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IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: JR1145/01

2001-11-13

In the matter between

E THOBISE

Applicant

and

POST OFFICE KRUGERSDORP

Respondent

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J U D G M E N T

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REVELAS, J:

1. This is an application, brought ostensibly in terms of section 145 of the Labour Relations Act, 66 of 1995 ("the Act"), in terms of which the applicant seeks to set aside a ruling made by the second respondent, refusing condonation of the applicant's late referral of his dispute.
2. I will treat the matter as if the application was brought in terms of section 158(1)(g) of the Act, which would be the applicable section to such applications.
3. The applicant has referred his dispute to the Commission for Conciliation, Mediation and Arbitration (the ≡CCMA≡) 154 days out of time.
4. The reason proffered by the applicant for the

lateness, is that after his disciplinary hearing he fell ill and could not contact the union officer to refer the matter to the CCMA. When he recuperated he contacted a shop steward for assistance.

The applicant had a representative at the hearing, Mr C P Mofakeng, and Mr L Mogolosi a shop steward of the Communication Workers' Union (CWU), who knew of the statutory time limit.

5. The commissioner found that since the applicant was not in a coma, the fact that he was very sick did not justify the delay. The applicant did also not tell the commissioner what was wrong with him, or provide him with proof of his illness.
6. The applicant was charged with the unauthorised possession of certain postage items. There was evidence, presented in the form of video camera footage, that the applicant had placed 24 letters in his trousers on 7 July 2001 at 10h07.
7. The applicant argued that he had good prospects of success. He stated there was no sufficient proof to warrant his dismissal, and the respondent never followed the correct procedure on appeal.
8. The applicant was suspended with full pay on 7 July 2000 pending a disciplinary hearing.
9. According to the union, and this was not apparently put before the commissioner, these letters were found in the ceiling thereafter.
10. The commissioner found that the applicant had not made out a case for condonation because the degree

of lateness is excessive, the reason given was not acceptable, and the applicant had no prospects of success. There are no grounds in the applicant's review application to persuade me to set the ruling aside.

11. Commissioners of the CCMA have a discretion with regard to the granting of condonation when disputes which are referred late. Provided they have exercised this discretion reasonably and judiciously, and dealt with the application fairly on the facts presented before them, the Labour Court would be extremely loathe to interfere with the exercise of their discretion. In this case there are no grounds upon which I could find that the commissioner's ruling should be set aside and that the late referral of the applicant must be condoned
12. This judgment was given in the absence of the applicant's representative of the CWU, Earlier on, after the matter had been argued, I informed the applicant's representative that I will give judgment at the end of the roll. It is now 16h20, and the court has reached the end of its roll, and the representative was absent.
13. The application is dismissed.

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E. Revelas