

Sneller Verbatim/MC

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: J4557/00

2001-01-30

In the matter between

SIMON M KGWALE

Applicant

and

ST STITHIANS COLLEGE

Respondent

J U D G M E N T

REVELAS J:

- 1.This is an application to set aside the ruling by the second respondent, a commissioner appointed by the first respondent, the Commission for Conciliation Mediation and Arbitration, ("the CCMA").
- 2.I have considered the matter and decided to come to the assistance of the applicant.
- 3.The condonation ruling reads as follows:

"Length of Delay and Explanation

The referral in this matter is approximately six months late. The explanation given for the delay is that the applicant initially approached his Union for assistance. It appears that the applicant stayed at home for four months, with pay.

Prospects of Success

The applicant states 'no real reasons known'.

Prejudice

The applicant state that the agreed age for retirement is 63 and he was not looking forward to being retrenched.

Ruling

The delay in this matter is excessive and no proper or acceptable explanation has been given. In the result condonation is refused."

4. In so far as the prospects of success are concerned the employer party and the condonation hearing put the following facts before the commissioner.
(He is the second respondent in this matter.)
5. The applicant was employed as a cleaner by St Stithians College, the third respondent and it was the policy of the respondent that the retirement age is 60 years policy. At the beginning of 2000 most cleaning staff were retrenched and paid out a severance package in accordance with section 196 of the LRA. Those cleaning staff who had reached normal retirement age (60 years) were informed that they would retire from the college, the third respondent, in the month they turned 60 years and the applicant was amongst a small group of employees who reached that normal retirement age.
6. It appears that the commissioner did not question whether the applicant understood what is meant with "prospects of success" because the answer which the commissioner quotes as the applicant's answer "no real reasons known" does not make sense.
7. The applicant gave me a copy of the school pension scheme of which he was a member and which applied to his employment conditions where the retirement is given as 63 years old and not 60 years as the commissioner was advised.
8. Furthermore the reason for delay was not properly dealt with by the commissioner, and should have been.
9. The Union and the employer (or the third respondent), entered into settlement negotiations and during these negotiations the applicant was required to stay at home for four months. At this stage he had no reason to refer the matter to the CCMA and therefore it was an

irregularity on the part of the third respondent to calculate the delay, from a date prior to these settlement negotiations. The settlement negotiations clearly suspended any time within which the applicant could have referred the matter.

10. In the circumstances, I grant the order as prayed for by the applicant, that the ruling of the second respondent dated 17 September 2000 is set aside.

E. Revelas