

JUDGMENT

IN THE LABOUR COURT OF SOUTH AFRICA

(HELD AT JOHANNESBURG)

CASE NUMBER: J678/98

Reportable: No

DATE: 1999-04-07

Of interest: No

In the matter of:

SUN INTERNATIONAL SOUTH AFRICA LIMITED

Applicant

and

CCMA AND OTHERS

Respondents

J U D G M E N T

BASSON, J:

The fifth and the sixth respondents were dismissed on 7 and 8 July 1997. The internal procedures pertaining to their dismissal (the appeals) took place on 28 July 1997 and the internal dispute procedures came to an end on 19 September 1997.

However, the dismissals on 7 and 8 July 1997 were not suspended by reason of these internal proceedings.

The operative dates of the dismissals are therefore 7 and 8 July 1997.

These dismissal disputes were referred to the Commission for Conciliation, Mediation and Arbitration (“the CCMA”) on 8 October 1997, that is, approximately two months out of time having regard to the provisions of section 191(1) of the Labour Relations Act, 66 of 1995 (“the Act”).

The conciliation proceedings took place on 4 November 1997. However, the issue of condonation for this late referral was not dealt with by the first respondent, that is the CCMA, through its commissioner, the second respondent. Nevertheless, the second respondent issued the certificate to the effect that the dispute remains unresolved on 4 November 1997.

The matter proceeded to arbitration after some time and extensions and postponements on 16 March 1998. The arbitrator of the CCMA, the third respondent, did not deal with the matter as he was of the view that the said certificate had not been correctly issued.

The applicant, Sun International South Africa Limited, accordingly took the issuing of the certificate on review, filing its papers on 1 April 1998.

The decision taken by the second respondent to issue the certificate in the absence of considering the merits of a possible condonation application, clearly constituted a gross irregularity in the conciliation proceedings.

Furthermore, it was incumbent upon the second respondent to consider the issue of condonation as it determines the jurisdiction of the CCMA to deal with this matter or dispute.

Accordingly the issuing of the certificate did not take place properly but it took place in the absence of jurisdiction to entertain conciliation proceedings and therefore falls to be set aside on review.

I make the following order:

1. The certificate issued by the second respondent in the matter between the applicant and the fourth, fifth and sixth respondents in terms of the provisions of section 135(5)(a) of the Labour Relations Act, 66 of 1995 and dated 4 November 1997, is hereby reviewed and set aside.
2. The first respondent is ordered and directed to consider afresh and on its merits and in terms of provision of section 191(2) of the Labour Relations Act any application for condonation which may be brought or persisted in by the fifth and sixth respondents in respect of the failure by the fifth and sixth respondents to comply with the time period of 30 days laid down in section 191(1) of the Labour

Relations Act.

3. The first respondent is directed to appoint another Commissioner to deal with this matter.

BASSON , J