

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT PORT ELIZABETH

CASES NO. P158 and P159/2000

DATE: 11 AUGUST 2000

In the matter between:

DRAKE INTERNATIONAL

Applicant

and

D J RAGA and R A FRANS

Respondents

J U D G M E N T DELIVERED *EX TEMPORE* ON 11 AUGUST 2000

REVELAS, J:

[1] These are two applications in terms of Sec 158(1)(g) of the Labour Relations Act No. 66 of 1995 ("LRA") to set aside two decisions of Commissioners of the Commission for Conciliation, Mediation and Arbitration wherein condonation for the late referral of disputes was handed down in favour of Mr Frans and Mr Raga. I will deal with both these matters in one judgment. I do not wish to give a long, judgment. I have read the record of the proceedings and the reasons given for granting condonation.

- [2] In the case of Mr Frans, who referred his matters three days out of time, which is a rather insignificant delay, the Commissioner found that the delay “was serious”. The Commissioner is wrong. However, he granted condonation to Mr Frans.
- [3] I read the Commissioner's reasons for his findings. Though the reasons did not seem particularly logical to me, I nonetheless do not wish to interfere with them. Since the delay in Mr Frans's case was almost insignificant and at the stage of a condonation application where the evidence had not been heard yet and there are no affidavits to determine the prospects of success, the failure to deal with the prospects of success is not fatal. There can hardly be prejudice from a three day delay and the explanation for the late referral is not unacceptable.
- [4] In addition to the aforesaid, this is not an appeal. This is a review of the decision of a Commissioner on whom the Labour Relations Act has conferred a very wide discretion and no grounds were put before me, either in the case of Mr Raga or Mr Frans, to make a finding that the discretion exercised in the granting of the condonations was not exercised judicially.
- [5] The period within which Mr Raga referred his dispute to the CCMA was longer than that of Mr Frans. However, the reasoning remains the same as in respect of Mr Frans, except for the time period. The difference in the degrees of lateness is not a factor which persuade me to interfere with the granting of condonation to him.
- [6] In the circumstances both applications are DISMISSED.

E REVELAS

JUDGE OF THE LABOUR COURT