



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JR1110/15

In the matter between:

**MEMBER OF THE EXECUTIVE COMMITTEE,
DEPARTMENT OF EDUCATION, FREE STATE
PROVINCE**

Applicant

and

**EDUCATION LABOUR RELATIONS BARGAINING
COUNCIL**

First Respondent

COMMISSIONER JEROME MTHEMBU

Second Respondent

M S MOKOMA

Third Respondent

Heard: 15 February 2017

Delivered: 03 March 2017

JUDGMENT

TLHOTLHALEMAJE, J

- [1] This matter was set-down for pre-enrolment hearing. The Applicant had on 3 July 2015, launched an application in terms of the provisions of section 145 (3) of the Labour Relations Act to stay the enforcement of an award issued by the Second Respondent under case number PSES389-13/14 dated 9 March 2015 pending the determination of a review application launched under the above case number.

- [2] The sole issue for determination at these proceedings was whether the review application was launched on time for the purposes of obtaining relief under section 145 (3) of the LRA. The award having been issued on 9 March 2015, the review application was also launched on 03 July 2015. In its application for condonation, it was submitted on behalf of the Applicant that the award was only received on 30 March 2015, and that the application for a review was therefore about 14 days out of time.
- [3] The principles applicable where condonation is sought are well-known. Thus, the court enjoys a discretion in determining whether good cause has been shown, having considered factors such as the degree of lateness, the explanation therefor, the prospects of success and the importance of the case. These factors are ordinarily interrelated, and are not individually decisive, except to the extent that *inter alia*, where there are no prospects of success there would be no point in granting condonation¹. Of equal importance in such applications in accordance with *Brummer v Gorfil Brothers Investments (Pty) Ltd*², is whether the interests of justice would be served by the granting or refusal of condonation.
- [4] The Third Respondent in opposing the condonation application did not take issue with the date upon which a copy of the award was sent to or received by the Applicant. The Third Respondent nevertheless further submitted in this regard that no reasons were advanced for the delay, and that in any event, the review application was doomed.
- [5] In the absence of any other contention on the part of the Third Respondent in regards to the receipt of the award as submitted on behalf of the Applicant, I will accept that the delay in filing the review application is indeed about 14 days. In my view, this delay is not excessive.
- [6] I have further had regard to the explanation proffered for the delay, i.e., that the decision to review the award went through a chain of command, resulting in further instructions being issued to the office of the State Attorney to proceed with the matter and to brief Senior Counsel. The reasons in this

¹ *Melane v Santam Insurance Co. Ltd* 1962 (4) SA 531 (A) at 532B-E

² [2000] (2) SA 837 (CC) at 839 F

regard may not be detailed in regards to accounting for each period of the delay. Be that as it may, I am satisfied that in the light of the Third Respondent's failure to address these reasons with any particularity, they ought to be accepted as reasonable.

- [7] In regards to the Applicant's prospects of success, the award sought to be reviewed and set was issued in circumstances where the principal issue before the Second Respondent was whether the dismissal of the Third Respondent was procedurally and substantively fair or not. It was common cause that the Applicant had invoked the provisions of section 14 (1) (a) of the Employment of Educators Act 76 of 1998 in terminating the services of the Third Respondent.
- [8] The dispute having been referred to the First Respondent, the Second Respondent had found that the dismissal of the Third Respondent was procedurally and substantively unfair, and had ordered that he be reinstated with retrospective effect. The Third Respondent was also awarded back-pay equal to 18 months and 17 days for the period between 20 August 2013 and 9 March 2015. The total amount payable in terms of the award is R627 820.00.
- [9] The Applicant seeks an order reviewing and setting aside the award on a variety of grounds which I do not deem necessary to repeat for the purposes of this judgment. I have further had regard to the Third Respondent's answering affidavit and submissions made in regards to the main application. In my view, given the circumstances of this case and the grounds upon which the review of the award is sought, I am satisfied that the interest of justice would better be served with the granting of condonation.
- [10] It is not clear on the papers as to the reason that the Applicant had further launched an application in terms of section 145 (3) of the Labour Relations Act. There is nothing in its pleadings that indicates that the Third Respondent had taken steps to enforce that award to necessitate the bringing of that application. As at the hearing of this matter, the application to stay the enforcement of the award remained unopposed and correctly so, as it was superfluous in the absence of any steps to enforce the award.

[11] A further issue however which appears not to have been taken up by the Third Respondent is the Applicant's non-compliance with the provisions of section 145 (7) and (8) of the LRA. There is equally no application by the Applicant to be exempt from those provisions. In the light of these considerations, this matter cannot be said to be ripe for hearing. In the circumstances, the order that follows is deemed to be appropriate;

Order:

1. The late filing of the review application is condoned.
2. The Applicant is directed to comply with the provisions of section 145 (7) and (8) of the Labour Relations Act within 21 days of the date of this order, or in the alternative, to file and serve an application within the same period to show cause why it should be exempt from those provisions. Such an application must also be served on the Third Respondent for its response.
3. There is no order as to costs

E Tlhotlhemaje

Judge of the Labour Court of South Africa

APPEARANCES:

On behalf of the Applicant:

Adv. LT Manye

Instructed by:

State Attorney, Bloemfontein

On behalf of the Third Respondent:

Adv. S Grobler

Instructed by:

Phatsoane Henney Attorneys

LABOUR COURT