

**IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT JOHANNESBURG**

CASE NO. JR 983/06

In the matter between:

CASH PAYMASTER SERVICES (PTY) LTD

Applicant

and

**COMMISSION FOR CONCILIATION,
MEDIATION AND ARBITRATION**

First Respondent

HAROLD MATSEPE N.O.

Second Respondent

ALWYN JACOBUS DE WAAL

Third Respondent

JUDGMENT

A VAN NIEKERK, AJ

Introduction

- 1 This is an unopposed application to review and set aside a ruling by the Second Respondent (the Commissioner) when on 16 March 2006, he refused to dismiss a dispute referred to the First Respondent (the CCMA) rather than reschedule the matter for an arbitration hearing on a future date.

- 2 In brief, the background facts are that the Third Respondent (De Waal) was employed by the Applicant (the Company) until February 2005, when he was dismissed for misconduct. He referred a dispute to the CCMA. The dispute remained unresolved and was ultimately set down for arbitration on 2 February 2006. By consent, the matter was postponed and was again set down for arbitration on 16 March 2006. Neither De Waal or his legal representative attended the proceedings. Prior to the arbitration hearing, De Waal's attorney, addressed a letter to the CCMA requesting that the arbitration proceedings be postponed. A copy of this letter had not been sent to the Applicant, nor had the Applicant's consent to the proposed postponement been sought. Despite the Company's contention that the referral should be dismissed, the Commissioner, as I noted above, issued a ruling requiring the dispute to be rescheduled, and ordered that the De Waal pay the wasted costs of the day.
- 3 In his ruling, the Commissioner records that the letter referred to above was received from De Waal's attorney on 23 February 2006, and that the reason for his unavailability was explained in that letter. Although the Commissioner notes that De Waal's attorney did not follow the correct procedures in terms of the CCMA's rules, he noted that the request had been timeously made, and that rescheduling the matter would avoid severe injustice on the part of the Applicant (who had relied on his attorney under the circumstances) and that this would permit both parties "equal chance of presenting their case before me".
- 4 In these proceedings, the Company contends that a party requesting a postponement of CCMA proceedings must inform the other party of its intention and that in the absence of confirmation that a postponement has been granted, is required to attend the proceedings and renew the request for a postponement. The Company avers that section 138(5) of the Act confers no discretion on a Commissioner and compels a Commissioner to dismiss a matter where a referring party, properly notified of the proceedings, fails to attend.

- 5 The Company's argument overlooks the plain wording of section 138(5). That section provides that if a party fails to appear at arbitration proceedings, and that party had referred the dispute to the CCMA, the Commissioner *may* dismiss the matter. This formulation clearly confers a discretion on a Commissioner either to dismiss a matter, or, as the Commissioner did in this instance to postpone a matter for hearing on a later date. The section does not compel a Commissioner to dismiss a matter in all instances where an Applicant fails to attend or to be represented at arbitration proceedings.
- 6 In the present matter, De Waal's attorney had not complied with the Rules relating to applications for postponement, nor had the attorney done the company the courtesy of forwarding a copy of the letter addressed to the CCMA, requesting a postponement. However, I am not persuaded that in electing to reschedule the arbitration on the basis of the letter addressed to the CCMA, the Commissioner can be said to have reached a conclusion to which no reasonable Commissioner could reach. While parties to proceedings in the CCMA should comply with the relevant rules, their failure to do so is not always fatal. An appropriate admonition by a Commissioner may be a reasonable response in the circumstances, for example, an order that a party failing to comply strictly with the Rules, pay the wasted costs (as was the case here).
- 7 I accordingly make the following order:
 - 1 The application to review and set aside the Second Respondent's ruling is dismissed;
 - 2 The matter is remitted to the CCMA for arbitration of the dismissal dispute between the Applicant and the Third Respondent; and
 - 3 There is no order as to costs.

ANDRE VAN NIEKERK,
Acting Judge of the Labour Court

Date of Hearing: 4 March 2008

Date of Judgment: 12 March 2008

APPEARANCES

For the Applicant: Fluxmans Inc
Ref: BM/bm/90103/4589