

Top 5 CCMA users, can they do better?

Which are the 'top five' unions referring cases to the Commission for Conciliation, Mediation and Arbitration (CCMA)? What are the main issues they refer and how could they use the CCMA more effectively? CCMA commissioner **Glen Cormack** examines some statistics and gives useful pointers.

The 'top five' unions referring cases to the CCMA are all affiliates of the Congress of South African Trade Unions (Cosatu). They jointly accounted for 4.7% of cases referred to the CCMA in the first five months of this year. The analysis of cases referred by these unions and their outcomes indicates that unions could make more effective use of the CCMA's resources, which would result in a speedier and less costly resolution of disputes.

The data for this analysis came from the CCMA's Case Management System (CMS). Then a comparison and analysis between the unions' approaches and outcomes was conducted. Statistics drawn from the CMS included cases still in process.

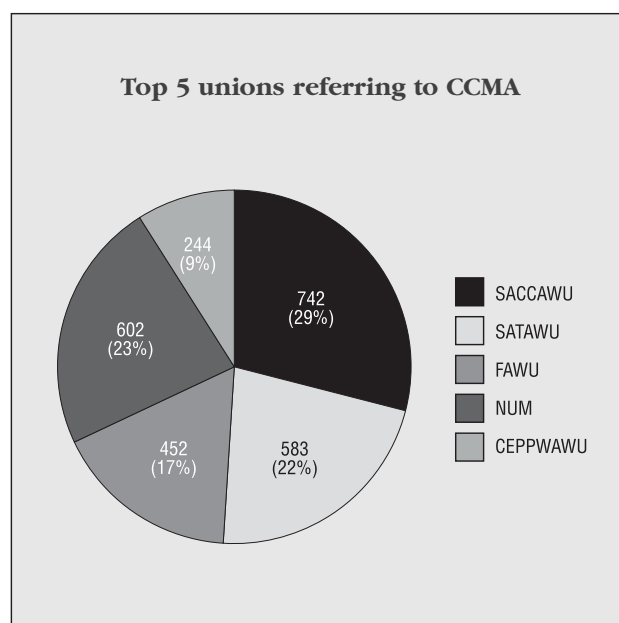
Dispute outcomes are determined by both the employer and the employee's approach to dispute prevention and/or resolution. Unfortunately, employer disputes were too many to be covered by the scope of this analysis. This means that comments on outcomes and proposals for more effective use of the CCMA's resources are general in nature.

DISPUTE REFERRALS

The CCMA received a total of 55 125 dispute referrals between January and May of this year. Of these, 2 623 were referred by the 'top five' highest referring unions. The pie chart shows levels of referral by these unions.

The 'top five' accounted for 4.7% of cases referred to the CCMA. Referrals by trade unions on behalf of their members ranged between 23% and 25% of the CCMA's total caseload in the first five months of 2008. As there are about 290 registered trade unions active in South Africa, this means that the balance of 285 unions collectively refer 20% of the CCMA's caseload.

It should be noted though that some unions are mainly active in workplaces and/or sectors covered by Bargaining Councils so they will refer disputes to the Council rather than the CCMA. The vast majority of disputes referred to the CCMA, about 70%, are brought by individual employees without the assistance of trade union representation and support.

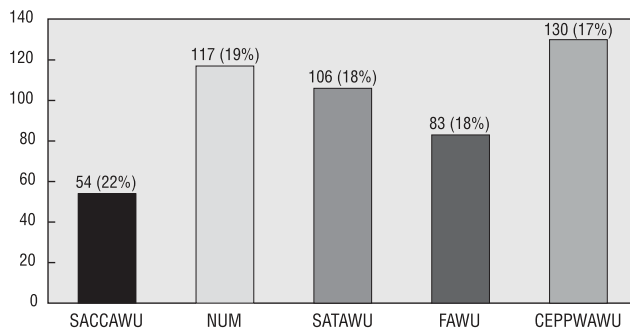


REFERRALS BY JURISDICTION

The bar chart depicts the percentage of cases referred by the five trade unions which were out of jurisdiction. These are disputes which are incorrectly referred to the CCMA including matters that do not meet the definition of ‘unfair’ in the Labour Relations Act, as well as incorrectly completed referral forms.

The bar chart opposite shows that the five unions referred a total of 490 disputes over five months which were out of jurisdiction. Nationally, 25% of disputes referred to the CCMA are out of jurisdiction, but it is important to bear in mind that about 70% of all referrals are submitted by lay people with limited knowledge of the law.

Out of jurisdiction referrals

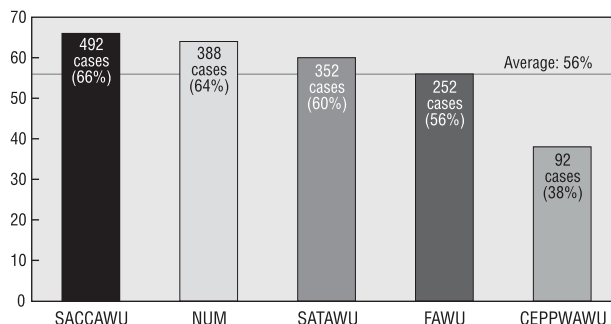


DISPUTES BY ISSUE

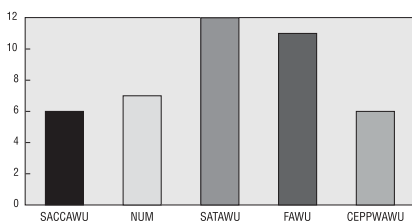
In the period under review, 81% of disputes referred were unfair dismissals. Below are the trends for the five unions.

The range displayed opposite, probably indicates different approaches to resolving workplace disputes by the different trade unions. Referrals for unfair labour practices, organisational rights and mutual interest disputes would complete the picture for referrals. Other issues under dispute are minimal in comparison to unfair dismissals.

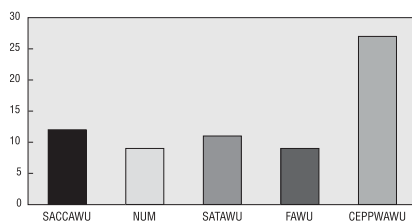
Unfair dismissal referrals (as % of referrals)



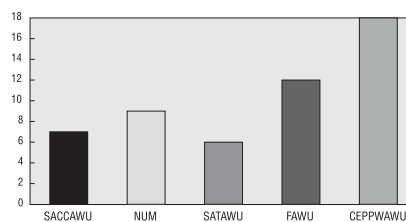
Unfair labour practice



Organisational rights



Mutual interest



Clearly, Ceppwawu finds it useful to use the services of the CCMA for collective disputes to a greater degree than other unions. It could be that Ceppwawu has more workplaces than other unions where it is striving for organisational rights, but the question remains as to why it has to declare disputes to gain organisational rights.

OUTCOMES OF DISPUTES

There are various processes and outcomes when disputes are referred to the CCMA which impact on the speedy resolution, low cost and deployment of CCMA resources. Factors that indicate an inefficient use of resources include the following:

- **Cases out of jurisdiction** which use screening resources.
- **Cases withdrawn** which use screening, capturing, allocating and scheduling resources.
- **Cases dismissed due to non-attendance by the applicant** which incur screening, capturing, allocating, scheduling, commissioner, interpreter and venue costs, as well as travel and accommodation costs in one of the 60 to 100 venues other than the provincial CCMA offices.

An analysis of these factors for the five trade unions shows the following concerns:

Union	Out of Jurisdiction	Withdrawn	Dismissed	Total	% of total Referrals
SACCAWU	130	32	66	228	26%
NUM	117	39	41	197	31%
SATAWU	106	30	48	184	29%
FAWU	83	32	24	139	31%
CEPPWAWU	54	12	12	78	27%
TOTAL	490	145	191	826	31%

% of Cases

In simple terms, the table above implies that 31% of all cases referred by the five unions, despite being processed by the CCMA at taxpayers' expense, never proceed to a hearing. Apart from direct and indirect costs incurred by the CCMA, there are also 'wasted opportunity' costs such as other cases which could have been processed and their resolution speeded up.

Referred	18.7%	5.5%
7.3%	31.4%	

A further concern surfaces when we undertake an analysis of settlement rates and awards in favour of applicant parties. When compared to a national settlement rate of 67% for the 2007/08 we see the following:

Union	Settlement rates %	Awards in favour of union	Award in favour of employer
SACCAWU	40%	60%	40%
NUM	35%	56%	44%
SATAWU	29%	59%	41%
FAWU	40%	71%	29%
CEPPWAWU	44%	60%	40%

It should be noted that 60% of all arbitrations finalised by May 2008 were in favour of employees. Again, this should be seen in the context of 70% of referring employees (applicants) being unrepresented. Only Fawu enjoyed a favourable 'award in favour of the union' rate (71%) and all five unions came in under the national settlement rate of 67%.

PROPOSALS FOR IMPROVEMENT

Anecdotal evidence shows that unions with intensely adversarial relations with employers, often have difficulty in resolving disputes at the workplace, or resolving them by agreement in a settlement once it is referred to the

CCMA. Union officials are often compelled through their union approach to keep on fighting disputes.

Further, there is an over-reliance by union officials on procedural defects rather than on using guidelines endorsed in the *Code of Good Practice: Dismissals* even when the defect has little or no effect on the issue that gave rise to the dispute. This focus on procedural defects adds little or no value to these unions' approach to dispute resolution.

Contributing to the problem are some CCMA commissioners' approaches to resolving disputes. The Governing Body of the CCMA has set a 70% settlement expectation rate for commissioners in their three year strategic plan (2007/08 - 2009/10).

Unions in turn should engage the CCMA on a bilateral basis (where necessary, case by case) to establish:

- Why the referrals may have been out of jurisdiction, and how can the union take corrective action.
- Why did the union refer matters and then withdraw.
- Why union officials and their members did not attend CCMA hearings.
- Why awards were found in favour of the employer and what lessons can the union learn from this.
- Was the CCMA's administration lacking in any of these matters?

Unions can benefit from critically evaluating approaches to dispute resolution. In addition, capacity building of union leadership in dispute resolution for both officials and shop stewards, linked to monitoring and evaluation programmes, should result in more speedy, low-cost resolution of disputes and more effective use of the CCMA.

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Glen Cormack is a CCMA Senior Commissioner: Dispute Management in Mpumalanga and Pretoria regions. The improvement proposals for the unions and the CCMA are based on insights gleaned from ten years of experience as a dispute resolution and prevention commissioner.