

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT JOHANNESBURG

CASE NO: JR1517/10

DATE: 2015-06-02

In the matter between

SUNDAY ZULU

Applicant

and

CCMA

First respondent

SBINGOSENI HINTSO N.O.

Second respondent

SUNNYSIDE PARK HOTEL

Third respondent

JUDGMENT

STEENKAMP, J

This is an application for condonation and an application to have an arbitration award reviewed and set aside. In dealing with the application for condonation, I will refer to the well-known principles set out in *Melane v Santam Insurance Company Limited*.¹

Firstly, the extent of the delay is excessive. The application is more than eight months late, despite the generous period of six weeks

¹ 1962 (4) SA 531 (A).

provided for in the Labour Relations Act.²

The only explanation that the applicant offers is the following. The arbitration award, handed down on 10 Feb 2010, was sent to his trade union, SACCAWU. “Subsequently I was informed by the CCMA that the arbitration award was sent to [SACCAWU”. He does not say when. He then says:

10 “I contacted the union offices and they reluctantly informed me that they never received the arbitration award. They further promised me that if they are in receipt of it, they will get in touch with me.”

Eventually, the applicant did get a copy of the award, apparently on 14 May 2010 after he took a letter from his attorneys, Kgotleng attorneys, to the CCMA. He says:

 “I immediately sent the same [i.e. the award] to my legal representative for perusal and advice.”

20 That legal representative was the applicant’s attorney, Mr Kgotleng. Kgotleng went on holiday, apparently, without bothering to refer the matter to anyone else and only returned two months later, on 17 July 2010. Despite that, it took another four months, until 19 November 2010, to deliver the review application. The only explanation for that is that the applicant says:

 “At the time I was out of pocket without any money to pay my attorneys.”

² Act 66 of 1995 s 145(1)(a).

He does state that the attorney was reasonable and gave him a chance to seek finances to enable him to proceed with the matter. He does not explain when he did that and why it took another four months to file a simple review application comprising 11 pages, four of which deal with the application for condonation. The explanation is a poor one.

I turn then to the prospects of success. Having perused the transcript of the proceedings and the arbitration award, it is clear that the arbitrator, Commissioner Sibongiseni Hintsho, dealt with the
10 evidence and argument before him clearly and comprehensively. He noted that the dispute concerned the dismissal of the applicant for poor work performance and failure to follow through an instruction. The applicant was employed as assistant front office manager of the Sunnyside Park Hotel. A customer requested an amended invoice from the applicant. The applicant never sent it to the client, despite numerous requests.

The arbitrator analysed the evidence and noted that it is common cause that the application received a request from the client to amend an invoice. The applicant confirmed that it was part of his duties
20 to assist guests with invoices, yet, he did not comply. The arbitrator further noted that it is common cause that the application was aware of the rules and regulations of the respondent. He confirmed that he was trained and did not require any further training. He was previously warned for poor work performance. He had a valid final written warning. The respondent applied principles of progressive discipline prior to the

dismissal. He was counselled on numerous occasions about his poor performance and he was offered a lower level job, which he refused. At the internal appeal hearing, he was again offered demotion as an alternative to dismissal. He declined.

The arbitrator found on a balance of probabilities that the dismissal was substantively fair. Applying the principles set out in *Herholdt v Nedbank Ltd*³ and in *Goldfields Mining*⁴, that conclusion is not so unreasonable that no other arbitrator could have come to the same conclusion. Therefore, the application's prospects of success in
10 the condonation application are non-existent.

ORDER

The application for condonation is dismissed.

STEENKAMP J

20

³ [2013] 11 BLLR 1074 (SCA).

⁴ *Gold Fields Mining SA (Pty) Ltd (Kloof Gold Mine) v CCMA* [2014] 1 BLLR 20 (LAC).

CERTIFICATE OF VERACITY

I, the undersigned, hereby certify that, *in as far as it is audible*, the foregoing is a **VERBATIM** transcription of the proceedings as was ordered to be transcribed by iAfrica Transcriptions and which had been recorded by Digital Court Recording Services by means of a digital recorder.

In the matter between :

SUNDAY ZULU
And

Applicant

SUNNYSIDE PARK HOTEL

Respondent

<u>CASE NO:</u>	JR1517/10
<u>RECORDED AT:</u> JOHANNESBURG	<u>Court:</u> Labour Court
<u>Court Nr:</u>	<u>Stenographer:</u>
<u>DATE OF HEARING:</u>	2 JUNE 2015
<u>ORDER TO TRANSCRIBE:</u>	Transcribe whole case.
<u>RECEIVED BY TRANSCRIBER ON:</u>	15 JULY 2015
<u>COMPLETED BY TRANSCRIBER ON:</u>	21 JULY 2015
<u>TRANSCRIBER:</u>	A G VAN STADEN
<u>NUMBER OF PAGES:</u>	10
<u>Number of CDs:</u>	<u>Sound via Internet:</u> Yes

PLEASE NOTE

1. *Court digital recording equipment not utilised to its full potential.*
3. *Court stenographer's annotations incomplete.*
4. *Where no clear annotations are furnished, names are transcribed phonetically.*