





CCMA InTouch

June 2025 Q1



From the desk of CAMEEL CHETTY

**ACTING SENIOR MANAGER:
STRATEGY AND GOVERNANCE**

*Building Momentum: Empowering Progress,
Embracing Change*

Dear CCMA Family,

Welcome to this edition of CCMA InTouch, where we reflect on our collective journey of building momentum through empowering progress and embracing change. This theme captures the essence of our newly launched strategy *"The Momentum: Empowering Progress, Embracing Change"* (2025/26-2029/30), which marks a pivotal chapter in our institutional evolution.

As we advance towards a more equitable and just society, we celebrate significant milestones and engagements that continue to elevate the CCMA's position as a world-class institution. The launch of our new strategy has reinvigorated our commitment to promoting labour market stability, social justice, and job security. This strategic direction not only reinforces our constitutional mandate but also demonstrates our adaptability and forward-thinking approach in a constantly evolving labour landscape. The momentum we are building is grounded in innovation, excellence, and meaningful stakeholder engagement.

Our commitment to regional collaboration and knowledge sharing has been exemplified through our recent hosting of international delegations. In May 2025, we welcomed the Office of the Labour Commissioner of the Republic of Namibia for a comprehensive benchmarking visit from 12 to 16 May, supporting their transformation into an autonomous Commission for Alternative Dispute Resolution (CADR). Additionally, on 24 June 2025, our Director hosted a delegation from the Commission for Mediation and Arbitration (CMA) of Tanzania, strengthening cross-border collaboration on dispute resolution mechanisms within the SADC region. These international engagements reaffirm the CCMA's reputation as a leading institution in labour relations, with our expertise being sought across all borders to support institutional development and reform efforts.

Furthermore, our Commissioners have actively participated in Employment Equity roadshows in partnership with the Department of Employment and Labour, engaging stakeholders nationwide and promoting fair and inclusive workplace practices. These initiatives demonstrate our proactive approach to dispute prevention and stakeholder engagement. In this edition, you will discover inspiring stories that reflect our momentum in action. From our successful intervention in the UNTU & Transnet dispute that prevented billions in economic losses, to the heartwarming community outreach initiatives by our Mbombela Office in support of GRIP, these moments highlight the CCMA's far-reaching impact. We also feature a story celebrating one of our Executives who completed her third Comrades Marathon, a testament to the resilience and determination that defines our people. We also took a closer look at the human side of organisational change, examining the psychology behind our recent restructure and how we have navigated transitions with empathy and transparency.

Our wellness initiatives continue to flourish, with hiking expeditions that form part of promoting our recently launched organisational strategy, mental health awareness and celebrating significant milestones like the 30th anniversary of the Labour Relations Act. These activities reinforce our belief that a healthy, engaged workforce is fundamental to delivering excellent service. We also delve into critical legal insights, including procedural versus substantive fairness in dismissals, unfair labour practices in non-promotion cases, and the evolving landscape of gig economy workers' rights. These articles provide valuable guidance to our stakeholders. As we continue to build this momentum of transformation, we remain steadfast in our mission to provide accessible, fair, and efficient dispute resolution services...

Thank you for joining us on this journey of building momentum through progress and change.

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G20 Second EWG ends with a commitment to foster a fair landscape in gender equality and address wage disparities

South Africa completed a historic and successful Group of Twenty (G20) second Employment Working Group (EWG) meeting and delegates committed their governments to discuss and address women's participation in the labour market and tackle the gender pay gap.

The four-day meeting concluded with a proposal known as the "Brisbane eThekweni Target" on Reducing the Labour Force Participation Gap Between Men and Women by 25% by 2035.

The Brisbane-eThekweni goal entails a revision of the target date from 2025 to 2035 to reduce the labour force participation gap between men and women.

The Brisbane Target was adopted during the Australian Presidency in 2014. The G20 leaders pledged in Brisbane to reduce the gap in labour force participation rates between men and women by 25 percent by 2025.

The aim was to bring 100 million more women into the labour market, increasing global and inclusive growth, and reducing poverty and inequality. The G20 EWG Forum reiterated that, while a substantial number of G20 countries have made progress in promoting equal opportunities, participation of women in the labour market, and reduction of the gender pay gap, continued efforts are still required. The member countries have also managed to reduce gender inequalities, but things have slowed down due to the impact of the COVID-19 pandemic on the global economy.



CCMA Hosts Namibian Delegation for Benchmarking Visit

As part of its institutional reform agenda, the Government of the Republic of Namibia conducted a week-long benchmarking visit to the CCMA. The goal: to inform the transformation of Namibia's Office of the Labour Commissioner into an autonomous Commission for Alternative Dispute Resolution (CADR).

To support this transition, a ministerial Technical Working Group (TWG) has been established to spearhead the reform process and oversee the development of the necessary legal, governance, and operational frameworks. A critical component of this initiative is the design of a comprehensive organisational structure for the future CADR. The visit gave the Namibian delegation direct access to the CCMA leadership and key departments, allowing them to gain firsthand knowledge of the CCMA's operational model and growth path.

The Benchmarking visit focused on the following areas of interest:

- Development of a detailed organisational structure (departmental mandates, divisional roles, job categories and grading, remuneration structure, and staff conditions of service)
- Overview of CCMA functions
- Funding mechanisms and any revenue generation initiatives
- Governance framework (Board composition and associated committees)
- Registration and regulation of trade unions
- Enforcement functions
- Training and organisational development strategies
- Management of professional standards (e.g., certification of arbitrators)
- Any other relevant operational or strategic insights
- Key learnings and reflections from the CCMA's developmental journey

"We hold the CCMA in high regard as a reputable institution within the SADC region, and we believe these engagements will greatly enrich our reform efforts. Additionally, we aim to conduct a stock-taking of key internal policies, systems, and procedures that are critical for the institutional development of CADR", said Ms. Kyllikki Sihlahla, Labour Commissioner & Chairperson of the TWG.

"While the implementation of the CADR system will be carried out in phases, the TWG is working diligently to accelerate the project's rollout. This effort takes into account the financial resources allocated for the 2026 financial year. The aim is to ensure that key components of the reformed institution are operational within that timeframe, subject to budgetary constraints and logistical considerations".

"The decision to benchmark with the CCMA originated during our planning session while developing the draft project implementation plan. We recognised the value of gaining practical insights from a well-established and functional institution specialising in dispute prevention and resolution. Given this objective, we considered it prudent to begin with organisations within the region. The CCMA stood out as a natural choice not only because of its proximity, but also due to its reputation as one of the leading dispute resolution bodies, not just in Africa, but globally". "Additionally, we viewed this engagement as an opportunity to reinforce and establish long-term institutional relationships. We are confident that strengthening these ties will provide meaningful support to the development and sustainability of the CADR, both in its foundational stages and beyond", said Sihlahla.

"Overall, from the Namibian TWG perspective, we have learned a great deal from your experiences and expertise, and we are sincerely grateful for the hospitality and openness you have shown us. We look forward to continued collaboration that will further strengthen our relationship, particularly in the areas of dispute prevention and resolution systems. We deeply appreciate the CCMA for sharing your time and knowledge. We feel truly fortunate to have you as a leading institution within the SADC region from whom we can learn and grow. We are genuinely indebted to you for your generosity and willingness to share your insights".



Unfair Labour Practices in Non-Promotion: Legal Insights and Awareness

Introduction

Promotion disputes are a common source of workplace tension, often raising questions about fairness, policy interpretation, and authority. An employee does not have an automatic legal entitlement to be promoted to a higher post unless there are conditions in the employment contract, a collective agreement, or a promotion policy regulating otherwise. The courts have echoed that arbitrators should not impose their own decisions on employers with regard to whom they promote. This article explores the legal principles involved, helping employees and employers understand their rights and obligations.

Supreme Law

Section 23 of the Constitution provides that “everyone” has the right to fair labour practices.

Legislative Framework

Section 186(2)(a) of the Labour Relations Act, as amended (the LRA) provides that an unfair labour practice includes “any unfair act or omission... involving promotion.” This means that if an employee wishes to challenge the fairness of a decision taken by that employee’s employer not to promote him

or her, that employee has a right to refer the matter to the CCMA or a Bargaining Council with jurisdiction. However, what may be perceived by the employee as unfair is not necessarily an unfair labour practice as set out in the LRA. The employee bears the onus to prove that the employer committed an unfair labour practice. The courts examine whether the decision-making process was rational, transparent, and aligned with established policies.

Case Overview: *Thandeka Gana-Mbekeni v Department of Social Development Western Cape*

Thandeka Gana-Mbekeni contested her employer’s decision not to promote her, arguing it was unfair. Although a selection panel recommended her for the role, the Head of Department (HoD) overruled the panel’s decision and chose to re-advertise the position, citing concerns about her suitability. Gana-Mbekeni argued that this decision violated the Provincial Government Western Cape Transversal Human Resource Management Policy, particularly paragraph 14.3, which outlines when and how a selection panel’s recommendation can be overridden.

Legal Questions Explored

The Labour Court considered several key legal issues:

1. **Authority of the HoD:** Did the HoD have the power to reject the selection panel’s recommendation?
2. **Fairness of the Decision:** Was the decision to re-advertise the post reasonable and transparent?
3. **Binding Nature of Recommendations:** Was the panel’s recommendation binding on the HoD?
4. **Compliance with Policy:** Did the HoD follow the policy requirements when rejecting the panel’s recommendation?

Key Findings and Legal Reasoning

1. HoD’s Authority and Discretion

The court concluded that the selection panel’s recommendation was advisory, not binding. The ultimate decision-making authority rested with the HoD, who could deviate from the recommendation for valid reasons related to the policy guidelines.

2. Application of Paragraph 14.3

Paragraph 14.3 allows the HoD to reject a panel’s recommendation if reasons are recorded in writing, related to the job requirements, procedural issues, or employment equity. Although the HoD did not explicitly record his reasons, the court found his decision justifiable based on the applicant’s suitability for the role.

3. Fairness and Reasonableness

The court evaluated whether the HoD applied his mind to the decision and found the process fair and reasonable. The HoD’s decision to re-advertise was motivated by concerns about the candidate’s capabilities, demonstrating a rational and considered approach.



4. Policy Compliance and Transparency

The court acknowledged that while the HoD did not document his reasons as required by the policy, his decision was consistent with the policy's intent. It emphasized that decision-makers should aim for transparency and accountability by recording reasons for deviations from panel recommendations.

Lessons for Employers and Employees

- **Discretion and Decision-Making Power**

Employers, particularly in public sector settings, have the discretion to deviate from selection panel recommendations if justified by reasonable, policy-related reasons. However, this discretion must be exercised with caution and transparently to ensure fairness.

- **Transparency and Accountability**

Decision-makers should always record reasons for deviating from panel recommendations. This ensures transparency, minimizes disputes, and aligns with policy requirements.

- **Employee Expectations and Legal Recourse**

Employees should understand that a recommendation by a selection panel does not guarantee promotion.

Implications for Future Promotion Disputes

This case reinforces the principle that while fairness is crucial, decision-makers are not bound by selection panel recommendations. As long as discretion is applied reasonably and in line with policy, the decision will likely withstand legal scrutiny.

Moreover, the ruling underscores the importance of clearly documenting the reasoning behind promotion decisions to maintain accountability and fairness, reducing the likelihood of disputes.

Other Jurisprudence Defining promotion.

- **Mashegoane v University of the North:** The court defined promotion as being elevated or appointed in a position that carries greater authority and status than the current position the employee is in.
- **Sukhedo v Department of Welfare and Population Development, KZN:** The court held that a dispute concerning a notch increase within the same post does not constitute a promotional dispute. It was echoed that promotions are usually accompanied by an increase in responsibility, remuneration or benefits.
- **SAMWU obo Damon v Cape Metropolitan Council:** The court held that unless the appointing authority was shown to have not applied its mind in the selection of the successful candidate, the CCMA may not interfere with the prerogative of the employer.
- **Van Rensburg v Northern Cape Provincial Administration:** The court held that interference in the employer's decision is justified only where its conduct is so gross and unreasonable as to warrant interference that they have failed to apply their mind.

Legal Principles

- Interference by CCMA or courts if there is gross unreasonableness.
- Arbitrators must not assume the role of employment agencies.
- An arbitrator's role is not to choose the best candidate for promotion.
- Arbitrators must not concern themselves with the reasons an employer declined to promote but rather with the process followed that lead to the decision.
- Reasons to overlook an employee are relevant to shed light on the fairness of the process.
- Best or most worthy is only relevant to an unacceptable reason including that of discrimination.

Dispute Resolution at the CCMA

- The employee must attempt to resolve the matter internally.
- If the matter is unresolved internally, the employee may refer an unfair labour practice dispute to the CCMA or the relevant Bargaining Council within ninety (90) days from the date a deadlock was reached with the employer.
- Conciliation, and if unresolved
- Arbitration

- The employee bears the onus to prove the following:
 - That the employer acted capriciously,
 - that the reasons for non-promotion cannot be substantiated,
 - that the decision taken was on a wrong principle, and
 - that the employer was biased.

Remedies

The most common remedy for an employee who successfully proves that she or he was subjected to an unfair labour practice (promotion) is compensation in terms of section 193, read with 194 of the LRA.

Conclusion

The case of *Thandeka Gana-Mbekeni v Department of Social Development Western Cape* illustrates the complexities involved in promotion disputes, emphasizing the need for fair, transparent, and policy-aligned decision-making. By understanding the legal framework and adhering to best practices, employers can make informed decisions, and employees can better navigate their rights and expectations. This case serves as a reminder of the delicate balance between discretion and fairness, encouraging a culture of transparency and accountability in workplace promotions.



CCMA Intervention Prevents Billion-Rand Economic Disruption in UNTU-Transnet Dispute

Key learnings emerge from successful section 150 intervention that averted potential strike action

A proactive intervention by the CCMA successfully prevented what could have been a devastating strike at Transnet, potentially saving the South African economy billions of rands in daily losses. The section 150 Labour Relations Act intervention, conducted by Commissioners Berlin Nayer and Malesela Maboya, offers valuable insights into dispute resolution at critical state-owned enterprises.

The potential strike threatened to disrupt the country's entire logistics network. Given Transnet's pivotal role in moving goods through South Africa's ports, rail systems, and pipelines, any work stoppage would have had far-reaching economic consequences, with potential losses running into billions per day. The dispute originated from what the Commissioners described as "a party driven anomaly that occurred at negotiation level. Transnet's decision to enter into an agreement with the minority union, apparently driven by the need to conclude a collective agreement quickly, triggered deep seated animosity between UNTU and the employer. This approach by employer, indicated "a fundamental challenge in appreciating the primary principles that drive stability in collective bargaining," according to the Commissioners' observations.

The initial agreement offered a 6% increase for the first and second years, and 5.5% for the third year. Through the CCMA intervention, parties entered into a majority driven collective agreement, securing improved terms: a 6% increase for each year across the three-year period from 2025/2026 to 2027/2028, along with a non-retrenchment clause.

The process was not without its challenges. One significant hurdle was the attendance of SATAWU at the first meeting, which threatened to derail the entire process. The Commissioners had to carefully manage this situation to prevent escalating tensions and avoid contributing to union rivalry. Throughout the intervention, the process was "marred by profound tension and mistrust," highlighting the complex dynamics at play in high-stakes labour negotiations.

Critical Success Factors and Challenges

Several key factors emerged as crucial to the dispute's resolution:

- The government's position as Transnet's shareholder proved critical to resolving the dispute. However, budget

constraints at national level directly impacted fund allocation to Transnet, creating additional complexity.

- The existing financial challenges posed the biggest threat to dispute resolution, underscoring how economic realities shape labour negotiations.
- The absence of key decision-makers during negotiations created unnecessary delays, reducing negotiators to "mere messengers" unable to make critical decisions to advance the process.
- Uncontrolled social media communication emerged as a threat to creating a conducive environment for dispute resolution, with certain posts aggravating the conflict at critical moments.

- Large delegation sizes sometimes created challenges due to different interpretations of shared information and affected the turnaround time for finalising mandates.

It was highly unlikely that an agreement would have been reached without the additional 0.5% increase ultimately offered. The Commissioners commended Transnet for "playing open cards" by disclosing relevant information to help the trade union bargain effectively, demonstrating the value of transparency in labour negotiations. One of the big challenges facing Transnet amid the threat of strike action was the potential loss of confidence by international lenders, which may have led to potential withdrawal of loan offers or increased interest rates on the loans. Therefore, it was crucial for Transnet's future sustainability to avert a strike.

The CCMA's intervention proved instrumental in reaching an agreement, with the Commissioners noting that the institution remains "a key role player in overseeing stability in the labour market." Crucially, this was a proactive intervention offered to parties before a strike notice was issued. "Without the aptly timed intervention, the prospects to reach an agreement were highly unlikely," the Commissioners observed.

The dispute resolution process confirmed that labour conflicts at entities like Transnet pose direct threats to the country's economic stability. The successful intervention demonstrates the continued importance of the CCMA in maintaining labour market stability and the value of proactive dispute resolution.

The case serves as a valuable template for managing high-stakes labour disputes at critical state-owned enterprises, highlighting both the challenges and the potential for successful resolution through skilled intervention and strategic negotiation.





The CCMA Director, Adv Cameron Morajane hosts delegation from Tanzania's Commission for Mediation and Arbitration

The Psychology of Structural Change – Understanding the Human Side of the CCMA Restructure

A new structure can look perfect on paper. Reporting lines align, roles are clarified, and efficiencies are imagined. But behind every realignment lies a quiet emotional shift that unfolds in the minds of the people affected. The recent restructuring at the CCMA reminded us that organisational change is not just an operational adjustment; it is a human experience.

Strategic Realignment and Psychological Transitions

As the CCMA transitioned into “The Momentum” Strategy in April 2025, organisational restructuring was rolled out to align with the strategic direction. Several units were adjusted to enhance operational alignment, reduce duplication, and improve governance and accountability.

While the changes made strategic sense, they also represented a significant shift for many employees. Adjustments in roles and reporting lines can trigger feelings of uncertainty, anxiety, and disengagement. These reactions are natural and well-documented in change psychology.

Change theorist, William Bridges, describes this period of transition as the “neutral zone” — the uncomfortable middle space between the old and the new. It is in this space that people let go of what they once knew and begin to cautiously engage with unfamiliar expectations. It is also in this space where resistance can emerge, not out of defiance, but from a deep psychological need for stability and clarity.

In parallel, many employees may unconsciously experience elements of the *Kubler-Ross Change Curve* — initially denying the change, expressing frustration, negotiating mentally with the new reality, and eventually moving toward acceptance and integration. These emotional stages, while often invisible, affect how people show up in meetings, how they engage with leadership, and how they commit to new ways of working.

“It is not the changes that do you in, it’s the transitions. Change is situational the new site, the new boss, the new policy. Transition is the psychological process people go through to come to terms with

the new situation.” — William Bridges (2009)

Recognising this, the CCMA ensured that change communication and consultation remained a priority throughout the process. Feedback loops allowed for select refinements to the structure where operational realities required it. This approach reflects best practice seen in global organisations such as the UK’s NHS and Deloitte SA, where ongoing engagement and adaptability have become essential features of modern restructuring efforts.

Key Observations:

- Structural changes can unintentionally disrupt employee identity and trust.
- Navigating the “neutral zone” requires empathy, clarity, and consistent communication.
- Change is a psychological journey, not just a strategic event.
- Flexible leadership and responsiveness build credibility during transition.

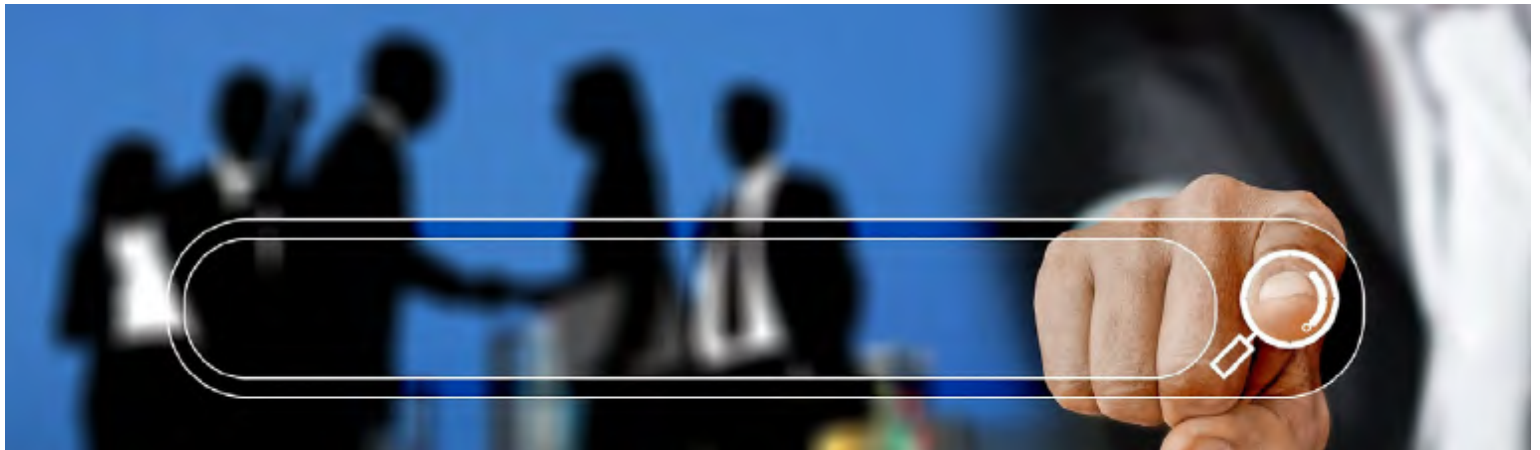
Leading With Empathy

The organisational structure changed, however the deeper work was assisting those affected by the change find their footing again, to understand where they belong, how they contribute, and why their role matters. The CCMA’s restructure journey reminds us that behind every organogram lies a person adapting, adjusting, and searching for meaning.

The lesson? Change leadership is not just about getting the structure right, it is about walking with people through the psychological process of letting go, navigating the in-between, and embracing the new.

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A Plea to Employers and Their Representatives plus Employees and Their Representatives – Help Save South Africa Please!

An Opinion Piece by CCMA P/Time Senior Commissioner Glen Cormack

At a crossroad? Frightening statistics for South Africa's labour and economic markets for April 2025 – 14 000 labour disputes referred to the CCMA with SA having the highest rate of labour disputes in the world; 7000 employees dismissed/month; 3 800 claims for monies owed; a mere 2% of cases settled (78% of all cases heard) result in re-instatement/re-employment; 13 million people not economically active versus a mere 17 million employed; 66% of unemployed people being long-term unemployed; 6% of employees (more than one million) are under-employed, i.e. working less than 35 hours/week; 2.4 million workdays lost to strikes in 2024 with a R576m loss in wages; thousands of employees facing retrenchments with economic growth less than 0.8%; 14 million people going to bed hungry every day.

My experience over 29 years as a commissioner personally dealing with over 13 000 disputes, and 15 years executive HR management and consultancy experience before that, is that the degree of fairness in our workplaces is not improving. Sure, there are some fantastic improvements and practices in some workplaces, greater focus on health and safety in some; wellness programmes and training and development programmes in more – but are these factors sufficient to change the picture. Sadly, I am not persuaded. Too many employers and employees and their respective representatives still display adversarial approaches to workplace relations, with inappropriate use of organisational power. This view is informed by our labour dispute rates and outcomes, plus all the statistics researched above.

Please let us change this picture, contributing to other efforts to save South Africa “falling off the cliff”. More attention needs to and can be given to meaningful approaches (not tick-box) to employee induction and conduct review programmes; misconduct prevention initiatives; workplace relations and trust building interventions; productivity



To top this alarming picture, add all the disputes referred to bargaining councils; 26,000 cases of child abuse reported in 2024; 7 million women having experienced violence in their lifetimes; an average of 89 persons being murdered every single day.

Then climate change and AI's impact on current jobs comes along with 68% of current outside jobs expected to not exist by 2030 due to heat stress and severe storms, and 5 million jobs at risk due to digital automation over the same period.

Then juxtapose this with SA's Gini co-efficient rate, a measure of income inequality of .67, amongst the most unequal countries globally - tainted with race realities. Just how long do you think we can continue with these trends before our very system collapses?

improvement initiatives; global competitiveness; capacity building of managers and worker leaders with skills and knowledge to address issues impacting on labour stability and workplace democracy. Let's stop the disputes! Let us up-skill and/or re-skill employees whose jobs are threatened by climate change and AI. Let's create “on the ground” policy and practice stability and certainty.

Let's create a partnership approach to securing and creating jobs by building investor confidence and growing the economy as called for in COSATU's President Zingiswa Losi's May Day speech and press releases, amongst many other such calls. Let's explore all the possibilities of developing meaningful social pacts. Let's seek out other stakeholders to increase our impacts. Let's stop fighting one-another and rather jointly fight the challenges posed by the issues raised above.

CCMA Western Cape Celebrating Africa Day

'I am because we are' — is an African proverb and reminds us that unity is the reason we've gotten anywhere. In South Africa, the month of May, every year is recognized as Africa Month and is linked directly to supporting and strengthening Africa Day.

The African Union (AU) dedicates Africa Day towards accelerating the implementation of the Africa Continental Free Trade Areas. It also promotes programmes supporting the International Decade of Indigenous Languages as declared by UNESCO, to highlight the significance of promoting the use of Indigenous African languages which plays a role in the G20 discussion on embracing and enhancing African culture as a whole.

The month of May marks Africa Month - a moment for the continent to pause, reflect, and celebrate our unique African identity and cultural expression. Africa Day is celebrated annually to commemorate the founding of the Organisation of African Unity (OAU), founded on 25 May 1963

The 11th edition of Africa month is celebrated under the theme: "Building Africa We Want through Solidarity, Equality and Sustainability"

Africa Day is a platform to promote the African Union's vision of "An integrated, prosperous, and peaceful Africa, driven by its own citizens and representing a dynamic force in the global arena.



Navigating the Minimum Wage Increase: A Guide for Employers and Employees

Overview of the post 2018 amendments to the Basic Conditions of Employment Act (BCEA)

The BCEA amendments of 2018 were introduced generally to improve the enforcement of provisions of the Act, and particularly the effective enforcement of the proposed National Minimum Wage Act. Amongst other things, the amendments were aimed to:

- extend the provisions for the labour inspectorate's monitoring and enforcement to include compliance with the national minimum wage and unemployment insurance requirements.
- extend the jurisdiction of the CCMA to include enforcement procedures and claims for underpayment in terms of the Act, the national minimum wage, unemployment insurance legislation, and claims arising from employment contracts and collective agreements.
- extend the jurisdiction of the CCMA to the arbitration of disputes relating to the interpretation and application of matters arising from section 80 (protection of employees against discrimination).

The National Minimum Wage Act N0.9 of 2018

The purpose of the Act is to advance economic development and social justice by-

- improving the wages of lowest-paid workers;
- protecting workers from unreasonably low wages;
- preserving the value of the national minimum wage;
- promoting collective bargaining; and
- supporting economic policy.



The Act applies to all workers and their employers except members of the South African National Defence Force, National Intelligence Agency, the South African Secret Service and volunteers (a person who performs work for another person and who does not receive or is not entitled to receive any remuneration for his or her services).

The Minister of the Department of Employment and Labour established a National Minimum Wage Commission whose primary function is to review the national minimum wage and to make recommendations on an annual basis for its adjustment. If the National Minimum Wage Commission deems it necessary, the national minimum wage is adjusted yearly. One of the Commission's ancillary functions is to investigate the impact of the national minimum wage on the economy, collective bargaining and the reduction in income differentials and to make such information available to the public. The national minimum wage is calculated as the amount payable for the ordinary hours of work. This means that a worker is entitled to receive the minimum wage for the number of hours that the worker works in a day. This does not include the payment of allowances to enable a worker to work, (such as transport, tool, food, or accommodation allowances, unless otherwise included in a sectoral determination), payments in kind including board or accommodation (unless specified otherwise in a sectoral determination), gratuities including bonuses, tips, or gifts, or any other prescribed category of payment. A provision is made for the Minister to exclude other forms of payment by regulation. From 1 March 2025 the national minimum wage payable was adjusted to R28.79 for each ordinary hour worked. This represents an increase of 4.4% from the previous 2023/2024 hourly rate of R27.58 per hour. This applies to all workers, except those on learnerships (different hourly rates apply as set out in the amended schedule to the National Minimum Wage Act) and those employed on expanded public works programmes (R15.83 per hour).

Case Overview

In *O'Reilly v CCMA and Others JR2395/19 (LC)*, the court held that there is no provision in the BCEA that indicates that the CCMA has jurisdiction to determine a dispute in relation to section 34 (1) of the BCEA (disputes concerning deductions from remuneration). It further re-emphasised that the Labour Court has jurisdiction to determine disputes arising from the BCEA unless stated otherwise. In *Kgasane v MEC Department of Health: Free State and Department of Health: Free State C507-2022* (judgment handed down on 19 November 2024) the applicant brought a claim under s77(3), read with s73A(1) and (3) of BCEA. The Employee claimed payment of 37.9 leave days in terms of Resolution 7 of the Public Service Co-ordinating Bargaining Council (PSCBC). The Respondents raised a preliminary issue relating to jurisdiction, stating that as the leave pay is payable in terms of Resolution 7 of the PSCBC Resolution of 2000 the matter should be dealt with under section 33A of the LRA, as the Court cannot enforce collective agreements concluded at Bargaining Councils.

The LC rejected this argument and stated that s73A of the BCEA deals with the payment of monies owed to employees and workers who earn at or below the BCEA threshold. Sections 73A(1) and (3) apply to employees who earn above the BCEA threshold (the Employee earned above the threshold). Section 73A(3) provides that an employee who earns above the threshold may refer a dispute of this nature to the LC. The Court held further that section 33A of the LRA relates only to disputes between the Bargaining Council itself and the parties to the Bargaining Council. Furthermore, as it is only the Bargaining Council that may refer a dispute to arbitration under section 33A, there was no clash between section 157(5) of the LRA, and section 73A of the BCEA. In *Venter v Symington and De Kok (JS418/15) [2017]* the court held that an Employee must establish that he/she is entitled to a claim under the BCEA, and therefore the onus of establishing the claim rests on the Employee. It is only after the Employee has established a *prima facie* claim that the Employer must then prove (through records it is required to keep in terms of section 76) that they are not liable for the claim and that they acted in compliance with provisions of the BCEA. In *Obed J Nimfashe and 55 Others v Bokwe's Trading CC T/A Bokwe's Security Services (C444-2021)* the court held that the Employees earning an amount equal or below the BCEA threshold and who wish to lodge a claim for payments owed by the Employer must refer such matters to the CCMA in terms of section 73A of the BCEA and not to the Labour Court in terms of section 77A(e). As we navigate with this new project of the national minimum wage and other BCEA matters, it is of great importance to highlight to the employees and employers' issues of importance.

Employers' issues to remember:

- **Understand Your Legal Obligations**
Employers must comply with the BCEA by ensuring employees are paid correctly and on time. To avoid disputes, familiarize yourself with the Act's specific requirements regarding wages, overtime, benefits, and deductions.
- **Maintain Accurate Records:**
Keep detailed and accurate records of employee wages, working hours, leave, and other entitlements. This documentation will be crucial if a dispute arises, as it helps demonstrate compliance with the BCEA and the National Minimum Wage Act.
- **Respond Promptly:**
If an employee files a Section 73A claim, respond promptly and respectfully. If payment has already been made to the employee / worker, provide the necessary proof of such payment. Delays or failure to engage may complicate the resolution process.
- **Seek Legal Advice:**
If the dispute escalates or you are unsure about the legal aspects, consult with an employers' organisation or a legal practitioner to understand your rights and obligations. Legal experts can guide you through the section 73A process to ensure legal compliance.

Employees issues to remember:

- **Know Your Rights:**
Familiarize yourself with your rights under the BCEA and the National Minimum Wage Act, especially regarding wages, working hours, overtime, and leave.
- **Keep Records:**
Keep track of your working hours, pay slips, and any correspondence related to your wages or employment. This documentation will be essential when first approaching your employer to sort out your payment query, or lodging a dispute under Section 73A (or the Labour Court if you earn above the BCEA threshold).
- **Follow the Correct Procedure:**
Section 73A claims must follow the prescribed process. First, try to resolve the issue directly with your employer. If that fails, you can approach the Department of Employment and Labour, a bargaining council with jurisdiction, or the CCMA for assistance.
- **Be Prepared for Dispute Resolution:**
Ensure you are well-prepared if the claim progresses to a formal dispute resolution process. This means having all your records, including pay slips, contracts, and written correspondence, organized and accessible.

In conclusion, by following these guidelines, employers and employees can collaboratively navigate BCEA Section 73A claims, ensuring effective and efficient resolution and mitigating the risk of protracted and costly disputes.

“When Justice Fails to Deliver: The Sidumo Standard and the Need for Transparent Arbitration in South Africa’s Labour Courts”

In a recent ruling by the Labour Court (LC) in *Securitas Specialised Services v Kabelane* (2021), the court was forced to grapple with a critical issue at the heart of South Africa’s labour dispute resolution system: the question of whether arbitration awards, especially those involving dismissals, are subjected to appropriate scrutiny and analysis. The case, like many before it, shines a harsh light on the potential dangers of an unreasonably brief or underdeveloped arbitration award that can lead to serious miscarriages of justice.

The *Sidumo v Rustenburg Platinum Mines* decision (2007) laid down the principle that LC judges must assess whether an arbitrator’s decision is one that a reasonable decision-maker could have arrived at. Yet, as the *Securitas v Kabelane* case illustrates, merely following this guideline is not enough to prevent judicial error when the reasoning behind an award is inadequate or entirely absent. In this case, the LC found that the arbitration award in question lacked sufficient analysis, raising concerns that a blanket, unfounded conclusion was reached without a thorough assessment of the evidence presented.

The LC’s decision to set aside the award and remit the matter for reconsideration underscores a significant issue: arbitration awards must be more than just a formal conclusion of the proceedings. They must be based on reasoned arguments that reflect a deep engagement with the facts and issues of the case. In *Securitas*, the court stressed that a decision-maker cannot simply assert that one version of events is more probable than another without addressing the evidence supporting that conclusion. This decision echoes earlier judgments, such as *Duncanmec* and *Herholdt*, which highlight the dangers of poorly substantiated decisions.

What this case further reveals is the precarious nature of employee rights under the current arbitration framework. Workers who face the prospect of dismissal have the right to expect that decisions impacting their livelihoods are made based on comprehensive reasoning that considers all evidence and evaluates the credibility of witness testimony. When arbitration awards are made without adequately addressing these factors, the risk of unfair dismissals



increases, leaving employees vulnerable to arbitrary decisions. This case also underscores the necessity for reform in the arbitration process. It is imperative that the criteria for evaluating arbitration awards be more robust, with stricter scrutiny placed on the quality of reasoning in such decisions. Without clear, transparent rationales, there can be no confidence in the fairness of the system. This lack of accountability in arbitration decisions not only undermines the integrity of the judicial process but also erodes trust in the broader system of labour law.

The call to action here is clear: South Africa must prioritize the training of arbitrators to ensure they apply the *Sidumo* test with the rigor it demands. More importantly, the LC must continue to hold arbitrators accountable, setting a precedent that the quality of arbitration awards matters just as much as the decision itself. This will ensure that justice is not only done but seen to be done, restoring faith in the legal mechanisms that protect the rights of South Africa’s workforce.

Reference

<https://www.saflii.org/za/cases/ZALCJHB/2025/107.html>

Retrenchment or Retaliation? Labour Court Warns Against Misusing Operational Requirements

In a recent Labour Court judgment, a stark warning was issued to employers: *retrenchment cannot be used as a cover for enforcing unreasonable contractual demands*. This came after an employer retrenched an employee who refused to sign a revised employment contract containing a 24-month, country-wide restraint of trade clause. The employee challenged the fairness of his dismissal at the CCMA and won. When the employer sought to overturn that decision, the Labour Court upheld the CCMA ruling and dismissed the review application.

This case presents important lessons for both employers and employees, particularly around the limits of operational requirements

restraint was necessary. As a result, the retrenchment was deemed substantively unfair.

This ruling highlights two critical points. First, employers must *demonstrate a genuine and measurable operational need* when retrenching employees. The mere non-compliance with a new contract especially when it contains overbroad clauses does not constitute sufficient grounds for dismissal. Second, restraints of trade must be *reasonable, proportional, and tailored* to legitimate business interests. A 24-month national restraint was seen as excessive and unjustified.

For employers, the message is clear: amendments to employment contracts must be carefully considered and properly motivated. If a restraint is necessary, it should be limited in duration, scope, and geography, and based on demonstrable business risks. Retrenchment

processes, too, must follow the procedural and substantive fairness required under labour law, failure to do so can result in costly compensation orders and reputational damage.

For employees, this case reinforces the right to question contractual terms that seem unreasonable or overly restrictive. The CCMA remains a vital platform for resolving disputes where dismissals appear retaliatory or procedurally flawed.

A Call to Action

Let this case be a reminder to employers: retrenchment is not a disciplinary tool. It is a last resort, reserved for real, unavoidable operational changes. And to employees: know your rights, you are not obliged to accept unfair contract terms under the threat of job loss. Both parties benefit when contractual negotiations are handled with transparency, fairness, and mutual respect.

The law and the CCMA are here to ensure just that.

Reference

[THE LABOUR COURT OF SOUTH AFRICA, DURBAN](#)



and the enforceability of restraint of trade clauses.

From the outset, the employer had amended contracts of employment to include a broad restraint of trade, which all but one employee accepted. The outlier was dismissed under the guise of retrenchment. However, the Court found no credible evidence that the refusal to sign the restraint would cause financial or operational harm. Nor could the employer justify why such a far-reaching

The CCMA embraces hiking as an important wellness activity for Mental Awareness CCMA Champions Mental Wellness Through Hiking

The CCMA has long recognised the importance of promoting employee wellness, strengthening internal cohesion, and creating spaces for positive engagement among colleagues across departments and leadership levels.

Following the successful Gauteng Province Hike held on 13 April 2025 in celebration of the province's successful run at last year's CCMA excellence awards, the CCMA held yet another hiking expedition – under the theme “*Let's keep the Momentum*”.

The hike served a dual purpose: **Strategic Significance:** Marking the official *launch of the CCMA's new Strategy*, and **Commemorative Celebration:** Honouring *30 years of the Labour Relations Act (LRA)*, a historic legislative milestone that has defined South Africa's employment relations landscape. The hiking experience was also aimed at encouraging physical activity, mental relaxation, and social engagement, all within the serene and picturesque setting of Taroko Trail Park.

Generally, hiking offers participants with a unique opportunity to recharge their energy, strengthen team dynamics, and reconnect with nature. Speaking at the event, CCMA Director Adv. Cameron Morajane, highlighted the importance of prioritising mental health and wellness. “By making time for regular hikes, staff members can enhance their mental awareness, find emotional relief, and foster a deeper connection with themselves and the world around them” he added.

Studies have shown that even short hikes can enhance focus, creativity, and problem-solving skills. The exposure to natural light and fresh air helps regulate sleep patterns and mood, contributing to overall mental balance.





Let's Keep The Momentum

CCMA's Chief Audit Executive goes the distance again From the Boardroom to the finish line: CCMA Chief Audit Executive completes her third Comrades Marathon

It is often said that, running the Comrades Marathon is more than just a race, it is a test of endurance, spirit, and determination.

The Comrades Marathon, the world's largest and oldest marathon which attracts thousands of runners globally, is an ultramarathon of approximately 89km which is run annually in the KwaZulu-Natal province between the cities of Durban and Pietermaritzburg.

This iconic ultramarathon challenges runners to push beyond their limits, both physically and mentally. Whether you're a regular athlete or a first-time participant, the journey is a celebration of resilience, camaraderie, and the triumph of the human will.

CCMA Chief Audit Executive, Ms Zanele Hlophe, after completing her third marathon at a time of 11:37 says running is therapeutic for her.

"Achieving running goals provides a sense of purpose and accomplishment".

"Finishing such a grueling event brings an immense fulfilment and a feeling of accomplishment, as it tests physical and mental limits. Hence all those that line up are regarded as heroes regardless of the results".

"I want to take a moment to express my heartfelt gratitude for all the support and encouragement offered to me as I prepared for the Comrades Marathon. Your belief in me kept my spirits high during the long training runs, and every kind word motivated me to push through the grueling 90km".

"As I laced up my shoes on race day, I carried your love and encouragement knowing I have such an amazing support", said Zanele Hlophe.



5 THINGS YOU DIDN'T KNOW ABOUT ZANELE HLOPHE

- *Adventurous Spirit*
- *Gentle Core Behind a Tough Exterior*
- *Hardworking*
- *Disciplined and Principled*
- *Kind and Supportive*

CCMA Mbombela Extends Wellness Beyond the Workplace Through Heartfelt Community Donation Drive

The Stakeholder Management, Communication and Projects team recently engaged in an inspiring conversation with the CCMA Mbombela Office about their remarkable donation drive in support of GRIP (Greater Rape Intervention Programme). This heartfelt initiative reflects the team's deep commitment to community wellness and social impact. Here's what they had to share about this meaningful outreach effort.

From Internal Wellness to Community Care

The CCMA Mbombela Office's donation drive was born from a beautiful extension of the organisation's internal wellness philosophy. "We were inspired by the CCMA's initiative of internal wellness, which encourages staff to care not only for themselves as individuals, but also as a unit," explained the team. "That's why we felt that taking care of those in our community was a fitting extension of this concept." The timing couldn't have been more perfect. With April 2025 being overall health awareness month in South Africa, the Mbombela Office identified an opportunity to make a real difference during challenging economic times for NGOs.

Supporting GRIP's Vital Mission

The choice of GRIP as their beneficiary was deeply strategic and aligned with the CCMA's values. Located near their Mbombela Office, GRIP does exceptional work establishing rape crisis centres at police stations, hospitals, and courts throughout Mpumalanga, assisting victims of sexual violence across all spheres of society. "This ties in perfectly with the CCMA's mandate in relation to the EEA, particularly regarding sexual harassment and the elimination of all forms of bullying and abuse in the workplace," the team noted.

A Month of Generous Giving

The process began with contacting GRIP to understand their most pressing needs. Throughout April and into early May 2025, donations poured in from staff members who contributed everything from clothes and food products to personal hygiene items. The official handover took place on May 9, 2025. While organising the drive presented some logistical challenges particularly finding time for the handover amidst the CCMA's busy operations, the team made it work through determination and collaboration.

Meaningful Impact on All Sides

The community impact has been profound. "We were able to show that we care and that we can all step up and lend a hand in a meaningful

way," the team shared. For GRIP, the assistance came as a welcome surprise, especially during a period when funding withdrawals have severely impacted their operations. For CCMA staff, the initiative provided an opportunity to unite around a goal beyond their immediate workplace, taking wellness to the next level while fostering appreciation for their ability to help others.

A Grateful Reception and Future Plans

GRIP Mbombela's response was overwhelmingly positive. The numerous bags and boxes of donations brought joy and gratitude, while also providing the CCMA team with an opportunity to express appreciation for GRIP's vital work in addressing what has become a pandemic level of sexual abuse and violence in society. "Sexual abuse and violence in our society is rampant to the levels of being called a pandemic, and we need to ensure NGOs such as this continue to exist and operate meaningfully," emphasised the team.

Looking Forward

The Mbombela Office plans to continue these drives, demonstrating their commitment to showing up for those who struggle to help themselves. As they put it, "Our momentum must be to inspire change to any form of behaviour that breaks down not only our places of work but our society at large." This initiative beautifully demonstrates how workplace wellness can extend beyond office walls to create meaningful community impact, embodying the CCMA's values in action.



Surviving Prostate Cancer: A Journey of Strength and Hope

Prostate cancer is one of the most common cancers affecting men, but thanks to early detection and advances in treatment, survival rates have significantly improved. For those who have overcome it, the journey is often one of profound transformation, marked by physical challenges, emotional resilience, and a renewed perspective on life.

Survivors not only battle the disease itself but also navigate the impact it can have on their personal relationships, mental well-being, and career paths. Their stories serve as powerful reminders of the importance of regular screenings, community support, and hope. In this edition, we highlight the inspiring journey of one such survivor, offering insights into the trials and triumphs of living beyond cancer.

Meet Zanempilo Boo, a prostate cancer survivor whose journey stands as a powerful testament to perseverance. Diagnosed at the age of 55, Zanempilo faced his diagnosis with a mix of fear and determination. He approached each step of his treatment with optimism, drawing strength from his loved ones and medical team. Throughout his treatment, Boo maintained a positive outlook, focusing on small victories and milestones. He embraced a healthier lifestyle, incorporating regular exercise, a balanced diet, and stress-reducing activities such as meditation and yoga into his daily routine.

Today, Zanempilo is cancer-free and dedicates his time to raising awareness about prostate cancer. He speaks at community events and supports others by sharing his story and advocating for early detection and holistic care. Zane's journey reminds us that with the right support and mindset, it is possible to overcome even the most daunting challenges. His story is a beacon of hope for those currently battling prostate cancer, showing that survival is not just about enduring but about thriving and giving back to the community.



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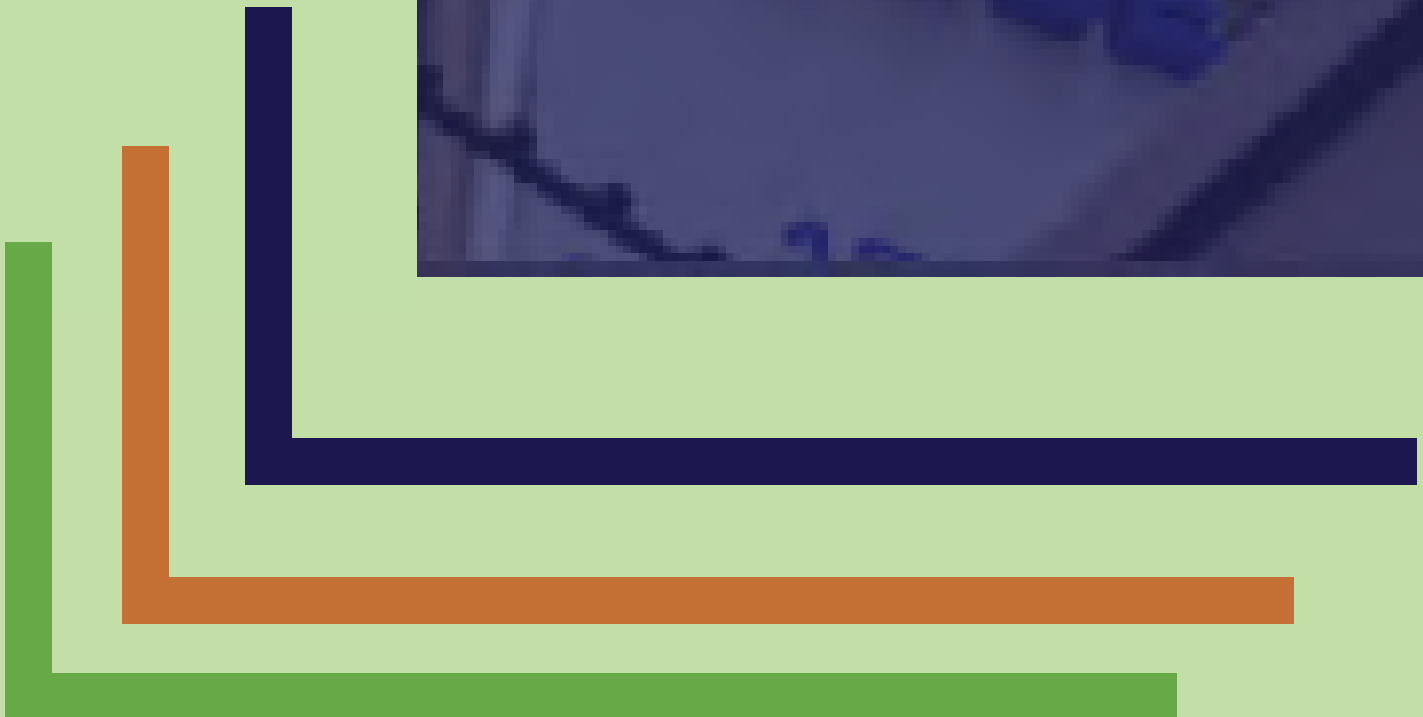
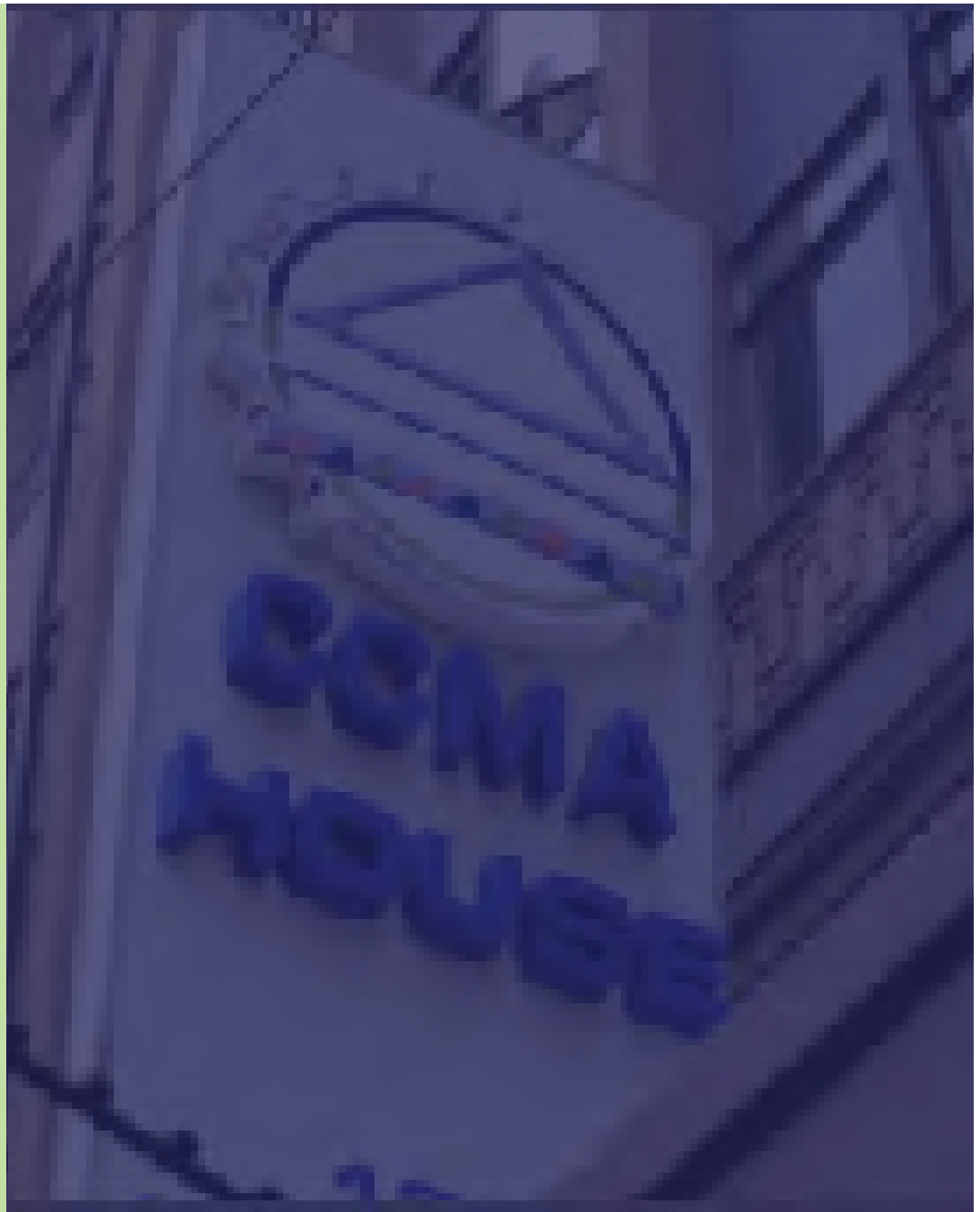
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