



**THE LABOUR COURT OF SOUTH AFRICA
JOHANNESBURG**

Not Reportable

Case no: JR 742/14

DANIEL D THEART

Applicant

and

**THE GENERAL PUBLIC SERVICE SECTORAL BARGAINING
COUNCIL**

First Respondent

COMMISSIONER L DREYER N.O.

Second Respondent

**THE DEPARTMENT OF JUSTICE & CONSTITUTIONAL
DEVELOPMENT**

Third Respondent

Heard on: 10 February 2017

Delivered: 13 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 May 2013. In her reward, the second respondent upheld the penalty of demotion imposed on the applicant after he had been found guilty of a number of charges of misconduct.

- [2] The present application was filed on 21 January 2015, more than 18 months late. The applicant has filed an application to condone the late filing of the review application. The third respondent in the review application is filed an application in terms of Rule 11 seeking to dismiss the review application on the basis that the applicant failed to prosecute the review application with the required degree of diligence.
- [3] The record was made available to the applicant by 18 March 2015. The transcription of the record was filed only on 1 December 2015, way in excess of the 60-day period prescribed by the practice manual. There is no application for condonation for the late filing of the record.
- [4] It is well-established that this court has the power to dismiss proceedings on account of the delay in the prosecution of the proceedings. This power is premised on the court's inherent power to prevent an abuse of its own process, and in the case of review applications, the exercise of the power to dismiss is one that is used more often than not to ensure compliance with the principle that review applications must be expeditiously dealt with.
- [5] The present applications were enrolled for a pre-enrolment hearing. At the time of the hearing, six years had elapsed since the applicant was first dismissed and almost 4 years had elapsed since the arbitration award under review was issued. In my view, the rule 11 application should succeed and the review application ought to be dismissed. I take into account particularly the fact that the review application was filed inordinately late. The applicant does not dispute that the extent of the delay is substantial. In my view, the explanation for the delay is unsatisfactory. The explanation centres on effort by the applicant to secure representation by the trade union that represented him at the arbitration hearing, and then another union, to prosecute the present application. While the court would ordinarily afford degree of latitude to a party seeking to prosecute a review application, the degree of lateness in the present instance this so excessive that any explanation for the period of delay must necessarily meet a high standard. The explanation in the present instance does not serve to offset the substantive delay in filing the application. Further, it is

apparent from the papers that the applicant's real complaint is with the arbitrator's assessment of the evidence and his conclusions that the decision to which the arbitrator came was incorrect. This is not the applicable test. Commissioners are allowed to be wrong. This court is entitled to intervene in limited circumstances, if and only if an applicant establishes that the commissioner's decision was so unreasonable that no reasonable decision maker could come to that decision on the available material. This is not the case that the applicant is made out. The applicant's prospects in the review application are therefore minimal, if they exist at all.

- [6] In any event, the applicant's failure to file the record timeously has the result that in terms of paragraph 11.2 of the practice manual, the application was deemed to have been withdrawn 60 days after the record was made available. The applicant took none of the steps provided in the practice manual in the case of an inability to file a record timeously. It is also not in dispute that during the course of September 2015, efforts were made to ensure that the applicant's attorney file the record. Despite assurances that the record would be filed without further delay, it was not filed until December 2015.
- [7] Perhaps the most fundamental factor to be considered is that of the statutory purpose of expeditious dispute resolution. The practice manual requires parties to prosecute review applications as if they were urgent applications. Recent amendments to the LRA make clear that parties are required to prosecute review applications without delay; indeed, all of the relevant papers are required to be submitted within a period of six months from the date on which the application is filed. Given these benchmarks, the applicant has been dilatory and as failed to prosecute the review application with the required degree of diligence. In these circumstances, and given the poor explanation for a delay in excess of 18 months in filing the review application, a consideration of all of the circumstances dictates that the application to dismiss ought to be granted
- [8] In the premises I make the following order:

1. The application for review is dismissed.

Van Niekerk J

Judge of the Labour Court

APPEARANCES

APPLICANT: Lange Carr & Wessels inc.

THIRD RESPONDENT: Ms N Gchilitshana, The State Attorneys