

LOM Business Solutions t/a Set LK Transcribers

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: J1724/99

2002-02-02

NOT REPORTABLE

In the matter between

NATIONAL UNION OF METALWORKERS

OF SOUTH AFRICA

Applicant

LIST OF INDIVIDUAL APPLICANTS

Second to Further Applicants

10 And

DORBYL LIMITED

First Respondent

CLIDET 453 (PTY) LIMITED

Second Respondent

J U D G M E N T

PILLAY D, J:

20 This is an application for condonation of the applicant's late delivery of its statement of case. The reasons for the delay were firstly, that the applicant had difficulty obtaining a case number from the registrar of the Labour Court. The case number was allocated after the expiry of the time for the delivery of the statement of case. Secondly, the first applicant union, NUMSA, had internal difficulties with its staff. The official originally dealing with the matter left the union. Another employee who was

engaged on probation was found not to be suitable; in the meantime he had mismanaged this matter to the extent that there were further delays. He assumed that the matter had been referred to the applicant's attorneys to attend to. He misread correspondence that had been filed, which led to this assumption. In any event, the matter was not referred to the attorneys to file the statement of case. On his departure, the regional secretary, Mr Mosepe, became involved in the matter. He realised that there had not been a statement of case filed and attended to it. By that stage there was a delay of some 10 months after the statement of case fell due.

10 Thirdly, there was a further delay from the time the statement of case was filed and the application for condonation was made. The explanation for that delay was that the officials who dealt with the matter within the union and who had left were unco-operative and it was difficult to get affidavits from them.

One of the officials who did sign an affidavit also failed to provide an address which suggests that there must be some support for the applicant's submission that there were difficulties in getting the former employees' cooperation for the application for condonation.

20 In any event, the application for condonation had to be brought within a reasonable time. In the circumstances confronting the applicant, I found that the application for condonation was brought within a reasonable time.

Returning to the main application for condonation, the explanation for the delay is in essence the ineptitude and organisational difficulties of the representative of the individual applicants. That explanation is not too

different from the explanation tendered on behalf of the respondent in its own application for condonation. The one similarity is that both representatives appear to have misread communications. for instance, the attorney for the respondent did not realise that heads of argument had to be delivered. He obviously did not read the notice of set down properly, which he acknowledged having received. The representative for the applicants also did not read correspondence sufficiently carefully and concluded that the matter had been referred to the applicant's attorneys.

10 A feature that favours the applicant's substantially is that the officials were at all times under the *bona fide* but erroneous belief that the matter was being attended to. There is no suggestion that their conduct amounted to anything more than negligence. However, comparing the degree of care that one might expect of a junior official of the union and an attorney, a higher degree of care can reasonably be expected of the attorney than of a junior official of the union.

In all of this, none of the applicants could be held personally responsible for the delays. If they were under the impression as they might reasonably have been that the matter was being attended to, then it is not likely that they would have taken any steps to expedite the matter.
20 It is not uncommon for labour matters to take a considerable period of time and the delays in this matter are not unusual.

The proposition that the union ought to have filed a statement of case timeously, despite not having being issued in advance with a case number, has this difficulty: The evidence is that a senior official had to confer with the registrar about a general problem of not being allocated

case numbers. I cannot assume that the registrar would have allocated a case number if the statement of case was before her without a case number on the day on which it was due. Without a case number no further steps in the proceedings could take place. The respondent would not be able to file its statement of defence and the matter would have to stand still until a case number was allocated.

In the circumstances, I find that the explanation for the delay is acceptable. The period of delay of 10 months is substantial; however this court has granted condonation in circumstances where the delay has
10 been longer. When considering the period of delay, the court takes into account the explanation for it and the importance of the case to the parties.

The importance of the matter to the applicants is quite obvious; there are 176 applicants. They have maintained an interest in the matter throughout. They reported regularly for feedback on progress. There is no indication that they abandoned the case whatsoever. They are from a community where unemployment of 176 people could affect that community. In the circumstances the case is important.

I also take into account the prospects of success. I am not
20 required to try the prospects of success on the pleadings. However, I find that the applicant had set out sufficient facts which if at the trial are found to be proved, could result in the applicants' success. Therefore, there are reasonable prospects of success.

In the circumstances, **the application for condonation is granted with no order as to costs.**

Pillay D, J

Date of Editing: 16 June 2009

Appearances

On behalf of the Applicant: Mr van der Riet instructed by Cheadle,
10 Thompson and Haysom

On behalf of the Respondent: Mr Buirski instructed by Pienaar Swart
Nkaisang Inc