



REPUBLIC OF SOUTH AFRICA

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Case No: JR2195/08

In the matter between:

NEHAWU obo MOTLANTHE

Applicant

and

MEC FOR HEALTH NORTHERN CAPE

First Respondent

COMMISSIONER CHARLTON REX

Second Respondent

PUBLIC HEALTH AND SOCIAL DEVELOPMENT

SECTORAL BARGAINING COUNCIL

Third Respondent

Heard: 14 January 2014

Delivered: 23 June 2014

Summary: Application in terms of section 158(1)(C) for an arbitration award to be made an order of court. Dilatory conduct on the part of the First Respondent. Review application not staying application in terms of section 158(1)(C) of the Labour Relations Act 66 of 1995 as amended. Award made

an order of court in terms of section 158(1)(C) of the Labour Relations Act 66 of 1995 as amended.

JUDGMENT

SNIDER, AJ

- [1] In this matter the Applicant seeks that an award (“the award”)¹ made by the Second Respondent, acting under the auspices the Third Respondent be made an order of this court.
- [2] This matter has its genesis in March 2005 when the Applicant appears to have been absent from his place of employment from 9 March 2005 until 8 or 9 April 2005².
- [3] In terms of the award the Second Respondent found the dismissal of the Applicant to be substantively unfair, ordered his reinstatement, with benefits, with effect from 4 February 2008 and further ordered the First Respondent to pay the Applicant his outstanding salary equivalent to eleven (11) months’ remuneration. The time for compliance with the award was by no later than 29 February 2008.
- [4] The First Respondent launched a review application on 23 October 2008, according to the date of the notice of motion on the application, however, the stamp on the notice of motion reflects 12 November 2008.
- [5] A courier document which follows the notice of motion in the review application reflects the date 7 November 2008 and I am accordingly, inclined to belief that the date reflected on the stamp is the correct date of the filing of the application with this court.

¹ A copy of the award appears at pages 9 to 13 of the papers.

² The award is contradictory in this regard. It refers to the period of absenteeism being 9 March 2005 until 8 April 2005 at (page 10 paragraph 70) and also refers to a return to work on 9 June

- [6] The review application was thus launched some seven months late. The explanation for the delay tendered by one Nolukhanyiso Gcilitshana of the State Attorneys, being the First Respondent's attorneys, is woefully inadequate. Even if one accepts the rather strange allegation that the instruction given to the state attorney was not as voluminous as documents usually received by the State Attorney and that accordingly it is possible that from 15 February 2008 until 26 August 2008 the matter could have gone, it is completely incomprehensible why it would not be possible, shortly after 26 August 2008, bearing in mind how delayed the matter already was, to arrange for an interview with the relevant witnesses very swiftly.
- [7] The review application is essentially based on one point only, the interpretation of section 17(5)(a) of the Public Service Act³ and this would have taken little consultation to achieve. There is then absolutely no explanation whatsoever as to what happened between 12 September 2008 and 12 November 2008, a period of two months, before the review application was launched.
- [8] There is also no explanation at all as to why the First Respondent did not follow up with its attorneys during the period from 15 February 2008 until 26 August 2008. This in itself militates against the granting of condonation.⁴
- [9] Although I am not adjudicating the condonation application in the review application, if it is ever adjudicated, it is doomed to failure given the principles surrounding condonation applications. It is trite that in an application for condonation a proper explanation for the delay must be given by the Applicant. There is clearly no such explanation in the relevant affidavit.
- [10] The conduct of the Third Respondent continued in an extremely dilatory

2005 which must be an error. The Second Respondent probably intended to reflect 9 April 2005.

³ Act 103 of 1934 as amended

⁴ *Saloojee and Another NNO v Minister of Community Development* 1965 (2) SA 135 (A) dictum at

fashion. It launched its review application on 12 November 2008 and, launched an application to compel the production of the record against the First Respondent only on 29 June 2010.⁵

- [11] It does not appear that the procedure to compel production of the record commenced with the notice in terms of rule 7A(4) was ever pursued by the First Respondent and, in terms of the affidavits filed in this application, nothing has been done since 29 June 2010 to procure the record. The affidavit opposing this application is materially lacking in this regard.
- [12] Even in respect of its answer in this matter the First Respondent requires condonation for the late filing of its answering affidavit.
- [13] Again the explanation given by the deponent to the First Respondent answering affidavit, Felix Mlungiseleli Mbeki, again an attorney practicing in the office of the State Attorney gives an explanation which is simply unsatisfactory. He alleges that he instructed his secretary to send copies of the application by courier to counsel on 6 October 2011 but only enquired as to the progress of the matter on 30 November 2011 allegedly only to find that his secretary had “inadvertently failed to dispatch the application as instructed”. The papers were then apparently dispatched to counsel on 2 December 2011 and yet the affidavit still took until the 13 February 2012 to be deposed to. Again this application for condonation simply does not pass muster. In principle, I should not have regard to the allegations set out in the answering affidavit. Once again the *dictum* in *Saloojee (supra)* is apposite.
- [14] The only purpose which the answering affidavit serves is to further illustrate the unacceptable conduct of the First Respondent in this matter.
- [15] In the premises, I see no reason why I should not grant the Applicant the relief sought.

[16] Accordingly, I make the following order -

1. The arbitration award dated 24 January 2008 handed down by Commissioner Charlton Rex, under case number PSH486-06/07 is made an order of court in terms of section 158(1)(C) of the LRA;
2. The costs of this application are to be paid by the First Respondent.

Snider, A J

Acting Judge of the Labour Court of South Africa

⁵ Record at pages 35 to 36.

APPEARANCES

For the Applicant: Nkopane Thaanyane of Thaanyane Attorneys.

For the Respondents: Advocate Rathaga Ramawele

Instructed by: the State Attorney.

LABOUR COURT