



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JR2946/10

**INDUSTRIAL DEVELOPMENT
CORPORATION OF SOUTH AFRICA
LIMITED (IDC)**

Applicant

and

TRACEY LUCILLE ROSCHER

First Respondent

ERIC MYHILL N.O.

Second Respondent

**COMMISSION FOR CONCILIATION
MEDIATION AND ARBITRATION**

Third Respondent

Decided: In chambers

Judgment: 12 May 2017

Summary: Leave to appeal -- application for leave to appeal granted.

RULING ON LEAVE TO APPEAL

HOWES, AJ

Introduction

- [1] This is an application for leave to appeal in respect of the whole of the judgment and order handed down by the Honourable Court on 2 August 2016. In terms of the judgment, the Applicant's review application was successful, and the arbitration award issued by the Third Respondent was set aside and replaced with an award that the dismissal of the First Respondent was substantively fair.
- [2] The First Respondent seeks leave to appeal the judgment, and also seeks condonation for the late filing of her written submissions. The Applicant opposes the application for leave to appeal and the application for condonation.
- [3] While the delay in serving and filing the written submissions is significant (some 60 days), an explanation of sorts is provided for the delay. It appears that a material portion of the delay is submitted to have been occasioned as a result of the untimely death of Mr Anthony Hinds, the First Respondent's initial attorney of record. Thereafter the delay is further explained as a result of the First Respondent's attempts to secure her file from the offices of Mr Hinds, due to *inter alia* a fee dispute.
- [4] I have to agree with the Applicant that there are certainly aspects of the First Respondent's explanation that are lacking, but as the primary explanation relates to action or inaction of the late Mr Hinds and Mr Hinds' offices, it is unlikely that the First Respondent could have provided a more detailed explanation for that period. While there are periods of the delay which are not properly explained, in the exercise of my discretion and given my views relating to the complexities of this matter and the merits of the application for leave to appeal, I condone the delay.
- [5] Having carefully considered the application for leave to appeal, and the submissions filed by both parties, I am persuaded that there are reasonable prospects that another court may reach a different conclusion on appeal. Furthermore, this matter is of considerable factual and legal complexity, it is voluminous in nature and it is of some public importance, as it involves a

publicly-funded employer, faced with a retrospective reinstatement order in respect of a senior and highly paid employee. In my view, it would be in the interests of justice to grant leave to appeal.

Order:

1. Condonation for the late filing of the First Respondent's written submissions, is granted.
2. The application for leave to appeal is granted.
3. Costs of this application are to be costs in the appeal.

Howes, AJ

Acting Judge of the Labour Court of South Africa