

NEW LABOUR APPEAL COURT AND LABOUR COURT RULES

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NEW LABOUR APPEAL COURT RULES



ADDITIONS

NEW RULE 5 – cross appeals

NEW RULE 7 – urgent appeals

NEW RULE 12 – practice note

NEW RULE 13 – powers of the Judge President

NEW RULE 17 – appeals from the Defence Special Tribunal

NEW RULE 19 – media access to proceedings

URGENT APPEALS

- can apply to JP for urgent hearing of appeal
- affidavit must set out reasons
- respondent may file AA within 10 days
- no reply permitted
- will be decided in chambers
- JP to give directions re further conduct

KEY CHANGES TO EXISTING RULES

Petitions

Procedure on appeal

Heads of argument

Labour Appeal Court sitting as court of first instance

PETITIONS

- change to time period for delivery of petition from 10 days of date on which leave refused to 15 days
- new requirement that petition may not exceed 20 pages
- new provision for RA within 10 days of AA dealing strictly with new matter/s raised in AA
- new provision for judges considering petition to call for further information, submissions or portion of record and failure to provide may result in petition being deemed to have been withdrawn
- new provision for partial granting or refusal of petition
- specific provision that no reasons need be provided for refusal of petition

PROCEDURE ON APPEAL

- similar to old rule 5
- provision that electronic version of record “*in format that will be easily accessible*” must also be delivered
- new provision for respondent to, within 5 days before heads of appellant due, raise any issue concerning correctness of record
- new provision for respondent to file the record necessary for the cross-appeal if the whole record is not required for a limited appeal
- new provision that opening or closing argument may be included in record if it is relevant to the appeal
- no requirement that a list of documents excluded from the record be included

PROCEDURE ON APPEAL

- new provision that failure to file a proper record may result in matter being struck from roll with or without costs
- new provision that if record not filed timeously, registrar will still set down for hearing and court will decide whether to hear, dismiss or strike appeal off roll with or without costs
- new provision that condonation application or application to reinstate appeal will be considered with appeal
- new provision that if not filed in prescribed period or within period agreed between parties, deemed to have been withdrawn and archived

PROCEDURE ON APPEAL

- new provision for application to retrieve appeal from archive (once record filed and matter is appeal ready)
- new provision that indigent person may be excused from rules and may write to JP who may direct how and to what extent must comply
- new provision that acceptance of record by registrar does not indicate record complies with rules
- court may dismiss or strike appeal off roll at hearing if expedient
- new provision for hearing of condonation simultaneously with appeal

HEADS OF ARGUMENT

- similar to old rule 9
- timing changed from applicant filing 15 days before hearing to 30 days after record delivered and respondent filing 10 days before hearing to no later than 15 days after applicant's heads delivered or due
- new limitation to 20 pages, excluding chronology and list of authorities
- new requirement of practice note as an attachment

LAC SITTING AS COURT OF FIRST INSTANCE

- limited now only to particular circumstances:

“if a matter is of national importance or affects all or a majority of employers and/or employees within a single or multiple industries”

- additional provision that the decision of the JP is final and reasons for decision need not be given

MISCELLANEOUS

Addition of *dies non* from 16 December to 15 January

Service by email instead of fax

Shorter terms

NEW LABOUR COURT RULES



ADDITIONS

ADMINISTRATIVE

NEW RULE 3 – seat where proceedings must be initiated and court sittings

NEW RULE 4 – Labour Court as court of record

NEW RULE 5 – dress code

NEW RULE 6 – modes of address and introduction

NEW RULE 8 – form of documents

ADDITIONS

REFERRALS FOR ADJUDICATION

NEW RULE 12 – notice of intention to defend

NEW RULE 14 – exceptions and applications to strike out

NEW RULE 15 – replication and plea in reconvention

NEW RULE 16 – failure to deliver pleadings – barring

NEW RULE 17 – extension of time and removal of bar

NEW RULE 18 – close of pleadings

ADDITIONS

NEW RULE 19 – special cases and adjudication on points of law

NEW RULE 20 – amendments to pleadings

NEW RULE 23 – additional requirements for pre-trial conferences: specific disputes

NEW RULE 24 – fast tracking

NEW RULE 25 – case management

NEW RULE 26 – enrolment for hearing

ADDITIONS

NEW RULE 27 – discovery of documents

NEW RULE 28 – expert witnesses

NEW RULE 29 – pagination, indexing, binding and general preparation of papers in trials

NEW RULE 30 – bundles of documents prepared for trials

NEW RULE 31 – practice note for trials

NEW RULE 32 – roll call

NEW RULE 33 – postponement of trials

NEW RULE 34 – part-heard trials

ADDITIONS

MOTION PROCEEDINGS

NEW RULE 36 – filing of answering and replying affidavits

NEW RULE 39 – applications in restraint of trade

NEW RULE 51 – representation of parties

NEW RULE 54 – settlement agreements and draft orders

NEW RULE 57 – irregular proceedings

NEW RULE 58 – contempt of court

ADDITIONS

NEW RULE 68 – *ex tempore* judgments

NEW RULE 69 – destruction of documents and archiving

NEW RULE 70 – *pro bono* exemption

NEW RULE 72 – virtual hearings

NEW RULE 73 – media access to proceedings

NEW RULE 74 – limitation of liability

KEY CHANGES

REFERRALS FOR ADJUDICATION

- Default judgments
- Pre-trials
- Fast tracking
- Case management

REFERRALS

- new requirement for notice of intention to defend to be delivered within 10 days of service of SOC
- change from SOR *may* be delivered to *must* be delivered *if notice of intention to defend is delivered*
- change to requirement that respondent must admit, deny or confess and avoid material facts in SOC
- change to time period for delivery of SOR from within 10 days of SOC delivered to delivery within 15 days of delivery of notice of intention to defend
- new provision for delivery of counterclaim with SOR
- change requiring preliminary points to be raised by way of exception or special plea or other appropriate pleading

DEFAULT JUDGMENTS

- change from onus being on registrar to enrol matter for default judgment on notice to parties when *dies* lapsed, to onus on applicant to deliver application in accordance with form 2 for default judgment
- inclusion of provisions of paragraph 10.1 of PM re default judgments

PRE-TRIALS

- change from convening pre-trial conference within 10 days of delivery of SOR to within 15 days of close of pleadings
- new requirement that the estimate of number of days required must include an estimate of the number of witnesses to be called by each party and a separate motivation should the number of days required exceed 3 days
- new requirement that a prior directive must have been obtained from JP and attached to minute if the duration is expected to exceed 5 days
- new requirement that minute must be filed within 5 days of conference but no later than 30 days after close of pleadings

FAST TRACKING

- provision for case management of matters in disputes concerning dismissing of 10 or more employees whose reinstatement is sought
- will be set down on expediated basis
- judge may follow provisions for case management or depart from or dispense with provisions whenever interests of justice / expeditious dispute resolution require

CASE MANAGEMENT

- similar to old rules 6(5) and (6)
- registrar must forward file to judge in chambers once pre-trial minute filed or time for filing same elapsed
- judge may:
 - certify trial ready and issue directives re further conduct of matter OR
 - direct that minute or supplementary minute be filed
- provision for convening of formal case management conference

KEY CHANGES

MOTION PROCEEDINGS

- reviews
- urgent applications
- applications in restraint of trade
- heads and practice notes

REVIEWS

- new requirement that FA must contain no more than a concise statement of the grounds of review:
 - state whether whole or part of award / ruling sought to be reviewed
 - record in point form each error / misdirection alleged to have been committed and alleged to be defect in proceedings with ref to award / ruling / conduct of decision-maker
 - state why errors / misdirections caused result of award / ruling to be unreasonable, irrational irt the evidence led without making abstract statements of principle lacking in detail
- new provision that in exceptional circumstances factual averments may be concisely incorporated and any abuse of this exception will be penalised by appropriate costs order
- specific requirement that award / ruling sought to be reviewed must be annexed

REVIEWS

- inclusion of para 11.2.1 and 2 of PM re collection of record within 5 days of notice from registrar
- new provision that applicant must deliver record within 60 days of date advised by registrar that the record had been received (para 11.2.2 PM), provided that, if body whose award / ruling being reviewed fails to deliver complete record, 60 day period commences to run only once complete record delivered
- application deemed withdrawn if record not filed within prescribed 60 days unless request respondent to consent to extension (para 11.2.3 of PM) - consent to be in writing and filed with registrar
- provision for application to JP for extension of time (para 11.2.3 PM)
- old rule 7A(8) notice must now be delivered within 5 days of delivery of record instead of 10 days
- new provision that supplementary affidavit may do no more than supplement grounds of review in FA or abandon one or more ground
- abuse of rule by including irrelevant or repetitive material risks adverse costs order

REVIEWS

- provision that AA may do no more than respond in concise terms to grounds on which appl opposed without any repetition of contents of FA and SA
- once RA delivered or *dies* for doing so expired, applicant must within 10 days:
 - index and paginate file (pleadings and affidavits bundle; notices bundle and record bundle ito para 11.2.8 PM)
 - apply to registrar for hearing date
- provision for respondent to apply for hearing date if applicant fails to do so within 10 days
- if application unopposed, applicant must apply for hearing date within 10 days of expiry of period for filing AA

REVIEWS

- provision for applicant to approach JP where the record has been lost or is inaudible or of such poor quality that compromises integrity of record and after all reasonable attempts made to reconstruct for a direction for the further conduct
- JP will allocate to a judge for direction
- judge must meet with parties to discuss remittance of matter to body whose award / ruling being reviewed, direct that the relevant portions of the record be reconstructed (para 11.2.4 PM) or direct that the application may be heard without ref to record
- no provision in para 11.2.8 of PM re ensuring that all papers in review appl must be filed within 12 months of launch of application

URGENT APPLICATIONS

- same as old rule 8
- provision that registrar when fixing date and time for hearing must have regard to the degree of urgency for which applicant contends
- new requirement that an applicant must have a draft order in hard and electronic format
- no longer a requirement for a party who intends to oppose to notify registrar
- new reference to *ex parte* applications being excluded from requirement that application be served on respondent
- no reference to provisions in para 12 of PM ie specific days for specific types of applications

APPLICATIONS IN RESTRAINT OF TRADE

- requirement that prescribed procedure must be strictly adhered to (provision for more urgent procedure if necessary)
- applicant must in notice of motion afford respondent at least 7 days to file AA, applicant at least 5 days to file RA and respondent at least 5 days to file fourth affidavit
- at time of launch of application, applicant must apply to registrar for provisional hearing date calculated to take into account mandatory time periods in rule and filing of heads of rule
- applicant must insert date no less than 7 days after launching application for hearing of matter if unopposed
- application will be provisionally enrolled during week following week in which heads exchanged
- founding papers must be indexed and paginated before application launched

APPLICATIONS IN RESTRAINT OF TRADE

- all subsequent papers to be paginated before filing
- applicant must immediately prepare index to application on receipt of fourth affidavit or expiry of *dies* for delivery and serve on respondent
- parties to simultaneously deliver heads of argument within 5 days of delivery of index or expiry of *dies* for doing so
- at same time as filing heads, applicant must apply for final enrolment of application
- hearing date will be finally allocated during week following delivery of heads
- either party's failure to file will not preclude final allocation for hearing

HEADS AND PRACTICE NOTES

- change to heads not necessary if unopposed application except if review application
- change from heads being filed at least 15 days before hearing to being filed within 15 days of close of pleadings
- respondent must file heads no later than 15 days before hearing even if applicant has not filed
- where party failed to file heads, court may make punitive costs order and strike matter from roll
- heads should also be emailed to address for each seat
- judge hearing matter may direct filing of supplementary heads on specific issue
- failure to file heads not basis on which other party entitled to postponement
- specific requirement for applicant to file practice note by email for any application enrolled for hearing in compliance with rule 31

MISCELLANEOUS

Addition of *dies non* from 16 December to 15 January

Issue of documents and registrar's duties - archiving

Destruction of documents and archiving (para 16.1 and 16.2 PM)

Limitation of liability

THANK YOU

