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Demographic Variables and Outcomes of Labour Disputes

Fathima Abdul

A dissertation submitted to the faculty of Arts, University of the Witwatersrand, Johannesburg in partial fulfillment of the requirements for the Bachelors of Arts Masters Degree in Industrial Psychology 2006.

Declaration

I hereby declare that this thesis is my own unaided work and has not been submitted to any other University for the purpose of any other degree.

Fathima Abdul

Submission date: 25 September 2008

Dedication

I would like to dedicate this thesis to two most important people in my life- my dad Yusuf and my mum Rookaya. As I have voyaged down life's part and withstood all the obstacles that were thrown at me, I realise how blessed I have been for your support and assistance as I ventured down this path.

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CHAPTER 1

Introduction

Over the past few years, South Africa has placed a great deal of emphasis on the usage of the CCMA (Commission for Conciliation, Mediation, and Arbitration) and the labour courts, in order to solve disputes occurring in the workforce. When solving disputes there is a legally specified process to be followed. According to South African legislation, an independent third party (i.e. CCMA) can only be called upon if the employer and the employee fail to solve a dispute amongst themselves (i.e. they find themselves in a deadlock). The CCMA's function is to resolve disputes through conciliation, mediation or arbitration. If either party feels that the decision rendered by the commissioner during this process is unfair, then the disgruntled party can take it up on review. It should be noted that the basis for reviewing an outcome is related not to the merits of the matter but to the commissioners' conduct. Thus, many biases which may include demographic variables such as age, race or gender that are unrelated to the case, may directly impact on the outcome of the case.

In-line with the study conducted by Giacalone, Pollard & Brannen (1989) on "Role of Forensic Factors and Grievant Impression Management in Labor Arbitration Decision", bias were found to be an endemic part of the commissioners' and grievants' personalities. In addition, Giacalone, Reiner, & Goodwin (1992) conducted a study on "Ethical Concerns in Grievance Arbitration" which further asserts to this notion, of the influence of the presiding officers' personality in rendering a decision. Here, a commissioner who exhibits an authoritarian personality may have a tendency to render an unfavourable decision toward those who do not show respect and compliance in the presence of the commissioner. One with a more liberal personality may examine many angles in the dispute thus; the resolutions

may be based on rights of the individual within their stipulated organisational contracts (Giacalone, Reiner, & Goodwin, 1992). In addition, the commissioners' locus of control and the grievants' past history may also impact on the commissioners' decision making process (Rotter, 1966; Rumsey, 1976). Further bias may arise from the commissioners' personal belief systems or their social programming and this will either facilitate or inhibit the commissioners' acceptance of available facts and evidence.

More disturbing bias may result from the grievants' demographic compilation which include for example race, gender or age, to mention a few (Kalven & Zeisel, 1966; Izzett & Fishman, 1976; Kerr & Bray, 1982), from the appearance of the grievant (Sigall & Landy, 1973; Sigall & Ostrove, 1975; Kerr, 1978), or the ability of the grievant to establish a favourable or unfavourable impression (Giacalone & Pollard, 1989; Giacalone & Rosenfeld, 1989). The South African Department of Labour rules established that judges "must be free from bias and interest in the subject matter and may not be related by affinity or consanguinity to either party" (Labour Law, 2005; Ziskind, 1943, as quoted in Hill and Sinicropi, 1981, p. 6). Yet there seems to be no rules or guidelines that are available in relation to the impact of demographic variables in the justice system. In the legal fraternity in America, for example, jurors have been found to be more lenient toward same race groups. In addition, the judges also rated the grievants' case as weaker when the defendants were members of their own racial group (Sommers & Ellsworth, 2000). This phenomenon can be related to the judges' social identity, whereby the judge may favour the grievant that belongs to a particular in-group as opposed to the out-group, thus resulting in the above-mentioned judges' leniency.

Against this background, the present study aims to investigate whether demographic variables are predictors of review outcomes. In addition to looking at broader patterns, the study will

also focus more specifically on whether the demographic variables of the presiding officers predict the outcomes of reviews of CCMA cases.

The thesis for the present study comprises chapters 2, 3, 4, 5, 6. The second chapter provides the conceptual and theoretical foundation for the present study. It focuses on the current arguments made by researchers in this field of investigation, and outlines the rationale for the present study. Finally, the research questions are presented which have been elicited from the emerging arguments made in the literature review. Chapter Three provides an overview of the methodological procedures that have been utilised in order to effectively answer the present research questions. It focuses more specifically on the research design, the composition of the sample, the procedures used, as well as the demographic information of the participants that form the core of the present research. Finally, the statistical analyses to be conducted on the data gathered will be discussed.

Chapter Four presents the results of the statistical analyses conducted. Once the initial analyses are completed, that is the descriptive statistics and the frequency analyses, the research questions are delved into. Firstly, a Chi-Squared Test of Association is conducted in order to investigate whether demographic variables of parties involved in a case are predictors of review outcomes. Next, the Chi-Squared Test of Association analysis is further conducted in order to investigate whether the demographic variables of the presiding officers are predictors of case outcomes. Finally, a level two and level three Chi-Squared Test of Association analysis is undertaken to explore other possibilities of associations between these variables. If significant associations are found, a log linear modelling analysis could be utilised.

Chapter Five presents a discussion of the findings, both in terms of the theoretical framework explored and the research questions elicited in chapter two. This is followed by the limitations of the present study and implications of the study for future research. Finally, chapter six provides a conclusion for the present study, which is followed by a reference list employed for this thesis.

CHAPTER 2

Literature Review

For two decades, South Africa has relied heavily on collective bargaining procedures for the adjudication of dismissals and other workplace issues. In South Africa, early efforts for the introduction of just and fair agreements occurred in the early 1980s, whereby black workers were allowed to join unions (Zack, 2000). Although these measures were in place, the disputes between workers and their employers often focused on unfair dismissals and working conditions, which frequently led to job actions such as strike action. However, in 1984, following a large influx of dissatisfied parties and claims of unfairness; the Independent Mediation Service of South Africa (IMSSA) was established. The IMSSA was an institution where disputing parties could turn for the peaceful and neutral resolution of dismissals and other disputes through mediation and arbitration (Zack, 2000). Following the South African transformation process into democracy in 1994, the new government created the CCMA, which is the Commission for Conciliation, Mediation, and Arbitration (Zack, 2000) and the Labour Courts. In conjunction with the creation of the CCMA, the South African government passed a new law (i.e. Labour Relations Act No. 65 of 1995) that protects all individuals in the workplace from being treated unfairly and unjustly.

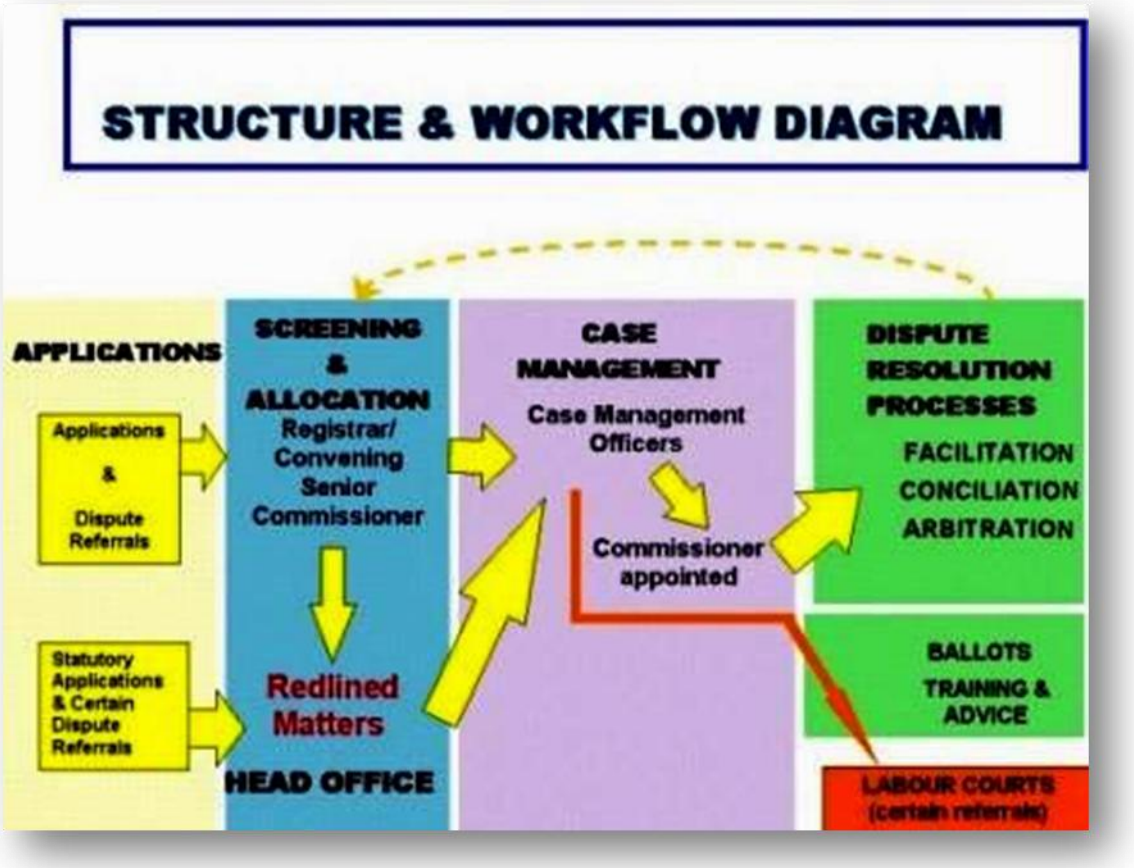
According to the Labour Relations Act No. 65 of 1995, the new government of South Africa undertook to resolve issues regarding the restriction of employees in relation to equity and fairness through the creation of the CCMA (Zack, 2000). The CCMA is a "publicly funded, independent statutory body and is governed by a tripartite governing body (GB) representing its social partners (organised business, organised labour and government). It is mandated to provide labour dispute resolution and dispute management services to the South African public" (CCMA, 2006, p.1). The CCMA's function is to "resolve disputes through

conciliation, mediation or arbitration; help in forming workplace forums; publish information on its activities and guidelines for dispute resolutions; advise on getting legal advice and the meeting procedure of its committee but to mention a few" (CCMA, 2006, p.1). Despite the enormous social, political, and economic pressures surrounding the end of apartheid, the CCMA has made South Africa a front runner in providing an impartial environment whereby employees are protected against unfair and unjust dismissals (Zack, 2000).

Based on the CCMA processes and as mentioned in Chapter one, if parties involved in a dispute are dissatisfied with the resolution/outcome rendered by the CCMA commissioners, then they can take it onto review (See Figure 1 for the Conflict Resolution Process, p.7). In terms of Section 145 of the Labour Relations Act, "a party may apply to the Labour Court on the basis of an alleged defect with a commissioners' ruling or awards. The party who alleges such a defect must apply to the Labour Court to set aside the award within six weeks of the award being served" (CCMA, 2006, p.1). It is important to note that the review is not an appeal, and therefore it is not related to the merits of the matter but to the commissioners' conduct.

Taking into account all that has been mentioned thus far, there are general factors that can play an influential part in the decision making process of presiding officers. Unfortunately, this may result in a certain decision being rendered that may not be based on the actual facts of the case. Although these factors do not form the basis of the present study, there is a need to understand the different context in which commissioners, as compared to judges, find themselves in, as this may have an influence on their decision making process. In the next section, a more in-depth explanation of these factors is provided.

Figure 1. Process of the Conflict Resolution Process (CCMA, 2006)



Factors that Influence Presiding Officers' Decision Making

There are a variety of variables that form part and parcel of an individuals' demography that may be influential in the decision making process of the presiding officers, thus the outcome of both CCMA cases and Labour Court Reviews may be biased. These variables may include the age, race, gender or educational levels of the presiding officers. However, there are other more general factors that can result in a decision being awarded towards one party as opposed to another. These factors may include; the level of expertise, experience and the resources available to the commissioners in comparison to the labour court judges. In addition, the CCMA is structurally and procedurally different and dependent on other parties as compared to the labour courts. Moreover, the presiding officers' personal value system may also bias the decision rendered. All these factors may result in the inadequacy of the presiding officers to view all the facts presented by all parties in the dispute. Discussed below are these factors in more details.

As mentioned above, there are many factors that can be attributed to a particular decision being rendered. As mentioned in Chapter One, it should be noted that a case review is not an appeal, and therefore is related not to the merits of the matter but to the commissioners' conduct. One of these factors that can contribute to the given outcome of a particular case includes the legal framework that the commissioner and the labour court judge are placed into. For example, the over reliance placed on the usage of the CCMA has created a large degree of case and work overload which results in the CCMA commissioners being placed under tremendous amounts of pressure, which can result in less time being allocated on assessing the facts of each case (Twyman 2001). In addition commissioners may find that they are often forced to "cut corners" in order to decrease the pressure that has been created by their ever-increasing workloads. Consequently, the load of these cases may adversely

impact on the quality of the outcome of CCMA cases, which may result in the commissioner rendering decisions that are unfair, as not all facts and evidence are clearly examined (Twyman, 2001).

The scarcity of resources has also caused commissioners to receive basic training and experience, which can play an impacting role as well. From the inception of the CCMA, contributions made by commissioners who had little legal qualifications and experience were prohibited from participating in the CCMA process but due to the increasing workload even the least experienced and qualified commissioners are allowed to adjudicate disputes. This can result in the increasing risk of unfairness and inequality within these resolutions (Twyman, 2001). As a result, it is likely that not all of the facts of cases are fully explored or that the ideologies encompassed in the South African Law are not fully employed. Thus, "due to the statuary time limits placed on the CCMA there is the possibility of the full discovery of facts in disputes being sacrificed" (Twyman, 2001, p. 12).

In contrast to the CCMA commissioners, the labour court judges have many different resources available to them, which can result in the outcome being biased , as presiding officers may render different decisions due to this difference that prevail (Labour Law, 2005). Thus, the outcome of the CCMA reflects that a commissioner differs from a labour court judge in the degree of scrutiny given to disputes, therefore allowing for increasing bias in the outcome of labour court reviews.

Additionally, the CCMA is seen as being both structurally and procedurally different from the labour courts, which may result in a greater tendency toward unfairness and injustice (Twyman, 2001). "The interpretation and application of the Act in awards lack the

significance of the judicial decisions of the labour courts" (Twyman, 2001, p. 12). The structure of the CCMA raises fairness issues not found in the labour court due to a large influx of factors that are many times not experienced in the labour courts. As alluded to previously, judges in the labour court have different resources and thus may not "meet on facing judgements as equals under the law", further impacting on the issue of fairness and equity (Twyman, 2001, p. 13).

Based on the above, the dispute resolution process, in some way may be influenced by other parties. This influence is exerted through the power and standing that many parties bring to the disputes. This is illustrated by Grenig & Estes (1989) in their study on "Labor Arbitration Advocacy: Effective Tactics and Techniques", which focuses on the adjudication of decisions based on where one finds themselves within the organisation's hierarchy in terms of power and authority. As per Grenig & Estes (1989, p. 72) "how equal the disputants be when one is a powerful corporation whose connections and clout extend well beyond the walls and the other is an employee of that corporation, even when a union represents the employee". Furthermore, the corporate hierarchy may interact with a commissioners' or judges' personal bias. Based on the hierarchal structures that many organisations still find themselves in, the presiding officer may presume that a grievant was more likely to distort the facts as compared to the supervisor (Grenig & Estes, 1989). Added to the above-mentioned factors, the decision rendered could also be depended on the demographic profile of the disputants in relation to where they find themselves in the power struggle within an organisation.

Moreover, it may be assumed that judges and commissioners alike inevitably bring their own personal value systems to the resolution process thus their outcomes being rendered may be biased. Nevertheless, it is believed that the dispute resolution process is designed to resolve

the immediate dispute between parties in a fair and just manner. Each commissioner may allow his/or her personal values to play an influential role in his/or her decision making process, as it may be assumed that the commissioner is not obliged to consider the larger "social impact of their decision", however this may result in the values of the South African Law not being fully upheld (Twyman, 2001, p. 12). If this were true, it could be assumed then, that outcomes are reached on the basis of the demographic profile of the commissioners and the judges and not just the facts presented in relation to the case. If so, how then can one say that the decision rendered is fair and just? Thus, the presiding officers may judge a case on the basis of predetermined values and behaviours, which inevitably defeats the reasons as to the establishment of the CCMA and the Labour Relations Act.

Thus, apart from focusing on the more general factors that may influence the decision making process of the presiding officers there is a need to explore the psychological context in which the present study is located. Thus, Social Identity Theory and Attribution Theory will be assessed in relation to demographic variables.

Social Identity Theory and Demographic Variables

As stated in Chapter one, the demography of individuals may play a pivotal role in the outcome of cases. Demography or demographic variables can be defined as "varying characteristics that is a vital or social statistic of an individual, sample group, or population", for example, age, gender, race or education (Neale, 1996. p.301). Demographic variables form a component of ones' social identity. Here, the presiding officers may be inclined consciously or unconsciously to identify the minimal factors, which would lead to a favourable outcome being rendered to the parties that belong to his/or her social group, in comparison to the other groups. Based on the above, the present study makes use of Social Identity in order to assess the extent to which demographic variables, in relation to ones' Social Identity, may impact on the decisions making process of presiding officers.

According to Social Identity Theory (Tajfel & Turner, 1986, p.7) "individuals seek to maintain a positive social identity through a process of self-categorisation". By doing this, individuals place people into distinct groups by using labels such as "us" and "them" (Tajfel & Turner, 1986). During this process, individuals seek to ensure that their social identity is one that is positive and beneficial to them. For instance, presiding officers may use demographic variables such as age, race and gender in order to group themselves and similar others (i.e. employers or employees) into in-groups ("us) and dissimilar others in out-groups ("them") (i.e. employers and employees), thus rendering a decision in favour of the party that is similar to his/or her social identity (Tajfel & Turner, 1986).

In accordance with Social Identity Theory, "identity" represents "the location of a person in social space" (Gecas, Thomas, & Weigert, 1973, p. 253). Identity consists of two components, which includes the personal component and the social component (Ashforth &

Mael, 1989). The personal component comprises of ones' personality and intellectual characteristics. The social component encompasses demographic variables, which includes factors such as age, race, gender and educational levels. Here, one may attach the label of "us" and "them" and add value to these social categories (Pettigrew, 1986), such that "an individual's knowledge of his or her memberships in social groups together with the emotional significance of that knowledge" constitutes social identity (Turner & Giles, 1981, p.8). Depending on how positively an individual views his or her group in comparison to other groups, will determine his or her satisfaction with their Social Identity in a particular situation. For example, as mentioned above, a commissioner may render a favourable outcome to the defendant as they belong to the commissioners' social identity group. This stems from the notion that individuals will often favour their in-groups and discriminate against the out-groups (Tajfel & Turner, 1986).

A key premise of Social Identity Theory, which forms an essential part of human functioning, is our need to have a positive sense of self (Hogg & Abrams, 1990). One of the ways in which people try to sustain this positive self-image, is by drawing on all the favourable factors of being part of the in-group and if possible, preferring to interact with individuals that form part of their in-group as opposed to other groups. Here, there is a seamless connection between ones' Social Identity and well being, which may result in in-group cohesion, cooperation and support (Hogg & Abrams, 1990).

Although much of the research surrounding Social Identity (for e.g. Hogg & Abrams, 1990; Williams and Giles 1978; Tajfel, 1969) has focused on the maintenance of positive feelings attributed towards group members. Some research have shown that when group members find that there are noticeable divergence between groups in relation to the standings of the group, then members of the lower status group, find it extremely difficult to find the in-group

individuality that once made the group alluring thus, making the group less attractive (Hinkle & Brown, 1990). Here, members of low status groups may seek out ways or strategies to increase their own sense of self. In doing so, they create an image of themselves that is seen as exceptional and a valuable asset in comparison to other group members (Williams and Giles, 1978). As a result, in-group solidarity, cooperation, and support are threatened (Williams & Giles, 1978). Here, the commissioner or judge who sees themselves as members of a majority group may be motivated to favour groups that may belong to from their social status. However, if the presiding officers find that they belong to a low status group, they may find other "self-enhancing strategies" to compensate for this deficiency (Williams& Giles, 1978). In addition, they may go out of their way to render favourable decisions to the in-group members, thus presenting an image that they are more valuable in comparison to out-group members.

Another aspect of social identity is group identification. Depending on whether there is a strong or weak sense of group identification, it will inevitably impact on the interactions and relationships among group members. According to Social Identity Theory, identification with a group is "a perceptual cognitive construct ... not necessarily associated with any specific behaviours or affective states" but, rather, based on a sense of oneself as "psychologically intertwined with the fate of a group" (Ashforth & Mael, 1989, p. 21). Members' identification within their groups will remain strong if they believe, to an extent, that their capacity to succeed is dependent on the success of group members. Thus, members will celebrate their success together and pull together in times of failure (Ashforth & Mael, 1989). In addition, the group members will form an alliance to stand up against any external forces, which may impact on the group, however, this dependent on whether their membership is one, which promotes and enhances the group member's well-being (Tajfel, 1969).

Demographic characteristics such as race, age and gender form a key component of Social Identity. This is so, as it helps to shape the meaning that individuals attach to their group identity in both in their personal as well as organisational life (Wharton, 1992). This, in turn, structures the way in which people relate to their group members. While there may be a link between organisational demographics and the nature and quality of work, research conducted in this area in relation to the development of relationships, has focused on the interactions between different groups, for example men and women (e.g. Gutek & Morasch, 1982; Fairhurst & Snavely, 1983) and blacks and whites (Alderfer & Thomas, 1988). Thus, a commissioner or judge may unconsciously draw on their social identity based on the meaning attached to it, in order to favour one particular group as compared to another group, in relation to their social identity, rather than solely using the factual information that is presented.

Social Identity and Self-Categorisation Theories have been used by Finn and Chattopadhyay (2000) to examine whether "demographic dissimilarity influences group member self-esteem, interpersonal dynamics and behaviours and employee emotions and behaviours". Chattopadhyay (1999) has argued that further enhancement of Social Identity can be obtained in "demographically homogenous work groups" (Chattopadhyay, 1999, p. 273), since individuals can have their membership in both the same work and demographical category. Further, "categorising along a given dimension creates in-groups and out-groups of differential status, and those conferred a higher status may be more invested in such categorisation than those who derive lower status from it" (Tajfel & Turner 1986, citied in Chattopadhyay, 1999, p.274). A the labour court judge who has a higher status as compared to the CCMA commissioner in the legal fraternity may inevitable taint decision-making based on their higher status and may unconsciously influence the outcome of particular cases. This

may be exacerbated by other demographic variables, for example, race or gender, which have status, attached to them.

However, a study conducted by Norton, Sommers, Vandello, and Darley (2006), on "The Influence of Illegitimate Information, such as Race, on Decision-Making", emphasised the difficulty of ascertaining the influence of discrimination in decision making. Here, two studies were conducted. Study 1 showed that Black students were being favoured over White students but non-racial justifications were utilised. In Study 2, these justifications were not simply "strategic and post hoc but also occurred as a natural part of the process of evaluating the candidate" (Norton, Sommers, Vandello, & Darley, 2006, p. 36). This can be attributed to the fact that people or in this case presiding officers may be unaware that social category information, such as race, has influenced their decision-making process (Norton, Sommers, Vandello, & Darley, 2006). As a result, presiding officers will make it less likely that they would leave clear evidence that demographic variables, in actual fact, influenced their decision. Thus, when participants deny that demography played a role in their decision, they are suspect on two levels. Firstly, "they may be well aware that take for example, race played a role yet successfully mask their use of this information. Secondly, they may genuinely but inaccurately believe that race played no role in their decision" (Norton, Sommers, Vandello, & Darley, 2006, p.47).

Moreover, presiding officers may tend to use alternative justifications for their decision, when in actual fact; their decision was influenced by "social category information". Furthermore, Norton, Sommers, Vandello, and Darley (2006, p.47) assert "those most likely to make questionable decisions such as favouring whites over blacks are also likely to mask the influence of racial information by inflating the value of non-racial criteria that support

their decisions". However, this can be attributed to the fact that presiding officers may be utilising their social identity unconsciously, thus alternative justifications are used.

Furthermore, within intergroup and international relation research, discernment centering on conflict resolution remains biased. Common to all human behaviour, is that blame is typically attributed negatively if it is in response to the behaviour or positive actions of the out-group, whereas actions of the in-group are enlarged (Astor & Cantril, 1954). What's more, is that parties in conflict resolution tend to show a tendency toward straightforward information processing (Suedfeld & Tetlock, 1977), which makes it likely that outgroup stereotypes and prejudice, will influence judgments of presiding officers(Kruglanski & Freund, 1983; Macrae, Bodenhausen, Milne &, Jetten, 1994). Likewise, presiding officers may sometimes fail to take into account new information because they are overconfident in their initial assessments and decisions rendered (Lebow, 1981).

As stated in Sommers and Ellsworth (2000) study which focused on the "Race in the Courtroom: Perceptions of Guilt and Dispositional Attributions", people tend to attribute the positive behaviour of in-group members to innate characteristics and the positive behaviour of outgroup members to situational forces while this pattern is reversed for negative behaviour (Pettigrew, 1986). In some cases, "judges may tend to attribute the behaviour of a same-race, ingroup defendant to situational pressures and the same behaviour of a different-race, outgroup defendant to an inherent disposition" (Sommers & Ellsworth, 2000, p.1367). For example, a White judge might explain the behaviour of a White employee due to the financial constraints placed on the individual. If the grievant was Black, this same behaviour might be viewed by the White judge as proof that the employee is an aggressive and immoral

person (Sommers & Ellsworth, 2000). However, this study showed that Whites were not influenced by the defendants' race, even when it showed to be as important. However, when racial issues were not highlighted for the next trail, it showed that White judges ruled that the Black defendants were more aggressive and guilty. Black judges did show signs of in-group bias in the initial trail, however when racial issues were not highlighted Black judges showed the same leniency, suggesting that "racial issues are generally salient in the minds of Black judges in interracial cases with Black defendants" (Sommers & Ellsworth, 2000, p.1367).

As social psychologists have longed observed and in line with human functioning , people have become so fixed on their social identity and their programmed mindsets that they are afraid to step out of their comfort zones. By doing this, people tend to continually stick to their beliefs and attitudes, even when faced conflicting evidence (Festinger, Riecken & Schachter, 1956). As a result, when people are faced with evaluating ambiguous information, they tend to ensure that their pre-existing views are maintained or are in line with their social identity or social programming, thus ignoring other factors that are presented before them, both consciously or unconsciously (Lord, Ross, & Lepper, 1979).

In summary and as mentioned previously, demographic variables form an important component of ones' social identity. Here, the commissioner may render a decision, in favour of the person who has similar traits, in comparison to the commissioner. One may also find that at times, the commissioner may unconsciously allow his/or her bias to enter the proceedings, as a result of ones' Social Identity, may thus bias the decision making process. Although ones' Social Identity plays a major part in ones' decision making process, attribution processes can help explain the behaviour of the commissioner in rendering a decision. Thus, in the next section, the focus will be on Attribution Theory in relation to demographic variables and its impact on the decision making process.

Attribution Theory and Demographic Variables

Apart from focusing on the influences of Social Identity Theory in relation to demographic variables, the influence of ones' attribution processes needs to be explored. Attribution Theory (Weiner, 1974) could be used in order to explain the behaviour of the decision maker (i.e. the commissioner and the judge in this case) who must decide on a response to the behaviour of other individuals. In accordance with Bemmels (1991, p. 445), attribution processes are "a form of cognitive information processing that help decision-makers to categorise information, reduce ambiguity, and understand the behaviour of others".

There are two components that make up Attribution Theory, i.e. internal and external attribution. Internal attribution refers to factors that are within the individual. For example, a particular judge believes that women are inferior and have little to no power therefore, when the judge has to render a decision with regards to a female, it may result in it being biased. External attribution relates to something in the environment. For example, if a commissioner has frequently had cases involving a particular group of individuals, the commissioner may not explore the facts available and make an unconscious decision even before the grievances are heard. A study undertaken by Bemmels (1991) on "Attribution Theory and Discipline Arbitration" showed factors such as the experience of the commissioner or arbitrator and the gender of the grievant may affect the outcome of cases.

Further research carried out by Nelson and Curry (1981) found that personal characteristics of the individual, specifically, the experience and demography of the grievant, influence the commissioners' decisions. Kelly (1967, cited in Bemmels, 1991, p. 550) argued that the decision-maker (in this case the commissioner/judge) might develop "causal schemata" or

"simplified rules to help the commissioner/judge from causal attributions". These causal experiences can be based on the decision makers experience in the resolution process. Kelly (1967, citied in Bemmels 1991, p.550) has further argued that "decision-makers develop causal schemata or simplified rules to help the commissioner/judge form causal attributions". These "causal experiences" may be developed from the presiding officers years of experience in resolving disputes. It may also be borrowed from inferences that the presiding officers may have developed about certain behaviours that are assumed to be inherent in all parties involved in the disputes (Bemmels, 1991). These inferences may be used to fill in the gaps, when relevant information is not available. This may allow the decision-maker to reach an "acceptable causal attribution by relying on a common causal scheme and the information that is available, and inferring the missing information to fill out the causal scheme" (Bemmels, 1991, p.550).

As per Bemmels (1991) study on Attribution Theory, gender effect was more lenient toward the treatment of women than men. This pattern is consistent with other studies (Bemmels 1988a, b, c & 1990b; Ponak, 1987; Oswald & Caudill, 1988) that have found more lenient treatment of women in commissioners' decisions, but contradicts other studies that have found no gender effects (Block & Stieber, 1987; Scott & Shadoan, 1989) or more lenient treatment towards men (Roger & Helburn, 1985). In concordance with this study, the results provided further clues to the source of gender effect in the outcome of cases. The study indicated that when facts of the case and the commissioners' perception of responsibility for the grievance were on par, the commissioner decided women should receive a more lenient penalty as opposed to their male counterparts. This result suggests a double standard in selecting the appropriate penalty as gender (in particular being female) appears to be a (and

probably unconscious) mitigating factor in deciding upon an appropriate judgement (Bemmels, 1991).

Furthermore, research carried out by Bemmels (1991) indicates experience of the presiding officers play a vital role in rendering an outcome. It appears that more experienced judges or commissioners are more likely than less experienced judges or commissioners either to decide to award a decision in favour of the organisation or deny the grievance, or to decide entirely for the grievant and ensure that the organisation provides the grievant with the full back pay (Bemmels, 1991). Bemmels (1991) further asserts that less experienced presiding officers are more likely to choose a neutral ground, in order to satisfy the grievant by implementing a very light punishment.

In terms of Attribution Theory, this pattern suggests that more experienced commissioners or judges may have more highly developed "causal schemata" than less experienced presiding officers. The benefit of many years of experience may allow commissioners to feel more certain about their causal attributions and, consequently, more comfortable with rendering decisions. However, it can also result in the over reliance on their experience that can lead to outcomes being biased in relation to their demographic profile.

In accordance with Bemmels (1991), the commissioners' attribution decision-making process was also found to be affected by two "moderators", which include the grievants' gender and years of experience. These two variables, however, enter the decision-making in different ways. Firstly, the gender influenced only the outcome (female grievant was given more lenient penalties than male grievant), whereas the presiding officers' experience influenced

both the formation of causal attributions and the selection of an appropriate outcome (Bemmels, 1991).

Attribution processes is used in the present study to assess ways in which presiding officers explain the behaviour of parties involved in dispute resolution process, when rendering a decision. Here, the presiding officers can render decision based on internal or external attribution. In addition, the presiding officers may develop "casual schemata" or simplified rules to help the commissioner/judge from "causal attributions". Thus, allowing the final decision to include not only the facts and evidence provided, but biased outcomes as well.

In addition to understanding the importance of the psychological context in relation to the present study, from a South African perspective it is of extreme importance to discuss the impact that stereotypes may have on demographic variables. In addition there is a need to understand how it may influence the decision making process of the presiding officers.

Stereotyping

Stereotyping is often used to make decisions that are based on the ideas that are held about certain groups of people. By employing stereotypes when making a decision, prejudices can be directed against male or female, black or white defendants. Demographic variables such as race and gender of the parties involved in the disputes seem to be the more important factors for rendering a particular decision (Dean, Wayne, Mack & Thomas, 2000). For instance, it may be true that presiding officers are more focused on the race of the defendant and may respond in socially desired ways. A study carried out by Dean et al., (2000) on the "Examination of Happiness, Racism, and Demographic on Judgements of Guilt"; provide evidence that the applicant and all other parties' demographics, especially race and gender,

involved in the dispute are very important determinants to the presiding officers' judgements. Specially, certain types of judges may weight the applicants' demographics (race and gender) more heavily in their decision making process.

Dean et al., (2000) further asserts that these results also have important implications for attorneys trying criminal and civil cases. For example, in a case where the defendant is female, defence lawyers should try to select as many female jurors (in the case of America) as possible, given that female participants were less likely to perceive a female defendant as guilty of a crime. Similarly, these results suggest that if a defendant is a minority, male jurors may be harsher in judgements against minority defendants than against White defendants. All of the above mentioned suggestions are so easy to put onto paper, but it very difficult to practice them. Realistically speaking, the number of female applicants in South Africa may outweigh the number of female judges available. Also the time period, in which disputes must be resolved, also play a vital point within this scenario.

In accordance with the above discussion, Bodenhausen and Wyer (1985) assert that the presiding officers may base the extent of the punishment, in part, on their perceptions of why it occurred. However, if the grievant belongs to a particular group and if they are believed to display similar traits and behaviour in line with this group, then these stereotypical factors would be used to render a decision (Bodenhausen & Wyer, 1985). This can be linked to Social Identity or group identification. Furthermore and in line with the heuristics hypothesis, commissioners may use stereotyping as a rule of thumb ("heuristic") in justifying the reasons for the behaviours of the grievant. In addition, the commissioner will search for an alternative justification only if the stereotypical justification is not applicable in that situation (Bodenhausen & Wyer, 1985, p. 268). As mentioned previously, the commissioner, may base his/or her decision on their social programming or taint the facts to fit within their way of thinking. In the present context and in line with the study conducted by Bodenhausen and

Wyer (1985), implies that if for example, the grievants' wrongdoing is stereotypical of his or her particular group, the presiding officer will use this stereotype to interpret it and make punishment recommendations regardless of whether other information, with different implications, is also available. This is congruent with the reliance on external attribution.

Apart from focusing on the broader context to which demographic variables are explored, there is a need to gain some understanding, of the influence that demographic variables may perhaps have on the parties that are involved in a review case.

Parties Involved in a Review Case and Demographic Variables

There are many parties that are involved in within the dispute resolution process, which may impact on the outcome rendered. Apart from the demographic variables that are brought to the table by the presiding officers (i.e. the commissioners and the judges), there are the demographic profiles of the applicant and the respondent and their representatives that one needs to take heed to. Due to this diversity that prevails in this process, there is a need to assess whether these factors may play a significant role in the outcome rendered.

In line with a study conducted by Mazzella and Feingold (1994), which focused on the effects of defendants' and victims' demographic variables on mock jurors' (in the case of America) judgments of guilt and punishment recommendations, it was found that race did not influence the outcome rendered by the mock jurors. However, the study did show that the punishment allocated to the defendant based on race, was strongly influenced by the type of crime committed. Furthermore, the study did point out to the fact that ones' gender may influence the decision rendered in two folds. Firstly, in line with the notion of Social Identity, a female presiding officer may tend to blame the female applicant less than would the male presiding

officer; while the difference might be reserved when allocating a decision for male applicants This may stem from the concept of "ingroup favouritism", whereby a positive decision may be rendered in favour of the members of the ingroup as opposed to those representing the outgroup (Tajfel, 1969). Second, gender could moderate the relationship between the individual difference variables and outcomes rendered such that the strength of these relationships might depend on the gender of the individuals (Mazzella, & Feingold, 1994). In summary, this study demonstrated that the race of the individual did not influence the decision rendered by the presiding officer, however the gender of individual did influence the outcome rendered.

In line with research conducted in the American legal fraternity, "jury decision making is a complex set of psychological processes in which jurors must attend to information, evaluate theories, resolve consistencies, and persuade one another in the pursuit of a verdict" (Sommers & Ellsworth, 2000, p. 1367). Social psychologists have long studied the impact of cognitive and motivational processes on the judges' decision making (Sommers & Ellsworth, 2000). However, research conducted with regards to race is very limited yet its influence is of utmost importance within the South African context. It is common knowledge that during the times of apartheid era in South Africa, race played a crucial role in the outcomes of cases. Blacks had suffered a long history of abuse at the hands of the justice system, and only a few instances were White suspects brought to courtrooms. Times have changed of course now that we are in a democratic society. There certainly have been many efforts that have been put into place in order to ensure that issues such as race do not play a pivotal role on the adjudication of a dispute. However, legal scholars have asserted that even though we find ourselves in the age of democracy, White judges often demonstrated biased behaviour against Black applicants (Fairchild & Cowan, 1997). Sommers and Ellsworth (2000) further asserts

that the affects of the parties involved in disputes are so widespread, that it can be assumed that the race of the grievant is regularly included as a factor in the deciding on a decision. This can however be attributed to an automatic or unconscious response, which makes it very difficult to avoid. However, Nortan, Vandello & Darley (2004) in their study on "Casuistry and Social Category Bias", do suggest that when White judges do become aware that they have rendered a decision based or influenced by race, they will try to rectify it.

In addition, Sommers and Ellsworth (2000) state that psychological research conducted in the courtroom is very limited. However, this can be attributed to the fact that the presiding officers may allow their prejudices to enter their decision making process unconsciously. In order for Sommers and Ellsworth to support their assumption mentioned above, a search was conducted on under the keywords "race and (jurors or defendant)" yielded only a few articles written in this decade (e.g. Wittenbrink, Gist & Hilton, 1997). Almost none of these studies considered the perceptions of the black judges, and their results are conflicting and vague. Most researchers conclude that race plays an important role, especially in the South African context, in judges' verdicts but some have found that judges may be biased against defendants of a different race (Klein & Creech, 1982; Sweeney & Haney, 1992), whereas others have found an outcome may be biased against applicants of the same race (McGowan & King, 1982). As mentioned earlier on, Sommers and Ellsworth (2000) study indicated Black judges were influenced by the applicants' race, whereas White judges were not. However, given the long history of injustices suffered by Black applicants at the hands of all White judges, it could be assumed that the White judges may become extremely careful due to the their decisions be viewed as being racially attributed. In line with this assumption and as mentioned above, Sommers and Ellsworth (2000) assert that White judges are constantly reminded of the possibility of racial prejudice in an interaction. Thus, they may work to

inhibit their own racial bias and become aware of their social programming and their external environment.

The attribution of responsibility for wrongdoing is a central process both inside and outside of the legal system, especially when biases are allowed to enter the courtroom. In accordance with Sanders and Hamilton (1987), it can be assumed that there are specific differences in the way that people attribute responsibility for wrongdoing. However, as mentioned above, some of these differences may be attributed to the demographic compilation of the all parties involved in the decision making process (Sanders & Hamilton, 1987). For example, the lawyer is told that one should attend to the demographic variables such as gender, age and race of the parties involved, for such traits can determine or influence the judges' verdict (Sanders & Hamilton, 1987). However, this notion may also stems from the socio-political environment in which South African were faced with, therefore this may be attributing to the decision being rendered to one party as opposed to another (Stephan & Stephan, 2001). However, this notion, if still occurring can be rectified by the values embedded in the CCMA and the South African Law.

In everyday life and as society dictates, we should expect there to be a difference for example, between males and females. Although there has been a substantial growth of academic interest in the attribution of responsibility (Fincham & Jaspars, 1980; Hamilton, 1978; Hogan & Emler, 1981; Vidmar & Crinklaw, 1974) there has been minimal work undertaken on the differences among groups in comparison to the way decision makers assign positive or negative decisions for wrongdoing. Corresponding to previously made arguments, it is believed that presiding officers that are of members certain groups may, on average, decide cases differently from presiding officers of other groups.

There have been many areas in research that have tried to understand the process as to how people form inferences for blame. From a social psychologist perspective, our perception plays an important role in determining how we make sense of what occurred and how the traits and behaviours of people influence these decisions (Shaver, 1985). In line with this, and as mentioned above, there is a plethora of research suggests that there are important individual differences in how people assign blame in many spheres of life (Kemmelmier & Winter, 2000). However, there is a need to explore whether these differences impact on how the presiding officers assign blame in dispute resolution cases. In other words, even when presented with the identical facts, the presiding officers often draw very different inferences about the grievant (Sanders & Hamilton, 1987). In addition, the decision maker may believe that they have been influenced by legitimate factors, in reality; their judgements have been tainted by their demography. As results, the commissioner and the judge may unconsciously base a decision not solely on the facts of the cases but in conjunction with the demographic variables of parties involved.

Despite the fact that individual demographic variables such as gender, age, race and education have long examined in relation to justice (Kacmar & Ferris, 1989; McEvoy & Cascio, 1989; Waldman & Avolio, 1989, 1991), the value of considering demographic variables in case outcomes have been the topic of greater interest in the more recent years, especially within the context of South Africa (Wesolowski & Mossholder, 1997). Due to the socio-political history faced by South Africa, as well as psychological phenomena that impact on decision-making, factors unrelated to the merits of the case may result in the outcome being slanted toward one party as opposed to other. One set of such factors that may distort or overshadow pertinent information and can lead to an unfair decision is the demographic

profiles of the parties involved in the dispute process. By engaging in this, we allow the values embodied by the CCMA and the South African Law to be sacrificed and forfeited.

Taking all these factors into consideration, there is a need to understand the importance that demographic variables play in the outcome of disputes resolution cases. To many, this is an uncomfortable question, especially within the South African context, as it may be assumed that the presiding officers might be unprofessional, incompetent or even discriminatory. But this derived from a simple concept: "Commissioners and judges are human, and humans put in the position of making any decision can make judgemental errors" (Payne & Giacalone, 1990; Greenwald, 1980, in Giacalone, Reiner, & Goodwin, 1992, p. 267). Thus, there is a need to access the influence of demographic variables on the outcome of labour disputes.

Rationale and Aim for the Present Study

As can be seen from the above discussion, everyday we use discriminators such as race, gender or educational levels to identify people with whom we are similar and those that are dissimilar and those who are different, thus we may consciously or unconsciously make favourable or unfavourable decisions based on this (Allport, 1958; Ehrlich, 1973; Taylor, 1981). This is linked to the notion of Social Identify theory, whereby we favour members of our in-group and discriminate against other. In addition individuals who belong to a certain social group are viewed as possessing a certain trait or traits, which the presiding officers may used to justify their outcomes rendered (Dean, Wayne, Mack, & Thomas, 2000). As a result, the grievant is then judged based on whether they belong to the in-group or out-group, rather than as unique human beings. In addition, outcomes may be rendered based on the inherent traits or characteristics that are associated with these groups (Ehrlich, 1973;

Hamilton & Trolier, 1986; Katz, 1981). As such it is important to understand the impact of demographics on decision-making.

The CCMA and Labour Court are put into place in order to ensure that there is fairness in the workplace. It is a common belief that the way judges and commissioners attribute responsibility and assign punishment is based on the evidence that is presented during the dispute resolution process. However, over recent years, great interest has been placed on factors that are unrelated to the cases but may possibly result in the favouring of one party as opposed to the next. These biases can be the result of the judges' attribute, the grievant attributes, attractiveness, ability to make a favourable impression, or the decision making process itself (Kerr & Bray, 1982; Giacalone, Pollard & Brannen, 1989; Giacalone & Pollard, 1989). However, as discussed above, demographic variables such as gender, race, age and education might also play a role in the outcome cases.

Against this background, it is necessary to understand factors that may lead to an outcome being biased against certain parties as compared to others. In line with researchers and the present study, the presiding officers may judge a dispute as more likely to "recur when it is committed by an individual with whom the wrongdoing is stereotypically associated than when it is committed by someone with whom it is not associated" (Bodenhausen & Wyer, 1985, p. 268). Hence, the present study aims to explore whether the demographic variables of the presiding officers predict the outcomes of reviews of CCMA cases and whether demographic variables of the parties in a case, predictors of review outcomes.

Research Questions

The present study thus asks the following research questions:

a) Are demographic variables of the parties in a case, predictors of review outcomes?

b) Do the demographic variables of the presiding officers predict the outcomes of reviews of CCMA cases?

CHAPTER 3

Methodology

This chapter provides an overview of the methodological procedures that have been utilised in order to effectively answer the present research questions. As mentioned in chapter one, it focuses more specifically on the research design, the composition of the sample, the procedures used, as well as the demographic information of the participants that form the core of the present research. Finally, the statistical analyses to be conducted on the data gathered will be discussed.

Research Design

In view of the fact that the present study aimed to ascertain the existence of a relationship between demographic variables i.e. age, race and gender, and outcome of cases, an archival, ex post facto, non-experimental design was necessary.

The research was classified as non-experimental owing to the fact that the outcomes of cases were already rendered by the presiding officers. In line with the above, demographic variables have impacted on the outcome of cases, and as results are not manipulated by the present research. Kerlinger (1986) describes non-experimental research as the form of inquiry whereby the researcher does not have direct control of the independent variables, either because they are inherently not manipulated, or because their manifestations have already occurred. Consequently, experimental research is the most systematic empirical inquiry from which one can make inferences about the relationships between variables, rather than cause-effect relationships (Kerlinger, 1986).

The specific design was an ex post facto design. The term ex post facto refers to an experiment in which the researcher, rather than creating the treatment, examines the effect of a naturally occurring treatment after it has occurred (Landman, 1988). As per Howell (1992), this type of design compares or explores differences in variables after the event has occurred. It involves no manipulation of independent variable or random assignment of subjects. There is a presumed cause examined but no definite conclusions of causation. In other words, it is a study that attempts to discover the pre-existing causal conditions between groups. This fits well with the present study, as the presiding officers may have relied on causal attributions that are most relevant to the facts of the case, which will impact on the outcome rendered. Additionally, the design bridges the gap between experimental and descriptive designs discussed in because we can make a stronger case for cause and effect than possible with the descriptive designs (Howell, 1992). Furthermore, many of the phenomena in psychology, sociology, economics, business, politics and the other social sciences can only be studied after the independent variable has occurred due to these ethical constraints.

In addition, the present research made use of archival data in order to reach the aims of the research objectives. This type of data is kept for purposes other than research, but they may be valuable in some research studies. Given that the present study aimed to determine the existence of the relationship between variables from archival data, this particular research was classified as non-experimental and ex post facto design.

Since the data was recorded and analysed numerically, the present study was classified as a quantitative paradigm.

Sample and Research Procedure

The sample of cases for the analysis for the present research was gathered by analysing Labour Review Reports that was accessed through the University of the Witwatersrand Library.

Permission was not required from any particular organisation or parties involved in the disputes, as the Labour Review Reports are public records.

Ten review case reports within the period of 2005 were randomly selected, in order to assess the kind of demographic data that was available. A template, for both demographics and outcomes of both CCMA and Labour Reviews was then developed from the data collected. Due to the nature of case reports, there was a difficulty in extracting the demographic variables. Thus, only the gender and race of the commissioners, judges and all parties involved in the dispute were extracted, along with the age of the commissioners and judges. Thereafter, the data for the study was collected based on these results or categories.

Christensen (1985) notes that as the members of participants within study increases, the ability of statistical procedures to detect true differences increases. Another impacting factor that determines the adequateness of the sample was dependent on the categories/ templates that are generated. It is for this reason that a relatively large sample size was recommended for the present size. A sample of 100 case reports was gathered in order to make as accurate inferences from the sample about the target population as possible. However, as mentioned above this was dependant on the amount of information that was extracted for each of the

variables, as discussed in the statistics section, the statistics was used required the sample to increase in proportion to the number of categories (in this case demographic) being used.

For the present study, 59% of the total sample was male and 41% female commissioners and 67% male and 33% female judges. 38% of the judges were Black whereas 62 % of them were White. The Black commissioners made up 49% of the overall percentage and the White commissioners 51%. The applicants compromised of 71% males and 29% females and the respondent included 79% males and 21% females. There were 54% Black applicants and 46 % White applicants and 60% of the respondents were Black and 40% White. Others parties involved in these dispute cases included the applicant and respondent representatives. The applicant representatives compromised of 79% of the males and 21% females and 45% of them were Black and 55% were White. For the respondent representatives, 70% were male and 30% female of which 41% was Black and 59 was White.

Furthermore, 66% of the judges were Black males and 34% were Black females. For the commissioners 51% were Black males and 49% were Black females. The applicants and respondents compromised of 61% and 75% of Black males respectively and 39% and 25% of black females. For the applicant and respondents representative 77% and 78% of sample was made up of Black males and 23% and 24% were Black females. Moreover, 68% of the judges were White males and 32% were White females. For the commissioners 67% were White males and 33% were White females. The applicants and respondents compromised of 83% and 85% of White males respectively and 17% and 15% of White females. For the applicant and respondents representative 83% and 80% of sample was made up of White males and 17% and 20% were White females.

Descriptive statistics for the various demographic characteristics are presented in Table 1 (See p.36). The majority of the commissioners fell between the ages of 40-49, with the youngest commissioner being between 30-39, and the oldest being between the ages of 50-59 (See Table 2, p. 38). With regards to the age of the judges, the majority of the judges fell between 40-49, while the youngest judge being less than 40 and the oldest being between the ages of 60-69 (See Table 2, p. 38).

Table 1: Demographic Characteristics of the Sample

CATEGORY	**PRECENTAGES**		
GENDER	**MALE**	**FEMALE**	
Judge	67	33	
Commissioner	59	41	
Applicant	71	29	
Respondent	79	21	
Applicant Representative	79	21	
Respondent Representative	70	30	
RACE	**BLACK**	**WHITE**	
Judge	38	62	
Commissioner	49	51	
Applicant	54	46	
Respondent	50	40	
Applicant Representative	45	55	
Respondent Representative	41	59	
AGE	**30-39 years**	**40-49 years**	**50-59 years**

Commissioner	18	63	19
	<40 years	**40-49 years**	**50-49 years**
Judge	3	63	32

	BLACK MALE	**BLACK FEMALE**
Judge	66	34
Commissioner	51	49
Applicant	61	39
Respondent	75	25
Applicant Representative	77	23
Respondent Representative	78	21
	WHITE MALE	**WHITE FEMALE**
Judge	68	32
Commissioner	67	33
Applicant	83	17
Respondent	85	15
Applicant Representative	83	17
Respondent Representative	80	20

Table 2: Mode, Standard Deviation, Minima and Maxima of Age

Age	**N**	**Mode**	**Range**	**Minimum**	**Maximum**	***Std. Dev.**
***Comm.**	100	40-49	30-39	30-39	50-59	0.61
Judge	100	40-49	40-49	30-39	60-69	0.56

Statistical Analysis

Based on the aims of the present research, (See Chapter 2, p.30), a number of statistical procedures were conducted in order to reach the statistical outcomes for the present research. These include: 1) Descriptive statistics, 2) Chi-Square test of association and if possible a 3) Log Linear modelling could be performed.

Descriptive Statistics

Descriptive statistics refer to the procedures and methods used for concisely organising, summarising, and describing a collection of quantitative data in a manageable way (Howell, 1999). It is important to describe what the data is saying about a particular phenomenon (Howell, 1999). This allowed the researcher to make certain inferences based on the description of the sample.

Descriptive statistics is "concerned with the description and/or summarisation of the data obtained for a group of individual unit of analysis (Howell, 1999 p. 208).

The descriptive statistics formed the initial statistical procedures that were conducted on the data gathered. In the present study, the data was grouped together in the form of tables so as to present the mode, frequencies, and variance.

The mode is the value that occurs the most frequently in a data set or a probability distribution (Howell, 1999).

Frequency of frequency data can be referred to as categories data. This is data that usually represents a number of observations in each category (Howell, 1999). Frequency of frequency data can be referred to as categories data. This is data that usually represents a number of observations in each category (Howell, 1999).

Variance, which is the standard deviation squared, can be defined as "a measure of the average of the deviations of each score from the mean" (Howell, 1999, p.69).

Once the descriptive statistics are run and so as to fully explore the research questions for the present study, the chi-square test of association was conducted. If there are meaningful relationships gained from the chi-square test of association then the log linear modelling statistical analysis could be run.

Chi-Square Test of Association

The Chi square test was conducted to assist in answering both the research questions that are presented in Chapter Two. The Chi square is a non-parametric test of statistical significance for bivariate tabular analysis (also known as cross tabulations (Howell, 1992). Any appropriately performed test of statistical significance lets the researcher know the degree of confidence that one can have in accepting or rejecting a hypothesis. Typically, the hypothesis tested with chi-square is whether or not two different samples (of people, texts, whatever) are different enough in some characteristic or aspect of their behaviour that researchers can generalize from samples that the populations from which the samples are drawn are also different in the behaviour or characteristic.

A non-parametric test, like chi-square, is a rough estimate of confidence; it accepts weaker, less accurate data as input than parametric tests (like t-tests and analysis of variance, for example) and therefore has less status in the pantheon of statistical tests (Howell, 1992). Nonetheless, its limitations are also its strengths because chi-square is more 'forgiving' in the data it will accept; it can be used in a wide variety of research contexts (Howell, 1992).

The purpose of the test is to examine whether there is any statistical relationship between two variables of a cross-classification table. The Chi Square Test of Association has three criteria that are necessary for its appropriate use. These include: 1) Two Partitions, 2) Some Number of Independent Observations, and 3) Frequency Data.

With regards to two partitions, in Probability Theory, a partition is a mutually exclusive and an exhaustive set of categories. Categories can be seen as pigeon holes or places where we can put things conceptually. To be a partition, sets of categories have to be both mutually exclusive and exhaustive. Mutually exhaustive means that observations can go into one and only one category (McCall, 1990). Exhaustive means that the set of categories cover ever-possible case. It means that every object we observe can be put into one of the categories (McCall, 1990). To do Chi Square Test of Association one must classify each of the observations. For example, male and female is one dimension and job status is the other dimension. The researcher will notice that the requirement is that every participant one observes in the study can be classified by each of the partitions. So each participant will go into one of these “cells” created by crossing these two partitions with each other (McCall, 1990).

The second criterion for the chi-square test of association is that the study must have some observations, each independent of each other (McCall, 1990). In the present study, say for example, the researcher classifies 50 participants who render outcomes based on their gender and educational level therefore it could assume that these participants are independent of each other and that the participants are just picked out at random (McCall, 1990). The researcher is thus assuming that the presiding officers and their gender are independent.

The third criterion is to have Frequency Data. Here, the researcher does not measure anything when we observe, all the researcher will do is put the observations in categories and count the number of observation that fall into each category. Each time a participant falls into a category the researcher will make a little hash mark in one of the cells of the table (McCall, 1990). The aim is to count, not measure. Thus, for the chi-square test of association, one does not measure the participants; one will just count their frequency in the various categories (McCall, 1990).

The sampling distribution that is used for the Chi Square of Association is called the Chi Square Probability Distribution. This distribution starts at zero and goes to a positive infinity, which is not symmetrical. It's different than a bell curve, it has a big lump down by the zero where most of the probability is and it has only one tail going off toward positive infinity (McCall, 1990). The sample size must be sufficiently large to have at least five expected cases in each cell of the table.

In summary and in accordance with Howell (1992), there is widespread misuse of chi-square, and as a result it is necessary to provide a summary of the underlying assumptions of x2 as mentioned above. The subject for each group must be randomly and independently sampled.

The groups must be independent. Each observation must qualify for one and only one category. The sample size must be fairly large such that no expected frequency is less than 5 for r or c greater than 2, or less than 10 if r = c = 2 Howell (1992).

The present study fulfilled each of the above requirements. If the results proved significant then the log linear modelling analysis will be conducted, that is discussed below.

Log Linear Modelling

In the 1970's L.A. Goodman published a series of papers on Log Linear Modelling. However, researchers become interested to a wide variety of models that could be fitted to cross-classified data. Thus, the introduction of the log linear model provided them with a formal and rigorous method for selecting a model or models for describing associations between variables (Jeansonne, 2002).

This statistical procedure will be conducted for both the research question as presented in Chapter 2 and 3, if meaningful associations are provided by the Chi-Square. Log linear analysis is an extension of the two-way contingency table where the conditional relationship between two or more discrete, categorical variables is analysed by taking the natural logarithm of the cell frequencies within a contingency variables (Jeansonne, 2002). Although log linear models can be used to analyse the relationship between two categorical variables, they are more commonly used to evaluate multi-way contingency tables that involve three or more variables (Agresti, 1996). The variables investigated by log linear models are treated as "response variables". In other words, no distinction is made between independent and

dependent variables. Therefore, log linear models only demonstrate associations between variables (Jeansonne, 2002).

There are some limitations when using this type of interpretation. Firstly, the inclusion of so many variables in log linear models often makes interpretation very difficult. Only a between subjects design may be analysed. The frequency in each cell is independent of frequencies in all other cells. With log linear models, the researcher would need to have at least five times the number of cases as cells in the data. For example, if researcher has a 2x2x3 table, then researcher will need to have 60 cases. If researcher does not have the required amount of cases, then they will need to increase the sample size or eliminate one or more of the variables (Jeansonne, 2002).

It should be noted, that in the present, the Person chi-square test of association and log linear modelling was used to determine the strength of this association between the variables. A 5% ($p=0.005$) level of significance was used. According to Howell (1999) the 0.5 level of significance indicates the probability of an observed score must be less than 0.5 by the chance, before one can reject the null hypothesis and accept the alternate hypotheses.

CHAPTER 4

Results

The results of the statistical analysis carried out for the present study are discussed in the following chapter. As outlined in Chapter Four, in order to compare the demographic variables of the commissioners, judges and all parties involved in the labour review a Person chi-square tests was carried out.

The following contingency tables present the findings of these analyses. The first set of analyses will focus on whether demographic variables of parties in a case are predictors of review outcomes. Subsequently, the focal point of the second set of analyses will be centred on whether the demographic variables of the presiding officers predict the outcomes of reviews of CCMA cases. Finally, the finding generated from the level two and level three chi-square analyses will be reported.

A. Are demographic variables of parties in a case, predictors of review outcomes?

Table 3 (See p.46) demonstrates the increased likelihood of the judge overturning cases based on the applicants' or respondents' gender. It indicates that an equal proportion (50%) of male applicants' outcomes of cases is neither changed nor unchanged by the labour judge in comparison to female applicants. In cases where the applicant is female, 48 % of case outcomes are unchanged and 52% are changed. Similarly, 53% of male respondents' case outcomes remain unchanged and 47% case outcomes are changed. In contrast, 63% of female respondents case outcomes are changed and the remaining 37% of the outcomes rendered by the commissioner are unchanged by the judge.

Table 3: Contingency Table for Applicants & Respondents Gender and Overturned

Overturned	**Applicants**		**Respondents**	
	Males	**Females**	**Males**	**Females**
0= no (unchanged)	50	48	53	63
1= yes (changed)	50	52	47	37
Total	100	100	100	100

Chi-Squared Test of Association denotes that this effect is insignificant. With df = 1, then if X2 obs < 0.18 (applicants) and df=1, then X2 obs<0.09 (respondents), at the 0.05 significance level then, the Ho is not rejected and thus the null hypothesis is supported. This indicated that there was no significant difference with regards to case outcomes where the applicants and respondents were male or when they were females.

Table 4 (See p.48) focuses on the increased possibility of the judge overturning the case based on the applicants or respondents race. It indicates that an equal proportion (50%) of white and black (i.e., African, Coloured and Indian) applicant' case outcomes were changed and unchanged by the labour judge. Forty-five percent of the black respondents' case outcomes were unchanged by the judge and the remaining 55% of the outcomes were changed. In contrast, 56% of the white respondents' case outcomes were unchanged and 44% of the outcomes rendered were changed.

With df = 1, then if X2 obs < 0.17 (applicants) and df=1, then X2 obs<0.10 (respondents), at the 0.05 significance level, the Ho is not rejected. As a consequence, the null hypothesis is supported, that the race of the applicants and respondents does not play a determining factor with regards to the decision to change or unchanged a case outcome based on the applicants or respondents race.

In order to answer the final part of the first research question, which looks at whether demographic variables of the parties in a case are predictors of review outcomes, both the applicants and respondents representatives' demographic compilation (i.e., gender and race) was analysed. In accordance with the above findings, gender and race had no influential effect on the decisions that were rendered.

Table 4: Contingency Table for Applicants & Respondents Race & Overturned

Overturned	**Applicants**		**Respondents**	
	Blacks	**Whites**	**Blacks**	**Whites**
0= no (unchanged)	50	50	45	56
1= yes (changed)	50	50	55	44
Total	100	100	100	100

As per Table 5 (See p. 50), which focuses on the increased possibility of the judge overturning the case based on the applicants and respondents representatives' gender, it showed that 51% of the applicants' representative whom were male had their case outcomes unchanged and 49% of their case outcomes was changed. With regards to the female representatives, 45% of their case outcomes unchanged and 55% changed by the judge. The results obtained with regards to the respondents' representatives drew upon similar conclusions. An equal proportion of the female representatives (50%) case outcomes were unchanged as compared to their case outcomes being changed. Correspondingly, 51% of the male representatives' case outcomes were unchanged and 49% of the case outcomes were changed. With df = 1, then if X2 obs < 0.18 (applicants) and df=1, then X2 obs<0.18 (respondents), at the 0.05 significance level. Thus, Ho is not rejected. As a consequence, the null hypothesis is supported, that the gender of the applicants and respondents representative parties involved does not have an influential effect with regards to the judges' decision to change or unchanged case outcomes.

Likewise, the analysis of race and case outcome as indicated in Table 6 (See p.51) presented no significant difference. The white and black respondents' representatives had 53% of their case outcomes unchanged, while 47% of the white respondents and the black respondents' case outcomes were changed. On the other hand, 45% of the black applicants' representatives case outcomes were unchanged and 55% of their case outcomes were changed. The white representatives had 53% of their case outcomes unchanged and 47% the case outcomes changed. Decision rules dictate that at the 0.05 significance level, if df = 1, then if X2 obs < 0.13 (applicant) and if df = 1, then if X2 obs < 0.11. Ho is not rejected. Thus, the null hypothesis is supported, that is, there is no difference between the applicants and respondents representatives' race and the decision rendered by the labour judge.

Table 5: Contingency Table for Applicant & Respondents Representatives Gender & Overturned

Overturned	**Applicants**		**Respondents**	
	Males	**Females**	**Males**	**Females**
0= no (unchanged)	51	45	49	50
1= yes (changed)	49	55	51	50
	100	100	100	100

Table 6: Contingency Table for Applicants & Respondents Rep. Race & Overturned

Overturned	**Applicants**		**Respondents**	
	Blacks	**Whites**	**Blacks**	**Whites**
0= no (unchanged)	45	43	53	53
1= yes (changed)	55	57	47	47
	100	100	100	100

B. Do the demographic variables of the presiding officers predict the outcomes of reviews of CCMA cases?

As per Table 7 (See p. 53), which looks at the increased likelihood of the judge changing case outcomes based on the gender of the commissioners, 62% of the total sample was male, and the remaining 38% were female. The results revealed that 56% of female commissioners in comparison to the 41% of male commissioners did not have their case outcomes changed by the judges. On the other hand, 59% of the male commissioners' judgements were changed whereas females had 44% of their judgements changed. Even though there is some evidence that indicates that there is some gender effect, the Chi-Squared Test of Association denotes that this effect is insignificant. Decision rules dictate that the 0.05 significance level, if df = 1, then if X2 obs < 1. 94. Ho is not rejected. Computations indicate that X2 obs= 0.3 Thus, the null hypothesis is supported, that is, there is no difference between the commissioner's gender and their decision rendered. Moreover, this confirmed by the reported p-value of 0.16.

Table 8 (See p. 54) illustrates the impact that gender has on the judges' likelihood of changing or unchanging a commissioner's decision, based on the said commissioners' gender. It indicates that 69% of the total sample was male labour law judges, and the remaining 31% were female labour law judges. The results indicated that 52% of male labour law judges did not change the commissioners' decisions regardless of their gender in comparison to the 48% of the commissioners' decisions that was changed. Alternatively, 46% of the female judges did not change the outcomes bestowed upon by the commissioners as compared to 54% of the commissioners' decisions that was changed.

Table 7: Contingency Table for Commissioners Gender and Overturned

Overturned	**Males**	**Females**
0= no (unchanged)	41	56
1= yes (changed)	59	44
Total	100	100

Table 8: Contingency Table for Judges Gender and Overturned

Overturned	**Males**	**Females**
0= no (unchanged)	52	46
1= yes (changed)	48	54
	100	100

Although there is some gender effect that may possibly be prevalent, the significance of this association was above the significance level, when df = 1, then if X2 obs < 0.59, at the 0.05 significance level. Thus, Ho is not rejected. As a consequence, the null hypothesis is supported, that is, the gender of the labour law judges is not significantly related to their decision to change or unchanged the case outcomes rendered by commissioners. Moreover, this confirmed by the reported p-value of the Chi-Squared Test of Association which is p= 0.65.

Subsequently, the impact that race has on the judges' likehood of changing or unchanging commissioners decision, based on the commissioners race is illustrated in Table 9 (See p.56).Table 9 points out that 52% of the total sample consisted of white commissioners and the remaining 48% were black commissioners (i.e., Africans, Coloureds, and Indians), as compared to the labour law judges who comprised 63% white 37% black judges (i.e., Africans, Coloureds, and Indians).

Firstly, the results indicate that 49% of the black commissioners' decisions were unchanged in relation to the 51% of the black commissioners' decisions that were changed. In contrast, 50% of the white commissioners' decisions were unchanged whilst the remaining 50% of their decisions were changed. This is further supported by the Chi-squared test of association. With df = 1, then if X2 obs < 0.03 thus the Ho is rejected. With df = 1, then if X2 obs < 0.91, at the 0.05 significance level for the commissioners. The Ho is not rejected. As a consequence, the null hypothesis is supported, that is, there is no difference between the race of the commissioners and their decision making process.

Table 9: Contingency Table Commissioners and Judges Race and Overturned

Overturned	**Commissioner**		**Judge**	
	Blacks	**Whites**	**Blacks**	**Whites**
0= no (unchanged)	49	50	36	57
1= yes (changed)	51	50	64	43
	100	100	100	100

Secondly, 36% of black judges' decisions were unchanged whereas 64% of their decisions were changed. For the white judges' judgements 57% were unchanged and 43 % of the white judges were changed. This is further supported by the Chi-Squared Test of Association. With df = 1, then if X2 obs < 0.03. Thus the Ho is rejected. Although it can be assumed from the above findings that the race of the presiding officers influences the changing or unchanging of the outcomes rendered by the judges, this assumption proves insignificant for the commissioners.

Table 10 and Table 11 (See p. 58 and p.59 respectively) provide the results for the effect of age on the decision rendered by the respective presiding officers (Table 10 represents the results for the commissioners and Table 11 for the judges). Table 10 reveals that 63% of the total sample consisted of commissioners that were in the age range of between forty and forty nine, while 19% fall between fifty and fifty nine and the remaining 18% were between thirty and thirty nine. With regards to the age compilation of the judges, the majority fell between forty and forty nine (60%), 35% ranged between fifty and fifty five, with the remaining judges falling between sixty to sixty nine (2%) and less than forty (3%) respectively.

The findings showed that commissioners who were between thirty and thirty-nine had 37% of their decisions changed and 63% of the decisions that were made by commissioners' were unchanged. In contrast, the commissioners' who fell between the ages of the forty to forty nine and fifty and fifty nine had 52% and 59% of their decisions unchanged and 48% and 41% changed respectively. In contrast to commissioners, judges who ages ranged forty to forty nine and fifty to fifty nine had 51% and 59% of the commissioners' decisions rendered changed. Alternatively, 49% and 41% of their decisions were unchanged. The remaining

Table 10: Contingency Table for Commissioners Age and Overturned

Overturned	**2 (30-39 years)**	**3 (40-49 years)**	**4 (50-59 years)**
0= no (unchanged)	63	52	59
1= yes (changed)	37	48	41
	100	100	100

Table 11: Contingency Table for Judges Age and Overturned

Overturned	**2 (less than 39 years)**	**3 (40-49 years)**	**4 (50-59 years)**	**5 (60-69 years)**
0= no (unchanged)	100	49	41	100
1= yes (changed)	0	51	59	0
	100	100	100	100

judges who were aged less than thirty 39 and sixty and sixty-nine rendered unchanged judgements.

Although it can be assumed from the above findings that the age of the presiding officers influences the changing or unchanging of the outcomes rendered by the commissioners, this assumption proves insignificant. With df = 2, then if X2 obs < 0.45, at the 0.05 significance level for the commissioners and df =3, then if X2 obs < 0.12 for the judges the Ho is not rejected. As a consequence, the null hypothesis is supported, that is, there is no difference between the age of presiding officers and their decision to change the decision proposed by the commissioners.

In order to further assess whether there is some degree of significance a two (for example, race of the commissioner and judge) and three (for example, race of the commissioner, judge and applicant) level Chi-Square Test of Association was carried out. It should be noted that gender has had no effect on the decision making process. On the other hand, race seems to have some effect on the judges' decision making. Since the majority of the results follows the same pattern as level one chi square analyses the following contingency tables will be presented below: a) judge commissioner gender, race and age, b) judges applicant and respondent gender and race, c) judge, commissioner, respondent representative race and d) judge, commissioner, applicant representative race. Although the previous analysis revealed that there are no significant relationships that exist, the level three analyses presented a different angle, which will be discussed below.

C. Level Two and Level Three Chi-Squared Test of Association Analyses

Table 12 (See p. 62) indicates that when the judges and the commissioners' gender and race are different, 46% of the time their decisions are the unchanged whereas 54% of the time their decisions are changed. However, when the judge and commissioner share the same gender and race, their decisions rendered by the commissioners are unchanged by the judges 53% of the time and outcomes are changed 47% of the time by the judges.

Although the results point towards the fact that gender places a pivotal fact in the changing or unchanging of a decision, the test of association proves insignificant. With df = 1, then if X2 obs < 0.46, at the 0.05 significance level. Ho is not rejected. As a consequence, the null hypothesis is supported, that is, there is no significance between the gender and race of presiding officers and their decision to change the decision proposed by the commissioners.

Table 13 (See p. 63) indicates that when the judges and the commissioners' age is different 48% of the time the outcomes rendered by the commissioners are the unchanged whereas 52% of the time the commissioners' outcomes are changed. However, when the judge and commissioner share the same age the commissioners' outcomes are unchanged 51% of the time and the commissioners' outcomes are changed 49% of the time.

With df = 1, then if X2 obs < 0.76, at the 0.05 significance level. Ho is not rejected. The null hypothesis is supported, that is, there is no difference between age of the presiding officers and their decision to change the outcome proposed by the commissioners.

Table 12: Contingency Table for Judges Commissioners Gender and Race and Overturned

Overturned	Judge Commissioner Gender and Race			
	Gender		Race	
	0=Different	1=Same	0=Different	1=Same
0= no (unchanged)	46	53	46	53
1= yes (changed)	54	47	54	47
Total	100	100	100	100

Table 13: Contingency Table for Judges Commissioners Age and Overturned

Overturned	**Judge Commissioner Age**	
	0 = Different	1= Same
0= no (unchanged)	48	51
1= yes (changed)	52	49
Total	100	100

Table 14 (See p. 65) indicates that when the judges and applicants gender are different, 60% of the time the outcomes rendered towards the applicant by the commissioners are unchanged whereas 40% of the commissioners' outcomes are changed. In contrast, when the judges and applicants gender are the same, 45% of the outcomes rendered towards the applicant are unchanged and 55% of the outcomes are changed. When the judges and applicants race are different 57% of the time the decisions are unchanged and 43% their decisions are changed. However, when the judges and the applicant share the same race, the decisions are unchanged 42% and 58% are changed. Although the results point towards the fact that there is some gender and race effect the changing or unchanging of a decision, the test of association proves insignificant.

Although there is some gender and race effect that is noted, the significance for both variables of this association was above the significance level. With df = 1, then if X2 obs < 0.21 (judge applicant gender) and df =1, then if X2 obs < 0.17 (judge applicant race) at the 0.05 significance level. Ho is not rejected. Accordingly, the null hypothesis is supported, that is, there is no difference between the gender and race of judge and the applicants in relation to whether their decision to change or unchanged the outcome rendered by the commissioner.

The findings illustrated by Table 15 (See p. 66) indicate that when judges and respondents gender are different, 37% of their outcomes rendered towards the respondents are unchanged whereas 63% of their outcomes are changed. When the judges and respondents race are different, 59% of the case outcomes rendered towards the respondents are unchanged whereas 41% of the case outcomes changed. However, when the judges and the respondent share the same gender the outcome is unchanged 29% and are changed 71% of the time.

Table 14: Contingency Table for Judges Applicants Gender & Race & Overturned

Overturned	Judge Applicant			
	Gender		Race	
	0=Different	1=Same	0=Different	1=Same
0= no (unchanged)	60	45	57	42
1= yes (changed)	40	55	43	58
Total	100	100	100	100

Table 15: Contingency Table for Judges Respondents Gender & Race & Overturned

Overturned	**Judge Respondents**			
	Gender		**Race**	
	0=Different	1=Same	0=Different	1=Same
0= no (unchanged)	37	29	59	51
1= yes (changed)	63	71	41	49
Total	100	100	100	100

When the judges and the respondent share the same race the outcome rendered by the commissioners are unchanged 51% and are changed 49% of the time. Although the results point towards the fact that there is some gender and race effect the changing or unchanging of case outcomes, the test of association proves insignificant.

While there is some gender and race effect that is present, the significance for both variables of this association was above the significance level. With df = 1, then if X2 obs < 0.14 (judge respondent gender) and df =1, then if X2 obs < 0.11 (judge respondent race) at the 0.05 significance level. Ho is not rejected. Accordingly, the null hypothesis is supported, that is, there is no difference between the gender and race of judge and respondents in relation to whether the outcomes rendered by the commissioners are changed or unchanged.

Table 16 (See p. 68) indicates that when the judge, commissioner and applicant representative race are different, 84% of the time the commissioners' outcomes rendered towards the applicant is unchanged whereas 26% of the time the outcomes are changed. However, when the judges, commissioners and applicant representative share the same race, the outcomes are unchanged 69% of the time and are changed 31% of the time respectively. These findings indicate that the race of the parties involved in the conflict resolution process influences the decision rendered. This is finding is above supported as the significance level was below the 0.05 level. With df = 1, then if X2 obs < 0.04. Ho is rejected. Accordingly, the null hypothesis is not supported, that is, there is a difference between the race of judge, commissioners and applicant representative in relation to whether the case outcomes are changed or unchanged.

Table 17 (See p. 69) indicates that when the judges, commissioners and respondents'

Table 16: Contingency Table for Commissioners, and Applicant Representatives Race Overturned

Overturned	**Judge Commissioner Applicant Representatives Race**	
	0 = Different	1= Same
0= no (unchanged)	84	69
1= yes (changed)	36	31
	100	100

Table 17: Contingency Table for Judges, Commissioners, and Respondents

Representative Race Overturned

Overturned	**Judge Commissioner Respondent Representatives Race**	
	0 = Different	1= Same
0= no (unchanged)	66	82
1= yes (changed)	34	18
	100	100

representatives' race are different, 66% of the time their outcomes rendered towards the respondent are unchanged whereas 34% of the time the outcomes are changed. However, when the judges, commissioners and respondent representative shared the same race, the outcomes rendered are unchanged 82% of the time and are changed 18% of the time respectively. These findings indicate that the race of the parties involved in the conflict resolution process influences the decision rendered. This is finding is above supported as the significance level was below the 0.05 level. With df = 1, then if X2 obs < 0.04. Ho is rejected. Accordingly, the null hypothesis is not supported, that is, there is a difference between the race of judge, commissioners and respondents representative in relation to whether the commissioners outcomes rendered are changed or unchanged.

Due to the nature of the results obtained from the chi square analysis, the log-linear modelling could not be conducted. As mentioned previously, the variables investigated by log linear models are treated as "response variables". In other words, no distinction is made between independent and dependent variables. Therefore, a log linear model only demonstrates associations between variables (Jeansonne, 2002). Given that there is not much significance in the association of the variables in the present research findings, it is futile to carry out the log linear modelling analysis.

CHAPTER 5

Discussion

In Chapter Two (See p. 30); two research questions were outlined that form the crux of the present study. Different statistical procedures were conducted to answer these questions, the results of which are presented in Chapter Four. The aim of this chapter is to discuss the findings obtained in terms of the theoretical framework of the study as described and in relation to the research questions established in Chapter Two.

The chapter begins with a discussion of issues with reference to the first research question, concerning the nature of the degree to which demographic variables of parties involved in a case are predictors of review outcomes. In addition to looking at these broader patterns, the second section will focus more specifically on the whether the demographic variables of the presiding officers predict the outcomes of reviews of CCMA cases. Both these sections will focus on the chi-square analysis results and the themes that emerged from this analysis. Finally, the limitations of the present study are discussed, in addition to the implications the study has for future research.

Are Demographic Variables of Parties involved in a Case, Predictors of Review Outcomes?

The first research question pertained to the degree to which demographic variables of parties involved in a case are predictors of review outcomes. As per Chapter Two, researchers have argued that demographic variables play a pivotal role in the review process as the merits of the matter is not put under scrutiny but rather the commissioners' conduct. When engaged in such dispute resolution processes, many biased outcomes can result that are unrelated to the

case, which would directly impact on the outcome of cases. As mentioned in Chapter Two, these disturbing biases may result from the grievants' race, gender or other demographic variables (Kalven & Zeisel, 1966; Izzett & Fishman, 1976; Kerr & Bray, 1982). However, the present research did not support the finding of the studies conducted by Kalven & Zeisel (1966); Izzett & Fishman (1976) and Kerr & Bray (1982), which indicated that there is a significant association between demographic variables, that is, gender and age and judgements. On the other hand, the race of the judges did provide some degree of significance. Moreover, the present study demonstrated contrary to the findings of the study conducted by Mazzella and Feingold (1994), which focused on the effects of defendants' and victims' demographic variables on mock jurors' (in the case of America) judgments of guilt and punishment recommendations, that found that gender rather than race may influence the outcome rendered by the mock jurors.

More specifically, gender appears to have had no effect on the labour judges' decision making process. All of the interactions between gender and the outcome of cases were insignificant, indicating that gender perhaps does not alter how presiding officers use the facts presented to them (such as the weights they assign to various facts) to arrive at their "causal attributions" or their decisions (Bemmels, 1991). The insignificance of the gender effect also indicates that applicants, respondents and their representatives' gender did not distort the presiding officers' perception of the facts of the case.

Despite the fact that the present study provides evidence of insignificant gender effects, it may be assumed that gender effects for the present study are much weaker than the influence of other factors, which may result in the outcome being rendered toward one side as opposed to the other.

As mentioned in Chapter Two, and in line with the study conducted by Giacalone, Pollard & Brannen (1989) on the "Role of Forensic Factors and Grievant Impression Management in Labor Arbitration Decision", biases were found to be an endemic part of the commissioners' and grievants' personality. In a another study by Giacalone, Reiner, & Goodwin (1992) on the "Ethical Concerns in Grievance Arbitration", it showed that , a commissioner who exhibits an authoritarian personality may have a tendency to render an unfavourable decision toward those who do not show respect and compliance in the presence of the commissioner One with a more liberal personality may favour much more interactive resolutions based on rights of the individual within their stipulated organisational contracts (Giacalone, Reiner, & Goodwin, 1992). In addition, the commissioners' locus of control and the grievants' past history may also impact on the commissioners' decision making process (Rotter, 1966; Rumsey, 1976). Within the South African context, ones' past history may play a much more influential role in relation to other factors. Here, the presiding officers' may tend to favour individuals that were previously disadvantaged due to the injustices that they had to endure in the past. This can be linked to the race of the individual, which did provide some significance in the present study. For instance, presiding officers may decide on a particular outcome not based solely on the race of the individual but also on past treatment that this race group had to endure.

Further biases may arise from the commissioners' personal belief systems or their social programming and this will either support or hinder the commissioners' acceptance of available facts and evidence. However, perhaps from a South African perspective, gender may not be at the forefront of peoples' minds, that is, it is not as a salient feature of a group identity as compared to race. As mentioned above, this can be attributed to fact that more emphasis is placed on the issues relating to racism through apartheid.

Moreover, the age of the judge in relation to the age of the applicants, respondents and all other parties involved in the review was not significant. The reason as to why age was considered, as a variable was to explore whether with age, comes the perception that a commissioner is more experienced. However, this association proved insignificant. This result differed from the results obtained by the study carried out by Bemmels (1999) on "Attribution Theory and Discipline Arbitration" that suggests that more experienced commissioners or judges may have more highly developed "causal schemata" than less experienced presiding officers. Bemmels further asserts that the benefit of many years of experience may allow commissioners to feel more certain about their "causal attributions". Thus, the presiding officers may find that they become more comfortable with making decisions. However, an alternative justification for the insignificant findings obtained from the present study, is that the bias can result in the over reliance and overconfidence on their experience rather the presiding officers' age.

From a South African perspective age of the presiding officers may not be a crucial factor due to fact that the issue is not merely age, but experience. South Africa cannot work on the same scale as the rest of the world where age equals experience. Due to Employment Equity and Affirmative action, the scale has become a sliding scale in South Africa. White judges have many years of experience. Black judges have skipped steps so that they could fill a quota. The problem that is happening now is that, senior black judges have more experience with high profile cases and serious cases, where white judges have all round more experience. The question begs, as too which is better.

In contrast, race provided some degree of significance. This significance was obtained from the level three chi square analysis. The findings of the present study, as specified, in Chapter Four indicated that it could be assumed that the judges are more likely to favour the applicant

in comparison to the respondents based on their race. It should be noted that the majority of the time the applicants is the employee, whereas the respondent is the employer. Thus, pointing to the fact that judges are more likely to render a decision towards the employee in relation to employer based on their race. Contrary to these findings, a study conducted by Grenig & Estes, (1989) on "Labor Arbitration Advocacy: Effective Tactics and Techniques" stated that the corporate hierarchy may correlate with a commissioners' or judges' personal biased. Based on the hierarchal structures that many organisations still find themselves in, the presiding officer may presume that a grievant may be motivated to distort the truth but a supervisor was not. However, it is evident that this study was carried out in 1989, which represented the themes that emerged then, but at present, it may actually be that more emphasis is placed on the employee and their rights within the corporate power struggles that exit, which results in the findings obtained in the present study.

In addition, and as discussed in Chapter Two, the study conducted by Dean, Wayne, Mack and Thomas (2000) on "An Examination of Happiness, Racism, and Demographics on Judgment of Guilt" provide evidence in support of the findings of the present study that showed that the applicant and all other parties' characteristics involved in the dispute are very important factor in relation to the presiding officers' judgment. Specially, certain types of judges weighted the applicants' characteristics (i.e., race in relation to the present study) more heavily in their decision-making.

Additionally, legal scholars have asserted that even in the age of democracy and freedom, White presiding officers often demonstrated bias against Black applicants (Fairchild & Cowan, 1997; Parloff, 1997b). However, this can be attributed to the fact that this act of being biased is done unconsciously or unknowingly. Nevertheless, the assumption here is

that judges are affected by the race of a defendant, which may result in prosecutors and defendants' attorneys regularly including racial considerations when deciding on a decision. However, the extent of this regularity occurring is unknown.

From the above discussion it can be seen that gender and age are not associated with the judges' decision-making process, as in the study by Bemmels (1991). As mentioned previously, the reason for the lack of significant can be attributed to the fact that gender and age provide much weaker associations than the influence of other factors on the judges' decision making. However, in line with the present findings, gender and age may be indicative of the fact that these variables might have less of an influence on the case outcomes than previous researchers may have believed (other studies to support this include that of Bodenhausen & Wyer, 1985; Dean, Wayne, Mack & Thomas, 2000). Perhaps, as Rogers and Helburn (1985, p.235) suggests, "Arbitrators' decision making is somewhat arbitrary" thus, labour judges overturn decision rendered by CCMA due to it being arbitrary, rather than on demographic variables such as gender and age.

Do the demographic variables of the presiding officers predict the outcomes of reviews of CCMA cases?

The second question under investigation in the present study focused on the association between demographic variables of presiding officers and outcome of CCMA cases, and raised the question as to whether demographic variables of the presiding officers predict the outcomes of reviews of CCMA cases. These demographic variables, which were extracted from labour review cases included, gender, race and age.

The results obtained provided some interesting findings with regards to race of commissioners and outcomes rendered by judges. The present study indicated that black judges are more likely to revise the decision made by commissioners as compared to their white counterparts. As indicated in Chapter Two and Three, a study carried out by Sommers and Ellsworth (2000) on "Race in the Courtroom: Perceptions of Guilt and Dispositional Attributions", indicated that Black judges were influenced by the applicants' race, whereas White judges were not. However, given the long history of injustices suffered by Black at the hands of all-White, it could be assumed that they would tend to be more careful when rendering a decision, due to the possibility of their decisions is viewed as being racially attributed.

These findings can also be explained by Social Identity Theory (See p.12), which indicates that when there are clear differences between groups, members of low-status groups find it difficult to uphold positive in-group individuality and hence find interactions less appealing as before (Hinkle & Brown, 1990). Under these circumstances, members of low-status groups may engage in ways in order to project an image that is more successful as compared to other group members. In relation to the results of the present study, race may influence the decision rendered by judges. Perhaps one can be assumed that the white judges may be motivated to favour groups that may differ from their social status, which differs from standard forms of discrimination. Nortan, Vandello and Darley (2004) study on "Casuistry and Social Category Bias", which focused on cases where people use other mechanisms to render decisions, which included criteria such as "social group memberships", showed that individuals do not want to be viewed as being biased, thus this desire to appear unbiased leads to behaviours that ensure that others will view them accordingly. A classical study to illustrate this point was citied in Nortan, Vandello and Darley (2004), conducted by Dutton (1971), which illustrated this

phenomenon. Dutton (1971, as citied in Nortan, Vandello and Darley, 2004, p. 819) study showed that "inappropriately dressed couples who attempted to dine at restaurants requiring formal dress were twice as likely to be seated if they were Black rather than White, presumably because the proprietors felt that confronting Black patrons might make them appear prejudiced". Thus, making it easier for Black presiding officers to change or unchanged case outcomes in comparison to their white counterparts.

Past research carried out during the times of apartheid by Miller, Rossi, and Simpson (1986) on the "Perceptions of Justice: Race and Gender Differences in Judgment of Appropriate Prison Sentences" indicated that both white man and women tend to use similar "judgment principles" when evaluating the appropriateness of cases. Here, it was shown that both the severity of the case and the demographic variables were entered into the decision making process. They state that "white men and white women subscribe to a justice philosophy focused on meting out deserved punishment, proportionate in severity to crime seriousness, for all applicants convicted of the same deviance" (Miller, Rossi & Simpson, 1986, p. 330).

Miller, Rossi and Simpson (1986) further assert that black judges, appear to use "judgment-making principles" that differ somewhat from those used by whites. Compared to whites, blacks generally are less strongly influenced by the degree of outcome of the case, and somewhat more influenced by the parties' (applicants, respondents and their representatives) characteristics surrounding the case. According to (Miller, Rossi & Simpson, 1986, p. 330), "the judgment-making principles summarizing black harshness ratings appear to reflect a justice philosophy that takes the individual applicant into account".

Additional, Rokeach, Smith and Evans (1960) proposed that the similarities of race may determine the degree to which prejudiced behaviours are used to decide on outcomes. Several studies have supported this view (e.g., Byrne & Wong, 1962; Stein, Hardyck & Smith, 1965), but other studies have shown that race is a more important factor in the allocation of judgments (e.g., Triandis, Loh & Levin, 1966; Triandis & Triandis, 1960). However, from a South African perspective, it should be noted that these studies were carried during times of racial segregation whereby whites were viewed as the superior racial group and blacks inferior. However, since then there has been a change in the mindsets of many, whereby this categorisation is currently being dismantled.

A much more recent study conducted by Stephan and Stephan (2001) assert that the reason as to why race of judges impacts on the decision making process in South Africa is due to the lack of representation of race groups. From a social constructionist perspective, in order for the presiding officers to be viewed as making fair judgments, it is stated that the goal is to ensure that the third party be as representative as possible in order to try and understand the group or individuals phenomenological world (Stephan & Stephan, 2001). Dean, Wayne, Mack and Thomas, (2000) further assert that these results also have important implications for disputes resolution. For example, in a case where the defendant is female, defence lawyers should try to select as many female jurors (in the case of America) as possible, female participants were less likely to perceive a female defendant as guilty of a crime. As noted in Chapter Two, realistically speaking, the number of female applicants in South Africa may outweigh the number of female judges available. Also the time period in which disputes must be resolved also play a vital point within this scenario.

In contrast to the above findings, the gender of the commissioner and the judge did not impact on the outcome rendered by the labour judge. This is in accordance with research conducted by Bemmels (1990b) that gender was insignificant, indicating that gender did not distort the presiding officers' perception of the CCMA commissioners' finding. This indicates that there are other factors that impact on the case being changed or unchanged by the judge. These factors may include the commissioners' lack of time or the availability of resources. Added to this, is the influx of cases that the commissioners are often forced to "cut corners" in order to get through their workloads. Consequently, the load of these cases may directly affect the quality of the outcome of CCMA cases (Twyman, 2001). Depending on the situation, it could be because they have no faith in the decisions made by the commissioners. Judges could feel that the commissioners' verdict was under-minding their own positions, stemming from anything from differing qualification or status.

In line with the above results and as stated in Chapter Two, it should be noted that the labour law judges take on the same status as that of a high court judge. They have the ability and power in relation to matters arising under the Labour Relations Act (Labour Law, 2005). "The labour court has the general jurisdiction and the ultimate authority over the equality of rights of employees" (Twyman, 2001, p. 21). The outcome of the CCMA reflects that a commissioner differs from a labour court judge in the degree of scrutiny given to disputes, therefore allowing for increasing biases in the outcome in the labour court reviews.

Conclusively, there maybe no gender effect but rather structural and procedural factors that produces the results of the present study. Although there are various studies that indicate that gender is associated with the allocation of outcomes rendered (e.g. Mazzella & Feingold, 1994), for the present study no significance difference with regards to cases where the

commissioner was male and where they were female influenced the presiding officers decision. As per Bemmels (1991, p.550) a logical explanation for the discrepancy across studies is "that gender effects are quite weak and are captured at a statistically significant level only in some, not in all, studies".

Furthermore, age too offered insignificant results. This is in relation to several studies, which indicated that the presiding officers' experience, which comes with age, has no effect on their decisions (Fleming, 1965; Heneman & Sandver, 1983). This result follows in line with the above conclusions drawn in relation to the effect of gender. These results can point to the fact that, as South Africans and in relation to our political background, we tend to focus all our attention on the differences that exist between us rather than to seek to identify and uncover other confounding variables that results in certain critical decisions being rendered.

In general the Chi-Square Test of Association analyses provided more substantial findings when investigating the effect of race in relations with case outcomes. Clearly, gender and age do not a play an important role in predicting reviews of CCMA cases, in comparison to race. However, in light of the results of the present study, there are other variables that are determinants of review case outcomes, which are discussed through out this chapter.

In summary, it was found that there was no significance between gender, age and review case outcomes. This does not imply that these variables have failed to provide significance in relation to past research however, this could simply mean that these variables do not impact on the decision making process of presiding officers. In spite of this, one may assumed that gender and age provides a weaker significance that is masked by other variables. In basic terms, gender and age may in fact play a substantial role in the conflict resolution process but

due to numerous other factors these variables may not be detected, that is, they do not play as significant a role. The race of the judges in relation to the race of the applicant and the respondent provided significance. In line with the above argument, Norton, Sommers, Vandello, and Darley (2006, p.1367) assert "that those most likely to make questionable decisions such as favouring whites over blacks are also likely to mask the influence of racial information by inflating the value of non-racial criteria that support their decisions".

Demographic variables such as race, age and gender are significant factors that are very difficult to avoid when making decisions, especially within the South African context. Although, individuals do not want these factors to influence their decisions, they may enter in an automatic or unconscious manner. As Yzerbyt, Schadron, Leyens, and Rocher, (1994, as citied in Norton, Vandello, & Darley, 2004, p.819) assert that "people feel at least somewhat constrained from judging others on the basis of their social group memberships, particularly in the absence of other information". However, in-line with the results of the present study the effects of gender and age were insignificant, yet race showed significance, which may point to the fact that some biases with regards to race, is allowed to enter into the judgments rendered by presiding officers. By allowing these biases to enter into the dispute resolution system, we are permitting to the values embodied by the CCMA and the South African Law to be sacrificed.

Apart from focusing solely on the results of the present study, there is a need to consider the limitations of the present in relation to these results. Such limitations will be provided below.

Limitations of the Present Study

The present study yielded a number of limitations that could have had an impact on the results obtained in Chapter Four. These relate to the data collection methods, in addition to the statistical analyses utilised.

The use of quantitative method of analysis provides the first limitation. The review case reports could not adequately explore the reactions to parties that may be different in the actual hearings when judges are presented with actual people and are provided with more contextual information. As noted by Dean, et al., (2000, p.831.), "It is possible that biases may be even stronger against certain racial or gender groups when minority applicants and respondents are visually present before the judge". The demographic variables of the parties in the review process that are reported in case reports was presented but not highlighted, that is, the case reports was not made blatantly aware of these characteristics, yet they were still important to their decisions. These characteristics may be more salient in an actual hearing when the characteristics are visible and could have even more of an impact on decision making than provided in the review case reports.

The use of an ex post facto research design provided the next limitation. The major limitations of ex post facto research includes that in the purest sense the design only establishes relationships among variables. For the present study, the interpretations of ex post facto findings are limited because the researcher does not know whether a particular variable is a cause or a result of the behaviour pattern being studied.

The statistical analysis utilised for the present study forms the fourth limitation. As mentioned in Chapter Four, the Chi-Squared Test of Association is based on the assumption of no relationship and its aim is to determine if an apparent relationship (from a sample) is attributed to chance. This analysis only tells the researcher about the existence of a relationship, and thus no causality is proved. It does not convey any information about either the direction of the association or about the importance of the finding with regards to the substantive importance (of question) nor the magnitude of difference.

Although there are various limitations indicated by the present study, there are several future research suggestions that can be obtained due to these restrictions. These suggestions for future research will be discussed next.

Suggestions for Future Research

Firstly, as mentioned above, researchers should examine whether results in the present research differ when qualitative methods, that is, interviews or through observation of actual review cases, rather than case reports that are utilised. By employing elicitation techniques especially that of observations, other demographic variables can be extracted, which would further explain if factors such as the educational level or socio-economic status of the parties in the review case, influences the decision rendered by the presiding officers?

Secondly, future research should also include other types of cases that perhaps may include sexual harassments cases or unfair dismissals. It may be that the applicant and respondents minority characteristics may be greater (or less) influential when different categories of conflict are analysed.

As mentioned through out the present study, there may be other variables that mask the impact of demographic variables such as gender and age that result in a decision being rendered towards a particular party as opposed to another. To reduce and uncover this effect on judges' judgments, researchers need to further investigate these moderating/confounding factors and attempt to overcome them.

Despite the limitations of the present study, the results suggested that the presiding officers do engage in the use of extralegal factors (excluding that of gender and age) to determine review case outcomes. The chief purpose of the implementation of the conflict resolution process in South Africa is to provide all parties in the dispute with a fair and impartial presiding officer (i.e., commissioners and judges). How is that possible if presiding officers bring their inherent biases into the labour cases (Dean, et al., 2000) Thus, future research should continue in this direction to identify how and when stereotypical judgments are allowed into the conflict resolution process and how to avoid its' impact on the final outcome.

CHAPTER 6

Conclusion

The use of demographic variables is endemic in every aspect of our habitual functioning, and perhaps may impact on our attitude and behaviours in innumerable ways. Apart from the everyday usage of discriminators such as gender, race or age to identify people with whom we are similar and those whom we are different, demographic variables may be utilised to make more crucial decisions. When these variables are drawn upon to render decisions in the legal domain, this can be viewed as unjust. Within the conflict resolution process of South Africa, that is, the CCMA and Labour Courts, this may mean that presiding officers may use the demographic variables of the parties involved in the case to render a decision and not adequately make use of the facts of the case.

Thus, the present study aimed to firstly, explore whether demographic variables of the parties involved in a case are predictors of review case outcomes. Secondly, to identify whether the demographic variables of presiding officers predict outcomes of reviews of CCMA cases. A copious amount of research in this area followed in line with researchers (for example Sommers & Ellsworth, 2006; Miller, Ross & Simpson, 1986) of whom clearly supported as well as those that disapproved (for example, Bemmels, 1988a, b) of the notion that demographic variables of decision makers perhaps is an important decision variable, which may influence the case outcomes. Other researchers further asserted that the characteristics of the decision maker, the recipient and all other parties involved may influence the perception of justice and fairness in the outcome of cases. Likewise, there were other studies that found other compounding factors that are much greater than the demographic profiles of all parties involved in the review of CCMA case outcomes (for example, Twyman, 2001).

However, the results of the study indicated that gender and age were insignificant whereas the race of judges, applicants and respondents provided a certain degree of significance. These results offered have provided an additional body of knowledge to the area of the influences of demographics variables and its role in the outcome of review cases and stepping stones for future research in this specific area.

CHAPTER 7

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