

CCMA FEES AND COSTS

3FEES

The CCMA does not generally charge fees for its dispute resolution work, but may do so in exceptional circumstances as outlined below. Fees are charged in accordance with the tariff of fees established by the CCMA Governing Body and published in the Government Gazette.

WHEN CAN THE CCMA CHARGE FEES?

Fees that may be charged by the CCMA are set by the Governing Body from time to time. The fees reflected herein are those published. (see tariff of fees overleaf)

The CCMA may charge fees in the following circumstances:

When conducting, overseeing or scrutinising any election or ballot at the request of a registered trade union or employers' organisation.

When providing advice or training to employees, employers, registered trade unions, federations of trade unions, registered employers' organisations, federations of employers' organisations, or councils relating to the primary objects of the Labour Relations Act or any other employment law. This fee would include (but is not limited to) the following-

- establishing collective bargaining structures;
- designing, establishing and electing workplace forums and creating deadlock-breaking mechanisms;
- the functioning of workplace forums;
- preventing and resolving disputes and employees' grievances;
- disciplinary procedures;
- procedures in relation to dismissals;
- the process of restructuring the workplace;
- affirmative action and equal opportunity programmes; and
- the prevention of sexual harassment in the workplace.

In terms of section 140(2) of the Labour Relations Act (LRA) the CCMA may charge an employer an arbitration fee in dismissal matters, where the commissioner finds that the dismissal was

procedurally unfair. This fee is in addition to any compensation awarded to the employee in terms of section 194(1).

The CCMA may charge a fee for each day or part thereof when hearing a dispute about the interpretation of a collective agreement when -

- the collective agreement does not provide a procedure for resolving that dispute;
- the procedure provided in the collective agreement is not operative;
- a party to a collective agreement has frustrated the resolution of the dispute;
- resolving a dispute between parties to a council, or parties who fall within the registered scope of a council, if the council's dispute resolution procedures are not operative;
- resolving a dispute between parties to a collective agreement that provides for the resolution of that dispute by an accredited agency, where the agency's dispute resolution procedures are not operative.

The CCMA may charge a fee per day for resolving a dispute by Inquiry by Arbitrator (previously known as Pre-Dismissal Arbitration) in terms of section 188A of the LRA.

WITNESS FEES?

Where a party wishes to subpoena a witness, it will be required to pay a witness fee to that witness together with the witness's reasonable travel and subsistence expenses. The CCMA may waive the requirement for payment of witness fees on motivation.

WHEN AND WHERE DO YOU PAY CHARGES / FEES?

You would pay only after receiving an invoice issued by the provincial CCMA Finance Department. Payment must be paid to that office, and no person is authorised by the CCMA to collect such charges from the party's premises.

Witness fees must be paid directly to the witness.

RELEVANT LEGISLATION

- Labour Relations Act 66 of 1995 as amended, sections 115(3), 123, 140(2), 142(7) and 147.
- Tariff of fees Government Gazette Notice 699 of 2017, as amended

COSTS

The term costs refers to an order by a commissioner for a party to pay the other party for certain expenses incurred in having the dispute resolved through the CCMA e.g. legal costs and disbursements for subsistence and travelling. Costs can only be awarded in respect of arbitration and similar hearings, not conciliation proceedings.

A commissioner may make an order for the payment of costs according to the requirements of law and fairness in accordance with rules made by the Commission in terms of section 115(2A)(j) and having regard to any relevant Code of Good Practice and any relevant guidelines which may be issued by the CCMA itself.

The Courts have explained the meaning of "law and fairness" as follows: costs may be awarded in the discretion of the decision-maker. Generally costs should follow the result (i.e. the loser should pay the winner's costs), but (particularly in the CCMA) regard should be had to additional considerations, namely that parties should not be discouraged from invoking the dispute resolution mechanisms of the LRA; that costs should not be lightly ordered if a party acts in good faith, especially where the matter involves issues of importance to the wider industrial relations community; that a costs award should not damage an ongoing relationship between the parties; and that the conduct of the parties should be taken into account.

CCMA RULE 39

This Rule sets out the factors that a commissioner should take into account in deciding whether or not to award costs.

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In addition to those referred to above, the factors include –

- the measure of success achieved by the parties;
- considerations of fairness;
- any “with prejudice” settlement offers;
- whether a party or a representative acted in a frivolous or vexatious manner;
- any agreement between the parties relating to costs;
- any other relevant factor.

The Rule also stipulates what costs can be awarded. Where a party is not legally represented, the costs are limited to reasonable disbursements actually incurred, and items and amounts must be specified by the party claiming costs. Where parties are legally represented the legal fees (not disbursements) can be claimed, and can only be awarded if all parties are legally represented. In terms of the LRA, legal fees are limited to R6 000.00 for the first day of arbitration and R4 000.00 per day for any subsequent days (both amounts inclusive of VAT).

CHALLENGING A COSTS AWARD

Any dispute arising from the costs order (e.g. where a party believes that the disbursements allowed are not reasonable or the amounts awarded are insufficient) can be determined by the CCMA. A taxing officer will be appointed by the Director for this purpose. A dispute of this nature is referred to the CCMA by delivering LRA Form 7.17. The matter will be set down for a hearing, after which the taxing officer will have to make a ruling.

Note that only the amounts awarded can be challenged in this manner. If a party wants to dispute the commissioner’s decision to award costs, this must be done on review to the Labour Court.

COSTS DE BONIS PROPRIIS

A costs order *de bonis propriis* is possible when ordering costs. This means that costs are ordered against a representative personally, as opposed to the party to the dispute. A costs order *de bonis*

propriis is rare in the CCMA; it will not be lightly made and would usually apply only in cases where the representative has acted in a dishonest, grossly negligent or unacceptably obstructive manner, and the party represented cannot be held responsible for the representative’s conduct.

RELEVANT LEGISLATION

Labour Relations Act 66 of 1995, section 138 (10) and Rule 39 of the Rules for the Conduct of Proceedings before the CCMMA as published in notice 498 in Government Gazette 38843 of 2015 as amended



TABLE – TARIFF OF FEES AS AT SEPTEMBER 2017

SECTION	SERVICE	TARIFF OF FEES
	Advice and training	
115 (3)	Providing advice or training to employers, registered trade unions, registered employers’ organisations, federations of trade unions, federations of employers’ organisations’ or councils relating to the primary objects of the Labour Relations Act and conducting facilitations.	R2680.00 – R6081.48 for each day or part thereof.
123(1)(b)	Conducting, overseeing or scrutinizing any election of ballot of a registered trade union or registered employers’ organisation.	Same cost as above
140(2)	If a commissioner appointed to resolve a dismissal dispute through arbitration finds that the dismissal is unfair only because the employer did not follow a fair procedure.	Same cost as above
147(1)	Resolving a dispute about the interpretation or application of a collective agreement if - (i) the collective agreement does not provide a procedure for resolving that dispute through conciliation and arbitration; (ii) the procedure provided in the collective agreement is not operative; or; (iii) a party to a collective agreement has frustrated that resolution of the dispute.	R3215.16 – R6081.48 for each day or part thereof
147(2)	Resolving a dispute between parties to a council if the council’s dispute resolution procedure are not operative.	R 2680.56 – R6081.48 for each day or part thereof
147(3)	Resolving a dispute between parties who fall within the registered scope of a council if the council’s dispute resolution procedures are not operative.	Same cost as above
147(5)	Resolving a dispute between parties to a collective agreement that provides for the resolution of that dispute by an accredited agency if the accredited agency’s dispute resolution procedures are not operative.	Same cost as above
188A	Resolving a dispute by arbitrator.	Same cost as above