

Sneller Verbatim/mc

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: J2085/00

2001-10-11

In the matter between

NUMSA

Applicant

and

CONSOLIDATED METALLURGICAL INDUSTRIES

Respondent

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J U D G M E N T

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LANDMAN J: Ten individual applicants who were members of NUMSA were selected for retrenchment on the basis of merit or the lack of merit by the Consolidated Wire Metallurgical Industries Limited (Extra SA (Pty) Limited) their employer. They were advised that should they not accept voluntary severance packages they would be placed in a labour pool and ultimately be retrenched compulsory. They were also advised that their positions were redundant. No prior notice was given to them and no consultations were held with NUMSA.

It is alleged that faced with these alternatives, the individuals accepted the inevitability of their retrenchment and volunteered for this and therefore resigned and were retrenched with effect from 30 October 1998.

Subsequently they discovered that their positions were being advertised. Initially the employer denied that such an advert had been placed, but later admitted that this was the case.

Thereafter a dispute was referred to the Metal and Engineering Industries Bargaining Council for conciliation. This referral took place on 1 December 1998. The dispute remained unresolved. On 17 February 1999 a certificate of outcome was issued which indicated that the dispute had not been resolved.

NUMSA then referred the dispute to the CCMA for arbitration as the Bargaining Council was not permitted to arbitrate such dispute. The referral took place on 11 March 1999, well within the time period provided for in the Labour Relations Act 66 of 1995. In its referral, NUMSA allege that the dismissals were constructive dismissals and that the individual applicants were coerced into accepting voluntary retrenchment.

The CCMA convened an arbitration meeting on 1 June 1999. At that meeting the employer objected to the jurisdiction of the CCMA on the basis that the referral to the Bargaining Council had been made late. The CCMA found this to be a good argument and said that it would wait for an application for condonation. No formal ruling was made but later inquiries elicited a formal finding by the arbitrator requiring NUMSA to make a formal application for condonation. This application was to be made to the CCMA and not to the Bargaining Council.

On 1 November NUMSA applied for condonation and in February 2000 it was advised that the case had been closed. Subsequently a ruling was handed down.

NUMSA's regional legal unit took over the matter and decided that the matter involved retrenchment, that the CCMA did not have jurisdiction to deal with it, and that the matter should be referred to the Labour Court.

An application for condonation for the late referral to the Labour Court was

made to this court on 22 June 2000. However the statement of case in respect of which condonation was sought, was not filed with the application. The statement of case was filed together with the replying affidavit some months later. The replying affidavit itself was out of time. No application for condonation was made for the late filing of that affidavit.

It was submitted that the requirements for condonation are met. A dispute was timeously referred to the CCMA for arbitration. But because of the employer's inappropriate objection and the CCMA's incorrect response, there were delays. Otherwise this matter would have been decided by the CCMA in June 1999. Well, this may be so, but in regard to the present matter where the cause of action is said to be retrenchment and the matter has been referred to this court, the prior history is relevant only to show that the dispute was kept alive and it is tangentially relevant to the long period which it has taken NUMSA to file the statement of claim.

Mr Schottler who appeared on behalf of the employer, submitted that the statement was 730 days late. It was submitted on behalf of NUMSA that there was strong prospects of success. Having regard to the facts which had been set out above, I come to the conclusion that the applicants are not without prospects of success. Insofar as the importance of the case is concerned, the case, as is every case, is important to the applicants. The case is marginally of importance to other litigants. I say this because the matter regarding the selection of employees for voluntary retrenchment has already been dealt with in at least one other decision of this court and therefore the matter is not *res nova*.

In my opinion the delay is considerable. The negligent conduct of the Union is serious. I do not know what the individual applicants have done to prod the Union to look after their interest. There is no affidavit filed by them. I presume

that they elected to let the Union to look after their case.

However, the circumstances of this case is such that I cannot look to their interests and overlook the conduct of their representative. Although the prospects of success are not unfavourable, so much so that one could say that there is a reasonable prospect of success, I have a discretion to exercise in regard to all these matters, taking into account the possibility of prejudice to the respondents.

The difficulty that this court would have should the matter eventually come to trial, which would probably be at least six months to a year hereafter, would compound the difficulties for both the parties, particularly the respondent. I am of the opinion that the application for condonation should be refused.

The application is accordingly dismissed and the first applicant only, is ordered to pay the respondent's costs.

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A A Landman

Judge of the Labour Court of South Africa

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