



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not reportable

Case no: JR 649/15

In the matter between

**AUTOZONE HOLDINGS (PTY) LTD T/A
AUTOZONE**

Applicant

and

JOHAN MOOLMAN

First Respondent

**DISPUTE RESOLUTION CENTRE FOR THE
MOTOR INDUSTRY BARGAINING COUNSEL**

Second Respondent

JANINE JOHNSON

Third Respondent

Heard: 17 January 2017

Delivered: 26 May 2017

JUDGMENT

MAKINTA AJBackground

- [1] The applicant, Autozone, employed Janine Johnson, (Johnson) as a dispatch clerk.
- [2] The parties in this matter are bound by a collective agreement of the Motor Industry Bargaining Council (MIBCO), (Agreement). The said agreement prescribes wages / salaries of employees in particular categories.
- [3] An inspector of MIBCO inspected Autozone, and concluded that, it was not complying with the agreement with regard to paying minimum wages, in that, it was not paying a certain Johnson, its employee, the minimum wage prescribed by the agreement.
- [4] Around June 2014, MIBCO issued a compliance notice to Autozone to pay Johnson the minimum wages prescribed in the agreement, with retrospective effort.
- [5] Autozone responded to the compliance notice, and stated that the job content of Johnson's job was ten percent (10%) clerical/office and 90% general work in the context of the agreement, and that therefore, what it was paying Johnson, which was on a general worker scale, was not in conflict, but in compliance, with the agreement.
- [6] The parties could not reach agreement on this issue, and the dispute went to arbitration, which was conducted on 11 December 2014.

- [7] In the award, the arbitrator found that Johnson was a “dispatch clerk,” and should be paid according to the minimum wage prescribed for a “dispatch clerk”.
- [8] The arbitrator accordingly ordered Autozone to pay MIBCO on behalf of Johnson an amount of (R2 457,20), which is what Autozone had short-paid Johnson with.
- [9] Autozone did not accept the above findings of the arbitrator hence, it instituted this review application.

Preliminary issues

- [10] This review application was instituted outside the six-weeks prescribed, and there is no proper application for condonation of the lateness.
- [11] Counsel for Autozone conceded that the application was instituted late, and attempted to move an application for condonation from the bar, which was clearly not in compliance with the Rules of this Court.
- [12] In any case, he did not know why the application was late, but speculated in this regard. In this regard, I am reminded of the remarks of this Court in *Numsa v Hillside Aluminium*¹ where it was held:

“Additionally, there should be acceptable explanation tendered in respect of each period of delay. *Condonation is not there simply for the asking. Applications for condonation are not a mere formality. The onus rests on the applicant to satisfy the court of the existence of good cause and this requires a full, acceptable and ultimately reasonable explanation.* One of the primary purposes of the Labour Relations Act is to ensure that disputes

¹ (2005) 6 BLLR 601 (LC) at para 6.

are resolved expeditiously, especially dismissal disputes. The intention is that disputes alleging unfair dismissal should be referred to conciliation within 30 days of the dismissal (section 191(1)(b)(i); that the conciliation process be completed within 30 days (section 191(5) and that disputes for adjudication by the Labour Court should then be referred within 90 days of the end of conciliation process. For a variety of reasons these time periods are often not complied with in practice. Nevertheless, to do justice to the aims of the legislation, parties seeking condonation for non-compliance are obliged to set out full explanations for each and every delay throughout the process. An unsatisfactory and unacceptable explanation for any periods of delay will normally exclude the grant of condonation, no matter what the prospects of success on the merits. The latter principle was stated by Myburgh, JP in *NUM v Council for Mineral Technology* (1999) 3 BLLR 209 (LAC) at 211G-H:

“There is a further principle which is applied and that is that 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 delay, an application for condonation should be refused.” (Emphasis added.)

- [13] Autozone has failed to proffer any reasonable and acceptable reasons for its late application and therefore condonation is refused.
- [14] Consequently, this review application is dismissed.

Merits of the Review

- [15] Should this Court be found to have erred with the finding above, the review application will be dismissed for the reasons stated below

[16] The applicant raised a number of grounds of the review of the Award, which lack particularity, including the following:

1). That the arbitrator did not render an arbitration award which a reasonable arbitrator could make.

1.1. The applicant does not substantiate as to why it submits that the Award is unreasonable.

2). The applicant submits that, the arbitrator has not applied his mind or considered evidential material, but does not specify the bases of these submission.

3). That the arbitrator assessed the job title "*at face value*", but does not elaborate, and does not refer to the definitions in the collective agreement relevant to this issue.

4). That the arbitrator failed to apply his mind to the factual issues before him, but does not specify which factual issues it refers to.

5). The applicant does not deal with the arbitrators' finding contained in the Award, and does not specify, why the findings should be found to be unreasonable.

[17] On the basis of the lack of particularity referred to above, this review application would still be dismissed, had it been instituted in time.

[18] The arbitrator considered that, the employee's appointment letter indicates that he is a dispatch clerk, not a general worker. He further considered that, there were many similarities between the duties of a dispatch clerk and those of a general worker.

[19] He found that, the duties of a general worker are so wide that they encompass most of the other positions in Autozone.

[20] He finally considered the fact that, the employee's position is described as that of a clerk, that is, dispatch clerk, and that, in terms of the MIBCO agreement, the scale of an administrative clerk is higher than that of a general worker, and Autozone pays the employee according to the letter scale.

[21] The above findings are so reasonable that any reasonable arbitrator could have made.

Conclusion

[22] I therefore find that, contrary to Autozone's submission, the Award is reasonable.

Order

[23] In the light of the above, the following order is made:

- 1) This review application is dismissed.
- 2) There is no order as to costs.

E.S. Makinta

Acting Judge of the Labour Court of South Africa

Appearances

For the Applicant: Adv. W Hutchinson

Instructed by: Fluxmans Inc.

For the Respondent: No appearance

LABOUR COURT