

**WHAT CONSTITUTES A BENEFIT BY VIRTUE OF SECTION 186(2) OF THE  
LABOUR RELATIONS ACT 66 OF 1995?**

***APOLLO TYRES SOUTH AFRICA (PTY) LTD V CCMA 2013 5 BLLR 434 (LAC)***

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**SUMMARY**

The uncertainty surrounding the concept benefit as provided for in section 186(2) of the *Labour Relations Act* 66 of 1995 was created not by the courts but rather by the legislature. The concept is not defined and clearly has a wide ambit. In previous decisions the courts upheld a restrictive interpretation of benefits to maintain the divide between disputes of interest and disputes of rights and to ensure that issues that should be the subject of negotiation could not become issues that can be decided by an arbitrator. Previously the courts insisted that a benefit was something arising out of a contract or law. In the *Apollo* case the court had to determine what constitutes a benefit and if a benefit is limited to an entitlement which arises *ex contractu* or *ex lege*. The court found that the early retirement scheme was a benefit, although the employee at that stage did not have a contractual entitlement to the benefit and that the benefit was subject to the employer's discretion. What becomes clear from this case is that the unfair labour practice jurisdiction cannot be used to assert an entitlement to new benefits, new forms of remuneration or new policies. The Labour Appeal Court criticizes the distinction between salaries and remuneration drawn by our courts and describes it as artificial and unsustainable.

Under the unfair labour practice regime the conduct of the employer may be scrutinized by the CCMA in at least two instances, namely when an employer fails to comply with a contractual obligation, an entitlement or right that an employee may have in terms of a statute, and secondly when an employer exercises a discretion under the contractual terms of a scheme conferring a benefit, including situations where the employer enjoys a discretion in terms of benefits provided in terms of a

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policy or practice – rights created judicially. This decision places the emphasis on the employer's actions and the unfairness of such acts or omissions.

**KEYWORDS:** benefits; contractual obligation; unfair labour practices; *ex contractu*; *ex lege*; remuneration; policy; discretion; unfairness; dispute of interest; dispute of right.