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IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: JR1153/02

2003-02-04

In the matter between

MAKHANYA

Applicant

and

MEADOWLANDS POST OFFICE

Respondent

J U D G M E N T

REVELAS J:

1. In this matter the applicant, Mr Makhanya, was dismissed by the respondent, (the Meadowlands Post Office), for allegedly stealing R300 from an envelope. Copies of the disciplinary inquiry were placed before me. This was evidently also placed before the arbitrator or commissioner who refused to grant the applicant condonation for his late referral of the matter.
2. The dismissal took place in August 2000. In the affidavit made to the Commission for Conciliation,

Mediation and Arbitration deposed to by a union official, it is stated that the dispute arose on 9 April 2001. Clearly there is a great discrepancy of almost a year. The dispute was then referred to the CCMA on 15 April 2002. According the commissioner it is therefore between 11 and 19 months late, depending on whose version is accepted.

3. The applicant alleged that he relied on his union organiser who assisted him in the disciplinary inquiry to refer the dispute about his alleged unfair dismissal. The union official did not deal with his matter dilligently and then in December 2000 he approached an alternative specialist for assistance.
4. The commissioner refused to condone the late referral on the basis that he did not believe that the applicant's prospect of success were good. I am unable to criticise his finding in view of the fact that he had the evidence of the disciplinary inquiry before him and he was addressed on several of the issues. He regarded the delay as excessive, which it was, and the explanation for the delay, he found to have had no merit at all. It also appears that the commissioner was aware that conflicting facts were placed before him. He stated that:

"The dates stated by the applicant are confusing and do not assist the consideration of the application."

5. Commissioners who decide condonation applications are enjoined with a discretion whether or not to grant

condonation of a late referral, and as long as the discretion is exercised judicially and reasonably there exists no reason to interfere in such rulings.

6. In this particular instance, the applicant has not demonstrated that the commissioner did not apply his mind to the facts before him, or that there was any reason to interfere with the exercise of his discretion. It must also be remembered that in terms of the Labour Relations Act, 66 of 1995, as amended, commissioners of the CCMA are enjoined to promote the expeditious conclusion of labour disputes. Matters that are referred to it 11 months after the dismissal heard and should not be such late referrals should not be condoned unless very special circumstances exist. There are clearly no such circumstances in this matter.
7. Accordingly the application to review the commissioner's award is dismissed.

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E. Revelas