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CASUAL WORKERS ADVICE OFFICE

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Prejudicial rules of representation at the CCMA challenged in court by the Casual Workers Advice Office, the Black Sash and others.

The Casual Workers Advice Office (CWAO), the Black Sash, the Maokeng Advice and Resource Centre and Ntombi Dlada are taking court action against the CCMA to remove a rule that denies precarious workers their rights. Rule 25 of the CCMA states that only an office bearer, official or member of a registered trade union or a legal representative may offer workers representation at the CCMA. But according to StatsSA **70% of workers do not belong to a trade union**. So if you don't belong to a trade union and you can't afford a lawyer, you're on your own.

Last year parliament passed amendments to the Labour Relations Act (LRA) that seeks to protect vulnerable precarious workers. Under section 198 of the LRA labour broker and fixed term contract workers must be permanently employed after 3 months and must enjoy similar wages and benefits as other permanent workers. Many workers have taken their employers to the CCMA in order to enforce these new rights. But as most of these workers do not belong to trade unions they turn to advice offices like CWAO and the hundreds of other community advice offices across the country. Many workers rely on community advice offices for information and advice about enforcing their rights, but can't be represented by them because they are not lawyers or unions. What is perhaps even more bizarre is that workers are even prohibited from representing each other.

The case of Ntombi Dlada, an applicant in the case and a labour broker worker, is typical. She has worked for a labour broker for 11 years and earns **R4,900 per month compared to the directly-employed machine operators, who earn over R11,000**. In March Ntombi and 70 other workers attempted to represent themselves at the CCMA. But without proper knowledge of the law this was very difficult, especially when employers can afford to employ multiple attorneys. The commissioner had the unenviable task of attempting to conciliate a dispute with 70 individuals, each only permitted by Rule 25 to represent herself. Five hours later he admitted defeat. And these 70 workers were only the night shift. More than 200 day-shift workers, who were part of the same dispute, feared they would be penalised if they took time off work to attend.

The CCMA is supposed to protect and uphold the rights of workers but rule 25 prejudices the rights to a fair hearing of the vast number of workers who do not belong to a trade union and cannot afford a lawyer. The rule prevents the CCMA from fulfilling its function of resolving disputes expeditiously and inexpensively. Processes are slowed down because of the impracticality of dealing with large numbers of workers simultaneously and separately.

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And the only way to obtain group representation is to hire lawyers, which workers simply cannot afford. Furthermore, the rule also comprises the rights of workers to choose to organise outside of registered trade unions, a trend that is becoming more common in South Africa and across the world.

In order to properly access their rights, workers need representation in proceedings before the CCMA. They should be allowed to be represented by: one of the hundreds of community advice offices around the country; or one or more fellow-employees. Both forms of representation are blocked by the CCMA rule and unconstitutionally prejudice the rights of workers. That rule must be struck down.

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