

# **POLICY ON APPOINTMENT OF CONCILIATORS AND ARBITRATORS FOR THE NATIONAL BARGAINING COUNCIL FOR THE WOOD AND PAPER SECTOR**

## **1. APPOINTMENT TO THE PANEL**

- 1.1 Arbitrators and Conciliators shall be appointed annually at the Annual General Meeting of the NBCWP or its relevant divisions.
- 1.2 Each division shall not appoint more than a maximum of 10 panelists.
- 1.3 The Council will consider this policy in the appointment of the Panel.

## **2. CRITERIA FOR APPOINTMENT**

The following guidelines shall serve as criteria for the appointment of conciliators/arbitrators.

- 2.1 Have a minimum of 3 years experience in arbitration and/or conciliations.
- 2.2 Have knowledge of the Wood and Paper and related sectors.

## **3. REMOVAL FROM PANEL**

- 3.1 The Council may remove a panel for:
  - Serious misconduct
  - Incapacity
  - A material violation of the Bargaining Council's Panelist Code of Conduct
- 3.2 The Panelists or the Bargaining Council may terminate the contract at any time, giving four (4) weeks written notice.

## **4. ALLOCATION OF WORK**

- 4.1 The relevant Secretary of the Bargaining Council shall endeavour to allocate work on a roster system, subject to the availability of panelists.
- 4.2 In the event of the parties mutually agreeing to a panelist, the Secretary shall appoint same.
- 4.3 The Secretary of the Council shall confirm in writing to the panelists, including the parties to the disputes, giving time, date and venue of the arbitration or conciliation.

## **5. FEES**

- 5.1 Arbitration Fee inclusive of the Award;
  - 5.1.1 Normal Fee: A fee of R----- for Senior Arbitrators and R..... for others is payable for full day (8h30-16h30) of arbitration inclusive of Awards fee.
  - 5.1.2 The panelists shall be governed by the fee structure of the Council and shall not enter into any agreements with the parties regarding fees.
  - 5.1.3 Executive Committee will look at adjustments to the fee structure from time to time.

## **6. CANCELLATIONS**

- 6.1 Arbitration may be cancelled or postponed by written notification from the General Secretary.
- 6.2 A cancellation fee of ½ day is payable to the arbitrator, in the event the arbitration is cancelled or postponed within 2 working days prior to the scheduled date.
- 6.3 Where the arbitration is scheduled for more than one day and the arbitrator has confirmed such booking, a cancellation fee may be charged in terms of clause 6.2.

## **7. CANCELLATION FEE**

- 7.1 The parties responsible for the cancellation or postponement are liable for the fee payable to the arbitrator, either individually or jointly.
- 7.2 The liable party shall pay the Bargaining Council the necessary fee within 30 days of the said cancellation or postponement.

## **8. MISCELLANEOUS EXPENSES**

Any other expenses such as traveling fees, hotel expenses etc. shall be payable in terms of the S & T Policy of the Bargaining Council.

## **9. VENUES FOR ARBITRATIONS**

- 9.1 The Bargaining Council shall endeavour to provide venues for the arbitrations and ensure that other logistical arrangements are made.
- 9.2 The disputing parties may agree to provide their own venue in an attempt to minimize traveling and associated costs. In the event such agreement is concluded, the parties shall inform the Secretary within 4 days of the scheduled arbitration date.

- 9.3 The Division may, annually, at the AGM agree on possible arbitration venues.

## **10. CONTRACT**

A contract, as per Annexure A, shall be signed between the panelist and the Council prior to work being allocated to an arbitrator.

## **11. CODE OF CONDUCT FOR CONCILIATORS AND ARBITRATORS**

### **11.1 PURPOSE**

The purpose of this code is to:

- (i) Assist in maintaining the good repute of the conciliation, mediation and arbitration processes.
- (ii) Provide guidance to all conciliators and arbitrators on matters of professional conduct and practice generally.

### **11.2 GENERAL ATTRIBUTES OF CONCILIATORS AND ARBITRATORS.**

In order for conciliation, mediation and arbitration processes to be seen to be fair and just, conciliators and arbitrators shall:

- 11.2.1 Act with honesty, impartially, due diligence and independent of any outside pressure in the discharge of their functions.
- 11.2.2 Conduct themselves in a manner that is fair to all parties and shall not be swayed by fear of criticism or by self interest.
- 11.2.3 Not solicit appointment for themselves. This shall not however preclude conciliators and arbitrators from indicating a willingness to serve in any capacity.
- 11.2.4 Accept appointments only if they believe that they are available to conduct the process promptly and are competent to undertake the assignment.
- 11.2.5 Avoid entering into any financial, business or social relationship, which is likely to affect their impartiality, or which might reasonably create a perception of partiality or bias.
- 11.2.6 Support sound labour relations in the Wood and Paper Sector.

## 12. CONFLICT OF INTEREST AND DISCLOSURE

- 12.1 Conciliators and arbitrators should disclose any interest or relationship that is likely to affect their impartiality or which might create a perception of partiality. The duty to disclose rests on the conciliators and arbitrators.
- 12.2 Conciliators and arbitrators appointed to intervene in any matter should, before accepting disclose this to the Secretary of the Council.
- 12.3 Any direct financial or personal interest in the matter.
- 12.4 Any existing or past financial, business, professional, family or social relationship which is likely to affect impartiality or may lead to a reasonable perception of partiality or bias.
- 12.5 If the circumstances requiring disclosure are unknown to conciliators and arbitrators prior to accepting appointments, disclosure must be made when the conciliators and arbitrators know such circumstances, The disclosure in this regard could in arbitration proceedings, include witnesses who may have relationship with the conciliators and arbitrators.
- 12.6 After appropriate disclosure conciliators and arbitrators may serve if both parties so desire but should withdraw if they believe that a conflict of interest exists irrespective of the view expressed by the parties.
- 12.7 In the event where there is no consensus on whether conciliators and arbitrators should withdraw or not, conciliators and arbitrators should not withdraw if the following circumstances exist:
  - If the terms of reference provide for a procedure to be followed for determining challenges to the conciliators and arbitrators, then those procedures should be followed.
  - If conciliators and arbitrators, after carefully considering the matter, determine that the reason for the challenge is not substantial and that they can nevertheless act impartially and fairly, and that the withdrawal would cause unfair delay or would be contrary to the ends of justice.

### **13. HEARING CONDUCT**

- 13.1 Conciliators and arbitrators should conduct proceedings fairly, diligently and in an even-handed manner.
- 13.2 Conciliators and arbitrators should have no casual contact with any of the parties or their representatives while handling a matter without the presence or consent of the other.
- 13.3 Conciliators and arbitrators should be patient and courteous to the parties and their representatives or witnesses and should encourage similar behavior by all participants in the proceedings.
- 13.4 Arbitrators should respect agreements by the parties for the use of mechanical recording.
- 13.5 In determining whether to conduct an ex parte hearing, an arbitrator must consider the relevant legal, contractual and other pertinent circumstances.
- 13.6 A conciliator or arbitrator must be satisfied before proceeding ex parte that a party refusing or failing to attend the hearing has been given adequate notice of time, place and purpose of the hearing.
- 13.7 In an event of more than one conciliator or arbitrator acting either as a conciliator, mediator or arbitrator, the conciliator or arbitrator should afford each other a full opportunity to participate in the proceedings.
- 13.8 Conciliators and arbitrators should not delegate their duty to intervene in any matter to any other person without prior notice to and the consent of the Secretary of the Council.

### **14. POST HEARING**

- 14.1 Arbitrators should not disclose a prospective award to either party prior to its simultaneous issuance to both parties and the relevant Secretary of the Council.
- 14.2 The award shall be in writing and shall be definite, certain and concise.
- 14.3 No clarification or interpretation of an award is permissible without the consent of both parties.

- 14.4 Under agreements, which permit or require clarification or interpretation of an award, arbitrators shall afford each party an opportunity to be heard.

## **15. CONFIDENTIALITY**

Information disclosed to conciliators in confidence by a party during the course of conciliation, should be kept by conciliators in the strictest confidence and should not be disclosed to the other party or to third parties unless authority is obtained for such disclosure.

## **16. JURISDICTION**

- 16.1 Conciliators and arbitrators must observe faithfully both the limitation and inclusions of the jurisdiction conferred by an agreement or by statute under which they serve.
- 16.2 A direct settlement by the parties of some or all issues in a case, at any stage of the proceedings, must be accepted by conciliators and arbitrators as relieving him or her of further jurisdiction in respect of such issues.

## **17. RELIANCE ON OTHER ARBITRATORS' AWARDS AND INDEPENDENT RESEARCH**

Conciliators and arbitrators issuing advisory or binding awards may have regard to other arbitrator's awards, decided cases or independent research but must assume full and unimpaired responsibility in each matter for the decision reached.

## **18. AVOIDANCE OF DELAYS**

- 18.1 Conciliators and arbitrators have the duty to plan their work schedules in a manner that ensures that commitments to the Council are fulfilled timeously.
- 18.2 Conciliators and arbitrators should cooperate with the parties and the Council to avoid delays.
- 18.3 On completion of a hearing, arbitrators shall submit an award within 14 days.

**19. FEES AND EXPENSES**

- 19.1 Conciliators and arbitrators should be governed by the fee structure of the Council and should not enter into any arrangement with the parties regarding fees.
- 19.2 Conciliators and arbitrators must maintain adequate records to support charges for services and expenses and must account timeously to the Council.

**20. COMPETENCY**

Conciliators and arbitrators should decline appointment, withdraw or request technical assistance when they decide that a matter is beyond their competency.