



**THE LABOUR COURT OF SOUTH AFRICA
JOHANNESBURG**

Not Reportable

Case no: JR 2133/09

NATIONAL UNION OF MINEWORKERS

First Applicant

H M MDASHE

Second Applicant

and

**COMMISSIONER FOR CONCILIATION MEDIATION &
ARBITRATION**

First Respondent

COMMISSIONER GLORIA RABYANYANA N.O.

Second Respondent

ANGLO PLATINUM MINES (RUSTENBURG SECTON)

Third Respondent

Heard on: 8 February 2017

Delivered: 10 February 2017

JUDGMENT

VAN NIEKERK J

- [1] This is an application to review and set aside an arbitration award issued by the second respondent on 14 April 2009. In her award, the second respondent held that the third respondent had unfairly dismissed the second applicant and ordered that the second applicant be paid compensation in a sum equivalent to

2 months remuneration. The applicant seeks to substitute that order with one of reinstatement.

[2] The present application was filed on 13 August 2009, outside of the applicable time limit. The applicants seek condonation for the late filing of the application.

[3] The review application was filed eight weeks late. The explanation for the delay is that the shop steward who represented the second applicant at the arbitration hearing was not re-elected to that office during a conference held on 20 March 2009. An arrangement was made in terms of which the shop steward would remain in office until 31 July 2009 in order to deal with part-heard cases. It emerged afterward that the award in question had not been sent to the first applicant's head office for screening; the award was sent only on 25 July 2009. The applicants state that there was confusion in the office as to who would be dealing with the matter. A consultation with the attorney was held only on 5 August 2009 and the review papers were prepared and filed on 13 August 2009. In regard to the prospects of success, the applicants submitted that they have good prospects of success and that the second applicant should be reinstated.

[4] Condonation is not there merely for the asking, nor are applications for condonation a mere formality (see *NUMSA v Hillside Aluminium* [2005] 6 BLLR 601 (LC)). The applicant bears the onus to satisfy the court that condonation should be granted. In *Novo Norsdisk (Pty) Ltd v CCMA & others* [2011] 10 BLLR 957 (LAC), the Labour Appeal Court recently observed, at paragraph 28 of the judgment:

It seems to me that the aforesaid requirements are equally applicable when a party seeks condonation. The party seeking condonation must satisfy the court that it has a reasonable explanation for its delay in failing to comply with the time limits applicable to that party. Its failure to put before the court a reasonable and acceptable explanation entitles a court to refuse condonation. Further, if a court takes the view, that they are little prospects of success then, in my view, a court can justifiably refuse the indulgence being sought.

[5] This principle is subject to that established by the Labour Appeal Court in *National Union of Mineworkers v Council for Mineral Technology* [1999] 3 BLLR 209 (LAC) in which the LAC said the following:

... without a reasonable and acceptable explanation for the delay, the prospects of success are immaterial, and without prospects of success, no matter how good the explanation for the delay, an application for condonation should be refused.

- [6] There is another policy consideration that I must necessarily take into account. That is the statutory purpose of expeditious dispute resolution and the various mechanisms provided for in the Rules and the practice manual to ensure that review applications are dealt with efficiently and within the specified time limits. Indeed, the practice manual requires that a review application be prosecuted with the same degree of diligence as an urgent application.
- [7] In my view, the explanation for what is an excessive delay is inadequate. In particular, the applicants have failed to provide a satisfactory explanation for the delay over the period 6 May 2009, the date of receipt of the award, to 25 July 2009, when the award was forwarded to the first applicant's head office for screening. Further, the shop steward's leaving office predated the arbitration award. At the time that a review was considered, he remained in office solely for the purpose of dealing with outstanding matters, including the present. The shop steward only left the applicant's provincial office on 31 July 2009, more than 3 months after the award was issued. They applicants fail to set out any of the steps taken by them during the above period. In essence, the only explanation given for the lack of activity for a period concerned is that the shop steward was under the impression that other officials were attending to the review application. The second applicant provides no explanation as to why he did not make any enquiries to confirm that the review was being dealt with. The applicants are required to explain the whole period of the delay with a degree of specificity that will enable the court properly to assess the merits of the application. In my view, the applicants have failed to do so.

[8] In regard to the applicant's prospects of success, to the extent that these are relevant given a failure by the applicants to provide a reasonable explanation for an excessive delay, the court must bear in mind the high threshold that

applies in review applications. The second respondent decided not to reinstate the second applicant in circumstances where the third respondent had led evidence to establish that he is conduct made a continued employment relationship in coral rubble. This clear from the record that the second respondent considered all of the relevant factors and made a determination on remedy that on the face of it, falls within a band of decisions to which reasonable decision-makers could come.

- [9] There is a further fundamental factor that militates against granting condonation. The present application, as I have indicated, was filed in August 2009, some 7 ½ years ago. The second applicant was dismissed on 19 December 2008, more than eight years ago. In my view, the interests of justice, the third respondent's right to certainty, and the statutory purpose of expeditious dispute resolution would not be served were condonation to be granted in a matter that has clearly not been prosecuted with the required degree of diligence.

For the above reasons, I make the following order:

1. Condonation for the late filing of the review application is refused.
2. The review application is dismissed.

Van Niekerk J

Judge of the Labour Court

APPEARANCES

APPLICANT: Mr M S Molebaloa, M S Molebaloa Attorneys Inc