



Dear Colleagues

We attended the scheduled arbitration hearing regarding the non-payment of STI to qualifying employees in the BCX subsidiary on 13 November 2018.

On Monday 29 October 2018 a Pre-arbitration session was held with Hannelie Du Toit (BCX). Lionel Samuels and I represented the Alliance.

During this session agreement was reached that all employees who achieved a **met** or **higher** rating during the 2017/18 performance cycle would receive the payment if our arbitration was successful.

At the onset of the arbitration hearing the BCX legal representative indicated that they had two legal arguments to raise as to why the CCMA does not have jurisdiction. They wanted this done before the matter could be argued.

The two issues raised were: the fact that the union filed the matter as a section 197(2) referral and as such the CCMA do not have jurisdiction and, the second issue was the fact that the names of the affected employees were not attached, which meant that the CCMA could not make a ruling as the referral is not member specific.

The Alliance representatives suggested that the BCX representative was being opportunistic because BCX either want postponement or do everything in their power to stifle the processes on every matter referred to the CCMA by the Alliance.

We proved that the first issue the legal advisor was referring to was incorrect because we actually filed it as an unfair Labour practice. It even had a different registration number!

As for the lack of members' names, we declared that we will testify to the fact that the interpretation of the wording as well as the understanding of all parties present was that all qualifying employees will be the beneficiaries if the matter is successfully argued.

After four long hours of debating the jurisdiction conundrum the commissioner indicated that she does in fact have jurisdiction and the matter can be adjudicated by the CCMA.

The next hurdle presented by BCX was the fact that they had travel issues as their flights back to Johannesburg were booked for 17:00. They wanted the hearing adjourned by 15:00 hours. They then suggested that the Alliance present their case, the matter is adjourned and the BCX representative thus has the opportunity to get a mandate from the employer. Just by the way he identified the employer as Telkom and not BCX!!

We initially agreed to this but after a caucus during which we discussed possible ramifications of this we decided that our cause would not be well served as they would have an opportunity to prepare a defence to our case. We then requested that a full day be set aside for the matter to be dealt with and concluded. This was agreed to by all parties and the matter was adjourned.

Some salient points raised during the *in limine* discussion:

- BCX do not have a STI plan in place and is using Telkom's STI plan.
- BCX referred to the agreements they gave employees stating that the BCX STI plan would be applicable after the "ring-fenced" period.
- BCX however did admit that not all the agreements were signed, which made them inadmissible.
- BCX staff cannot claim the benefit in terms of the Telkom STI plan.

- Telkom's remuneration senior manager is their witness in chief on the matter as it relates to the rules laid down by Telkom for the BCX STI plan, which they do not have.

We again need to implore members to be extremely diligent when signing or agreeing to anything with BCX management. It has been proved yet again how underhanded BCX are when dealing with members.

Please also note that we received a citation regarding section 189 process. The proposed date is the 22 November 2018. The CCMA rule however is that it should be issued 14 Days prior to the scheduled date.

The CCMA shut down from 18 December 2018 to 07 January 2019.

An important fact to note is that BCX have been through three restructuring processes and in doing so made sure that the Alliance did not have recognition. They only recognised one union. The end result of this was a section 189 process!!

Be sure we will be vigorously representing the rights of our members in these and any other matters that may arise.

THE CHOICES YOU MAKE, NOT THE CHANCES YOU TAKE DETERMINE YOUR DESTINY...

END

Karriem Abrahams

If you no longer wish to receive these emails, simply click on the following link [Unsubscribe](#).