the Council, if available;
 - c) the relief sought;
 - d) the address at which the party delivering the document will accept delivery of all documents in the proceedings;

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- e) that any party that intends to oppose the matter must deliver a notice of opposition and answering affidavit within five (5) days after the application has been delivered to it; and
 - f) that the application may be heard in the absence of a party that does not comply with subparagraph (e).
- 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.
- 5) a) Any party opposing the application may deliver a notice of opposition and an answering affidavit within five (5) 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 (3) and (4) respectively.
- 6) a) The party initiating the proceedings may deliver a replying affidavit within three (3) 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.
- 7) A Commissioner may permit the affidavits referred to in this Rule to be substituted by a written statement.
- 8) In an urgent application, the Council or a Commissioner-
- a) may dispense with the requirements of this Rule; and
 - b) may only grant an order against a party that has had reasonable notice of the application.

- 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 may be scheduled for argument based on papers filed.
- 10) Despite this Rule, the Council or a Commissioner may determine an application in any manner it deems fit, provided that the Council or the Commissioner informs the parties of how the process will be conducted and gives the parties an opportunity to be heard.

31A How to apply for Picketing Rules or the determination of disputes relating

- (1) Parties wishing to apply for Picketing Rules must approach the Commission for Conciliation, Mediation and Arbitration, which has jurisdiction over such matters.

31B How to apply for the enforcement of Written Undertakings and/or Compliance

- (1) This Rule applies to any -
 - (a) application for an undertaking to be made an arbitration award in terms of Section 68(3) of the BCEA; and
 - (b) application for a compliance order to be made an arbitration award in terms of Section 73(1) of the BCEA;
- (2) An application must be brought in a prescribed form⁴ and set out the following information:
 - (a) the full name and authority of the applicant;
 - (b) date on which the written undertaking was secured or compliance order issued;
 - (c) date on which the employer ought to have complied with the written undertaking or compliance order;
 - (d) whether the employer failed to fully or partially comply with the written undertaking or compliance order; and where the employer partially failed to comply with the written undertaking or compliance order, the relevant provisions which the employer failed to comply with.

⁴ BCEA Form 15

- (e) Relief sought.
- (3) The application must be supported by the following documents:
- (a) a copy of the undertaking or compliance order;
 - (b) in the case of a compliance order, proof that the compliance order was served on the employer in accordance with the BCEA;
 - (c) if applicable, any documents related to securing a written undertaking or issuing a compliance order, including a complaint or grievance, an inspection report or other notes made during an inspection and any relevant records of the employer;
 - (d) if the inspector is not the person signing the prescribed form, a Confirmatory Affidavit signed by the inspector;
 - (e) supporting witness or third party affidavits, where applicable; and
 - (f) any other relevant documents
- (4) The application must be signed by the applicant and commissioned by the Commissioner of Oaths and served on all persons who have an interest in the matter, including the employer and employee.
- (5) An employer may, subject to the provisions of the BCEA, object to a written undertaking or compliance order being made an arbitration award by serving and filing an affidavit setting out its grounds for objection in accordance with the provisions of this Rule.
- (6) An objection affidavit in terms of sub-rule (5) must be delivered, supported by relevant documents, to the Department of Labour and any affected employee(s) and filed with the Council within (5) days from the date on which the application was served on the employer.
- (7) The party initiating the proceedings may deliver a reply within three (3) days from the day on which any objection is served on it.
- (8) The reply must address only issues raised in the objection affidavit contemplated in sub-rule (5) and may not introduce new issues of fact or law.

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(9) The Council must, once a reply is delivered or the time period within which a reply may be delivered has lapsed, whichever occurs first, appoint a Commissioner to determine the application by considering the documents filed in terms of this Rule.

(10) Despite sub-rule (9), the Commissioner may, if he/she considers it appropriate, request allocation of a hearing date, in which event:

(a) the Council must notify the parties of the date, time and place of the hearing of the application;

(b) the Application may be scheduled for argument based on papers filed.

32 How to apply to vary or rescind arbitration awards or rulings

An application for the variation or rescission of an arbitration award or ruling must be made within fourteen (14) days of the date on which the applicant became aware of the arbitration award or ruling.

33 How to apply to refer a dismissal dispute to the Labour Court

1) An application in terms of Section 191(6) of the Act to refer a matter to the Labour Court, must be delivered -

a) within ninety (90) days of a certificate that the dispute has not been resolved being issued; or

b) by a party that has not requested arbitration, within fourteen (14) days of the referral for arbitration being filed.

2) Despite sub-rule (1), a party that requests arbitration may not thereafter make an application in terms of Section 191(6).

3) The application must state the grounds on which a party relies in requesting that the dispute be referred to the Labour Court.

4) If any party to the dispute objects to the matter being referred to the Labour Court, that party must state the grounds for the objection within seven (7) days of receipt of the application.

5) The Council must notify the parties of its decision in terms of Section 191(8) within fourteen (14) days of receiving the objection.

6) In the event that the request has been granted, the party who applied for the dispute to be referred to the Labour Court must refer the matter to the Labour Court in line with Rule 11 of the Labour Court Rules.

PART SEVEN
Section 188A INQUIRY

34 How to request an inquiry in terms of Section 188A

- 1) An employer requesting the Council to conduct an inquiry, must do so by delivering a completed LRA Form 7.19 to the Council.
- 2.) The employee must sign the LRA Form 7.19 unless the employee has agreed in terms of Section 188A(4)(b)⁵ to the inquiry in a contract of employment or the inquiry is held in accordance with a collective agreement, in which case a copy of the relevant extract of the contract or the collective agreement must be attached to the Form.
- 3) When filing the LRA Form 7.19, the employer must pay the prescribed fee to the Council. Payment of the fee may only be made by -
 - a) bank guaranteed cheque; or
 - b) electronic transfer into the bank account of the Council.
- 4) Within seven (7) days of receiving a request in terms of sub-rule (1) and payment of the prescribed fee, the Council must notify the parties to the inquiry of when and where the inquiry will be held.
- 5) Unless the parties agree otherwise, the Council must give the parties at least seven (7) days notice of the commencement of the inquiry.
- 6) The Council is only required to refund a fee paid in terms of sub-rule (3), if the Council is notified of the resolution of the matter prior to issuing a notice in terms of sub-rule (4).

PART EIGHT
GENERAL

35 Condonation for failure to comply with the Rules

- 1) Subject to sub-rule (3), the Council or a Commissioner may condone any failure to comply with any provision of these Rules, on good cause shown.
- 2) In exercising its powers and performing its functions the Council may act in such a manner as it deems expedient in the circumstances in order to achieve the objects of the Act. In doing so it shall have regard to substance rather than form, save where the Act provides otherwise.
- 3) The provisions of this Rule do not apply to Rule 25.

⁵ Only an employee whose earning exceed the amount determined by the Minister in terms of section 6(3) of the Basic Conditions of Employment Act, (currently R205 433.30 per annum) my consent to an inquiry in a contract of employment

36 Recordings of Council proceedings

- 1) The Council must keep a record of -
 - a) all processes except conciliations, unless otherwise stated in these Rules;
 - b) any arbitration award or ruling made by a Commissioner.
- 2) The record must be kept by means of a digital recording and, if practically possible, also by legible notes.
- 3) A party may request a copy of the record or a portion of a record kept in terms of sub-rule (2), on payment of the relevant costs where, applicable.

37 How to have a subpoena issued

- 1) Any party who requires the Council or a Commissioner to subpoena a person in terms of Section 142(1) of the Act, must file a completed LRA Form 7.16 together with a written motivation setting out why the evidence of the person to be subpoenaed is necessary.
- 2) A party requesting the Council to waive the requirement for the party to pay witness fees in terms of Section 142(7) (c) must set out the reasons for the request in writing at the time of requesting the Council to issue a subpoena in respect of that witness. The Council's decision must be made in writing and delivered when issuing the subpoena.
- 3) An application in terms of sub-rule (1) must be filed with the Council at least fourteen (14) days prior to the arbitration hearing, or as directed by the Commissioner hearing the arbitration.
- 4) The Council may refuse to issue a subpoena if-
 - a) the party does not establish why the evidence of the person is necessary;
 - b) the party subpoenaed does not have seven (7) days in which to comply with the subpoena;
 - c) not satisfied that the party requesting the subpoena has paid the prescribed witness fees, reasonable travel costs and/or subsistence expenses of the person subpoenaed.
- 5) A subpoena must be served by the person who has requested the issuing of the subpoena or by the Sheriff, at least seven (7) days prior to the scheduled date of the arbitration by: -
 - a) delivering a copy of it to the person subpoenaed personally;
 - b) sending a copy of it by registered post to the subpoenaed person's -

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- (i) residential address;
 - (ii) place of business or employment;
 - (iii) post office box or private bag number;
- c) e-mailing, faxing or telexing a copy of the document to the person's e-mail, fax or telex number respectively, or an e-mail address, fax or telefax number of the the subpoenaed person.
- 6) Service of a subpoena must be accompanied by proof of payment of the prescribed witness fees for one day in accordance with the tariff of allowances published by notice in the *Government Gazette* in terms of Section 142(7) of the Act and the witnesses' reasonable travel costs and subsistence expenses.
- 7) Sub-rules (4)(c) and (5)(b) do not apply if the Council, in terms of Section 142(7)(c), has waived the requirement to pay witness fees.

37A Expert witnesses

A party intending to call an expert witness shall give seven (7) days, prior to the hearing, notice thereof to the Council and the other party to the dispute together with a summary of the proposed evidence of such witness, any document on which the witness will rely during evidence and the basis on which the witness is regarded to be an expert to enable the other party to consider the summary and obviate the need for any postponement.

38 Payment of witness fees

- 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.
- 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 issuing 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) .
- 3) Despite sub-rule (1), the Commissioner may, in appropriate circumstances, order that a witness receives no fee or reasonable travel costs and subsistence expenses or only part of such fees or expenses.

39 Order of costs in an arbitration

- 1) In any arbitration proceedings, the Commissioner may make an order for the payment of costs according to the requirements of law and fairness and when doing so should have regard to -
 - a) the measure of success that the parties achieved;
 - b) considerations of fairness that weigh in favour of or against granting a cost order;
 - c) any with prejudice offers that were made with a view to settling the dispute;
 - d) whether a party or the person who represented that party in the arbitration proceedings acted in a frivolous and vexatious manner –
 - i) by proceeding with or defending the dispute in the arbitration proceedings, or
 - ii) in its conduct during the arbitration proceedings;
 - e) the effect that a cost order may have on a continued employment relationship;
 - f) any agreement concluded between the parties to the arbitration concerning the basis on which costs should be awarded;
 - g) the importance of the issues raised during the arbitration to the parties as well as to the labour community at large;
 - h) any other relevant factor.
- 2) A Commissioner may make an award of costs in favour of a party who is represented in arbitration by a person contemplated by rule 25(1)(a) in respect of reasonable disbursements actually incurred in the conduct of its case in the arbitration. A Commissioner who makes an award in terms of this provision must specify clearly the items and amounts in respect of which costs are ordered.
- 3) A Commissioner may make an award of costs in respect of the legal fees of a party that is represented in an arbitration by a legal practitioner or candidate attorney, only if the other parties to the arbitration were represented by a legal practitioner or candidate attorney.
- 4) An award of costs in terms of sub-rule (3) must be in the amount of –
 - (a) in respect of the first day of an arbitration (including any arbitration concluded in a single hearing) – R7 000-00 (VAT inclusive);
 - (b) in respect of each additional day of an arbitration – R4 700-00 (VAT inclusive).

- 5) An award for costs in respect of a candidate attorney must be 50 percent of the amount set in out in sub-rule (4).

40 Certification of arbitration awards

- 1) An application to have an arbitration award certified must be made on -
 - a) LRA Form 7.18A in respect of arbitration award;
- 2) Any arbitration award that has been certified in terms of Section 143 of the Act that -
 - a) orders the payment of an amount of money may be enforced by execution against the property of the employer party by the Sheriff of the court in the Magisterial district where the employer party resides, or conducts business;
 - b) orders the performance of an act other than the payment of money may be enforced by way of contempt proceedings instituted in the Labour Court.
- 3) The amount of money that may be enforced through execution by the Sheriff in terms of sub-rule (2)(a) shall include -
 - (a) the amount ordered to be paid in terms of the award;
 - (b) an award of costs in terms of Section 138(10) read with Rule 39;
 - (c) an arbitration fee charged in terms of Section 140(2)
 - (d) any interest on the amount set out in the award, calculated in terms of section 143(2); and
 - (e) the Sheriff's costs permitted in terms of the Magistrate's Court Tariff for Sheriffs.
- 4) In the event that the Council financially assisted the party in whose favour the award was granted in the enforcement or execution thereof, the Council may, if the costs of the execution were not realized therein, collect such costs, with interest, directly from the defaulting party.

40A Payment of an arbitration fee ordered in terms of section 140 of the Act

- (1) Where the Commissioner, having found that the dismissal was procedurally unfair, orders payment of an arbitration fee in terms of section 140(2) of the Act:

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- (a) The arbitration fee shall be the fee set set out in the CCMA's Tariff of Fees, as gazette annually.
- (b) The employer must pay the prescribed fee to the Council within fourteen (14) days of receipt of the award ordering payment of such a fee.
- (c) Payment of the fee may only be made by -
 - (i) electronic transfer into the bank account of the Council.

41 What words mean in these Rules

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), and includes any regulation made in terms of that Act;

'Association' means any unincorporated body of persons;

'CCMA' means the Commission for Conciliation, Mediation and Arbitration;

'Council' means the Transnet Bargaining Council;

'Commissioner' means a Commissioner appointed by the Council in terms of its Constitution;

'Con-arb' means proceedings held in terms of Section 191(5A);

'Deliver' means serve on other parties and file with the Council;

'Secretary' means the General Secretary of the Council appointed in terms of its Constitution, and includes any person delegated by the Secretary to perform any of the functions of the Secretary;

'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 36 of 1994);

'Rules' means these Rules and includes any footnote to a rule;

'Senior Commissioner' means a senior Commissioner appointed in terms of Section 117 of the Act and includes any person delegated by the senior Commissioner to perform any of the functions of the senior Commissioner;

'Serve' means to serve in accordance with Rule 5 and 'service' has a corresponding meaning;

'Taxing officer' means any employee of the CCMA appointed by the Director of the CCMA in terms of the CCMA Rules.

SCHEDULE ONE

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