

PREPARING FOR & PRESENTING A CASE AT PRE-DISMISSAL ARBITRATION

PURPOSE / OUTCOME

Delegates will exit this workshop with:

- a foundational understanding of the relevant statutory framework (LRA)
- familiarisation with the concepts of evidence, substantive & procedural fairness
- familiarisation with the pre-dismissal arbitration processes
- an ability and skills set to prepare for pre-dismissal arbitration
- an ability and skills set to present a case at pre-dismissal arbitration
- a working understanding of different types of evidence

CONTENT

LRA PROVISIONS RELATING TO PRE-DISMISSAL ARBITRATIONS

- Overview of the LRA's dispute resolution provisions
- What is a "pre-dismissal arbitration"?
- How does it differ from a CCMA arbitration?
- Who may conduct it?

RIGHTS V INTEREST DISPUTES

- Structure of the LRA's dispute resolution processes
- Difference between disputes of right & disputes of interest

PROBLEMS IN PRE-ARBITRATION

- Typical procedural problems arising prior to and during arbitration

DISMISSAL: SUBSTANTIVE ISSUES

- What constitutes a "dismissal"?
- Dismissal for misconduct: substantive law
- Dismissal for incapacity: substantive law
- When and how should expert evidence be used?

EVIDENCE

- Forms of evidence (oral, real and documentary)
- How does one deal with machine generated and similar evidence?
- How does one weigh up evidence?
- What does "balance of probabilities" mean?
- Is there a higher standard where the charges are of a criminal nature?
- What is the "evidential burden"?
- Admissibility & relevance of evidence
- May one rely on illegally obtained evidence?
- Admissions
- When must one file statements?
- When can the arbitrator take "judicial notice" of a fact?
- Presumptions of law
- Problems with evidence

PREPARATION FOR PRE-DISMISSAL ARBITRATION

- Deciding which evidence to use
- When and how should expert evidence be used?
- How does one secure attendance of witnesses?
- How does one make objections and what can one object to?
- Strategising your case

THE PRE-DISMISSAL ARBITRATION HEARING

- Opening statements
- Narrowing the issues
- What should one disclose?
- Do's and don'ts at the pre-arbitration hearing
- Postponements and no-shows
- Points in limine
- Making a favourable impression

WITNESSES

- Interviewing witnesses and taking statements
- When is a witness competent to testify?
- Can one compel someone to testify?
- Refreshing the memory of witnesses
- Impeaching the credibility of witnesses

EXAMINATION OF WITNESSES

- Examination in chief
- Cross-examination
 - What does one want to achieve with cross-examination?
 - Ethical considerations
 - General principles relating to preparation of cross-examination
 - How do I prepare for cross-examination?
 - Does it make a difference whether material is available or not?
 - Risks and pitfalls of cross-examination
 - The importance of timing
 - Restrictions on cross-examination
 - Basic techniques in cross-examination
 - Why should I always put our witness's version to the witness?
- Re-examination

PRACTICAL ACTIVITIES

- Case studies
- Individual & group work
- Role plays

TARGET GROUP

Employer & employee
representatives at pre-dismissal
arbitration

DURATION

2 days