

LOM Business Solutions t/a Set LK Transcribers

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: JR949/06

2008/04/29

In the matter between

W.W BOVULA

Applicant

And

THE SAFETY & SECURITY BARGAINING

10 COUNCIL

First Respondent

SOUTH AFRICAN POLICE SERVICES

Second Respondent

MRS Z. MDLADLA

Third Respondent

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J U D G M E N T

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PILLAY D, J:

20 This is an application to review and set aside the award of the third respondent commissioner, who had refused to condone the late referral of a dismissal dispute. The applicant employee was dismissed on a charge of corruption on 20 August 2002. He was charged criminally and acquitted on 3 September 2003. The employee referred the dispute to the bargaining council on 22 April 2005 and made his application for condonation of the 4 May 2005. The period of delay of more than three

years, is considerably more than the two years, three months and 24 days alleged by the applicant in his application for condonation. The explanation for the delay is also unacceptable, as the commissioner found. The commissioner's reasons for rejecting the applicant's explanation appear in paragraph 4.3 of the award. Given the unacceptable explanation for the long period of delay, the commissioner did not need to consider the prospects of success on the merits of the application.

- 10 In any event, the evidence of the prospects of success presented to the commissioner is not clear. The fact that the money was not found on the employee's person is neither here nor there. In the light of the long period of delay, the prejudice to the employer is great. Witnesses may no longer be available and even if they are, their recollection could be impaired. In the circumstances the application for review must fail.

The application is dismissed with costs.

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- 20 Pillay D, J

Date of Editing: 5 July 2009

Appearances:

For the Applicant: Bethuel Netshisumbewa - SAACOWU

For the Respondent: Unopposed