



**IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT PORT ELIZABETH**

**NOT REPORTABLE
Case Number PR 11/17**

In the matter between:

ADRIANA CHRISTA SLABBERT

Applicant

and

MOTOR INDUSTRY BARGAINING COUNCIL

First Respondent

COMMISSIONER BOTHA DU PLESSIS

Second Respondent

BMW CONTINENTAL CARS

Third Respondent

Heard: 16 January 2018

Delivered: 16 January 2018

EX TEMPORE JUDGMENT

POTGIETER, AJ

[1] This is an application firstly to condone the late filing of a review application and if condonation is granted, to review and set aside the decision of the Second Respondent (hereinafter referred to as “the Arbitrator”) acting under the auspices of the First Respondent.

[2] The Arbitrator held that the dismissal was fair.

CONDONATION.

[3] Section 145(1A) of the Labour Relations Act, No 66 of 1995 (LRA) requires of the applicant to show good cause when applying for condonation.

[4] In considering whether good cause had been shown I am having regard to what was said in Hospersa & Others vs. PSCBC & Others (under case number C 502-2011) (handed down on 22 November 2013) where the Honourable Judge extensively dealt with the applicable jurisprudence. The overriding principle guiding me in exercising my discretion whether to grant or refuse an applicant’s application for condonation, as confirmed by the Constitutional Court in Brummer v Gorfil Brothers Investments (Pty) Ltd [2000] (2) SA 837 (CC), is the interest of justice.

[5] Factors to be considered are the length of the delay, explanation thereof, prospects of success, prejudice and public interest.

- [6] The application is late by 77 days. The delay is serious and needs a full and proper explanation – see Van Wyk v Unitas Hospital and Another (Open Democratic Advice Centre as Amicus Curiae) 2008 (2) SA 472 (CC) at paragraph [22] *“An applicant for condonation must give a full explanation for the delay. In addition, the explanation must cover the entire period of delay. And, what is more, the explanation given must be reasonable.”*
- [7] The explanation proffered by the applicant is highly improbable as she states on the one hand that she first became aware of the six week period when she spoke to Mrs van Staden and on the other hand that she, when she spoke to Mrs van Staden, was under the impression that she already lost the case because of the six week period. This evidence is not congruent with her evidence that Mr. van der Walt never told her about the time limits she would only think that she already lost her case if she was advised by Mr. van der Walt of the six week period. A highly improbable version is presented in that she received hand delivered correspondence from Mr. van der Walt but did not read it because she did not trust him. No apparent reason is advanced for her misgivings of his trustworthiness is given. I also find it strange that a person, aggrieved by being unfairly dismissed, takes her time, where she knows that time is of the essence to read through the very papers she will rely on to enforce her rights causing a further delay.
- [8] Large portions of the 77 days remains unexplained and the explanation of some of the time amounts to no explanation at all. I cannot under these circumstances find that it will be in the interest of justice to grant condonation. The applicant states that she enjoys prospects of success. I do not necessarily share her view. I have already stated that her explanation for her lateness amounts to no

explanation at all. It will thus not be necessary to deal with whether she does or does not have prospects of success as confirmed by the Labour Appeal Court¹

[9] The applicant had not shown good cause. It is, as stated above, not in the interest of justice to grant condonation under the circumstances presented to me.

[10] There is nothing before to prevent me from ordering that costs should follow the outcome.

ORDER

Condonation is not granted and the applicant's application is dismissed with costs.

POTGIETER, A J

Appearances

For the Applicant: Mr. R o' Brien
of O'Brien Incorporated

For the Respondent: Advocate J.G. Grogan

¹ *NUM v Council for Mineral Technology (2002) 23 ILJ 1229 (LC)* at 1231 D – E: “There is a further principle which is applied and that is 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.”

Instructed by Joubert Galpin & Searle

LABOUR COURT