



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: JS 692/22

In the matter between:

CHRISTINA JENNY TEIXEIRA

APPLICANT

and

CONTRACT ALUMINIUM (PTY) LTD

RESPONDENT

Heard: 10 October 2023

Delivered: 05 February 2024

JUDGMENT

MUKOME, AJ

Introduction

- [1] The Respondent has raised a point *in limine* on the basis that this court has no jurisdiction to entertain the dispute referred by the applicant, as there is no application for condonation for the late referral of the dispute to this Court.

Facts

- [2] The Applicant referred an automatically unfair dispute to the Commission for Conciliation, Mediation and Arbitration on 17 December 2021.

- [3] The dispute was certified unresolved by the CCMA on 11 January 2022.

- [4] On 30 September 2022, the Applicant then referred an automatically unfair dispute to this court seeking the following relief:
1. Automatic unfair dismissal and reinstatement, payment of 2021 leave and salary to date;
 2. Alternatively, 24 months' compensation, 2021 leave, and return of personal belongings;
 3. Damages, as contemplated under the Employment Equity Act¹ (EEA), in respect of bank loan arrears; and
 4. Further and/or alternative relief.
- [5] On 20 October 2022, the Respondent filed a Notice to Remove Cause of Complaint, Exception and Special Plea (First Notice).
- [6] The First Notice dealt with the Applicant's failure to comply with the Labour Court Rules² (Rules), the referral being vague and embarrassing and the fact that the Applicant failed to apply for condonation for her non-observance of time frames.
- [7] On 17 November 2022, the Applicant then applied for default judgment on the basis that the Respondent failed to give a response in terms of Rule 6 of the Rules.
- [8] On 1 December 2022, the Respondent filed a Notice to Remove Cause of Complaint: Irregular Step (Second Notice) which afforded the Applicant an opportunity to withdraw her Application for Default Judgment.
- [9] The Applicant failed or refused to withdraw her application for default judgment resulting in the Respondent applying to this Court to have the irregular step set aside.

Respondent's submissions

¹ Act 55 of 1998.

² GN 1665 of 14 October 1996: Rules for the conduct of proceedings in the Labour Court.

- [10] The Respondent submits that this Court only needs to determine the special plea at this stage, since in the absence of a condonation application, the Statement of Case is not properly before this Court.
- [11] The Applicant referred an unfair dismissal dispute to the CCMA on 17 December 2021 and the CCMA certified the dispute remaining unresolved on 11 January 2022.
- [12] In accordance with section 191(11) of the Labour Relation Act³ (LRA), the Applicant had to refer her dispute to the Labour Court within 90 days after the CCMA certified that the dispute remained unresolved.
- [13] The Applicant had to refer the dispute to the Labour Court before 11 April 2022. Therefore, she has filed the Statement of Case, 172 days out of time.

Applicant's submissions

- [14] The Applicant submits that she still maintains her wish to proceed with her Application for Default Judgment.

Analysis

- [15] Section 191(11) of the LRA provides the following:

- '(a) The referral, in terms of subsection (5)(b), of a dispute to the Labour Court for adjudication, must be made within 90 days after the council or (as the case may be) the commissioner has certified that the dispute remains unresolved.
- (b) However, the Labour Court may condone non-observance of that time-frame on good cause shown.'

- [16] In the matter of *National Union of Mine Workers v Hernic Exploration (Pty) Ltd*⁴, the Labour Appeal Court held that section 191(11)(a) is clear in its provision that the referral of a dismissal dispute to the Labour Court for adjudication in terms of sec 191(5)(b) must be made within 90 days after the

³ Act 66 of 1995, as amended.

⁴ [2003] ZALAC 1; [2003] 4 BLLR 319 (LAC) at para 45.

council or the commissioner “*has certified that the dispute remains unresolved*”.

[17] In this matter, the CCMA certified the Applicant’s dispute as remaining unresolved on 11 January 2022. The Applicant only referred her automatically unfair dispute for adjudication by this Court on 30 September 2022.

[18] The Applicant’s referral was outside the 90 days as provided under section 191(11)(a) and thus requires the Applicant to apply for condonation for the non-observance of the time frames.

[19] Since the Applicant’s referral is out of time, this Court does not have jurisdiction to adjudicate the referral⁵.

[20] In the result, the following is ordered:

Order

1. The Respondent’s point *in limine* is upheld.
2. The Applicant’s referral is dismissed.
3. There is no costs order.

L Mukome
Acting Judge of the Labour Court

Appearances:

For the Applicant: Christina Teixeira

Instructed by:

For the Respondents: Adv Cobus Prinsloo

Instructed by: Darran Ledden Incorporated

⁵ *SA Transport & Allied Workers Union & another v Tokiso Dispute Settlement & others* (2015) 36 ILJ 1841 (LAC); [2015] ZALAC 12 at para 18.