

**IN THE LABOUR COURT OF SOUTH AFRICA
(HELD IN DURBAN)**

Case no:

D875 / 01

In the matter between:

CHEMICAL ENERGY PAPER PRINTING

First Applicant

Second & Further applicants

and

PINE TOWN PLASTICS COMPOUNDERS

First Respondent

PP LABOUR HIRE KZN CC

Second Respondent

JUDGMENT

LANDMAN J:

1. The individual applicants were employed by Pine Town Plastics (Pty) Ltd (PPC). PPC purported to transfer a portion of its business to PP Labour Hire KZN CC (PPL) on 27 April 2000. The applicants dispute that there was a transfer or a bona fide transfer. They allege that they were dismissed, I assume, on 1 September 2000 and obliged to sign inferior, they use the term “degraded”, contracts of employment with PPL. This they did under protest.
2. On 17 October 2000 a dispute concerning an alleged unfair labour practice was referred to the Metal Engineering Industries

Bargaining Council (the Council). This dispute was not resolved. There matters stood until the NUMSA instructed attorneys to attend to the matter. The resignation of the union's national legal officer had caused some logistical difficulties in the head office.

3. The attorneys advised that the dispute had been mislabeled and that an opportunity for conciliation should at least be given to PPL. Another referral was lodged. This dispute is described in the referral and includes the alleged dismissal and the circumstances of the "transfer". The referral

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was late. But a certificate of outcome, dated 9 April 2001, was provided. A copy of the application for condonation of that referral was handed to me and applicants' attorney stated that condonation had been granted. The certificate of outcome refers to the dispute as one relating to an unfair labour practice. This is patently incorrect. It would appear that the description in the previous certificate was carried over to the latest one.

5. The application for relief in this court was lodged timeously as regards the dispute with PPL and as regards the dispute with PPC which remained unresolved on 9 April 2001. But the statement of case in so far as it relates to PPC and the alleged unfair labour practice which remained unresolved on 17 October 2000, is of course late. An application for condonation has been lodged (I do not find the notice of motion to which the affidavit refers in the bundle). The application is directed at the applicants' failure to refer the matter to this court timeously after the alleged unfair labour practice dispute could not be resolved on 17 October 2000.
6. Condonation would be necessary in so far as the applicants intend claiming relief from PPC based on an alleged unfair labour practice. The applicants do not rely on an unfair labour practice as contemplated in item 2 of Schedule 7 to the Labour Relations Act 66 of 1995. Nor is the relief sought against PPC predicated on an unfair labour practice. This being so the application for

condonation is unnecessary. The application is accordingly dismissed.

7. The application is accordingly dismissed. This raises the question of costs. PPC has been successful but it seems to be a Pyrrhic victory. Nevertheless the applicants brought the application. It was reasonable for PPC to oppose it. In the result PPC is entitled in law and fairness to its costs.
8. In the premises the application for condonation is dismissed with costs.

Signed and dated at BRAAMFONTEIN this 26th day of February 2002.

AA Landman

Judge of the Labour Court of South Africa

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20 February 2002

26 February 2002

Ms S Reddy of Chennels Albertyn & Tanner

Durban.

Adv MM Posemann instructed by John Dua

Attorneys