

Sneller Verbatim/HVDM

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: J1451/00

2002-03-08

In the matter between

MEGWU o.b.o A. KNOX

Applicant

and

C.A. DU TOIT (PTY) LTD

Respondent

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J U D G M E N T

Delivered on 8 March 2002

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REVELAS J:

1. The applicant has applied for condonation for a late referral of a dismissal dispute to the Labour Court. She claims that she was unfairly dismissed and that the reason for the dismissal was based on the respondent's operational requirements. The respondent has placed the dismissal in dispute and contends that the applicant had resigned voluntarily.

1. 2. The applicant referred the dispute to the Commission for Conciliation Mediation and Arbitration ("CCMA") and a certificate of outcome was issued on 28 February 2000. The dispute remained unresolved. The applicant then had to refer a dispute to the Labour Court for adjudication within 90 days in terms of section 191(11) of the Labour Relations Act 66 of 1995 ("the Act"). The applicant only referred her dispute to the Labour Court on 22 March 2001. The delay is therefore 306 days. The applicant did not apply for condonation prior to referring the dispute but only did so after the respondent raised it as a point *in limine* in response to the applicant's referral.
3. The Labour Court may condone the late referral of a dispute, on good cause shown. The factors to be considered are the degree of lateness, the explanation for the lateness, the prospects of success and the importance of the matter and the prejudice to be suffered. In this regard see *Melane v Santam Insurance Co Ltd* 1962 (4) SA 531 (A) at 532C-F.
4. In so far as the degree of lateness is concerned, it is an excessive delay. The applicant waited 10 months before referring her dispute.
1. 5. Insofar as the explanation for lateness is concerned, the applicant has placed the blame squarely

on the shoulders of her union. The applicant claims that her union had a duty to ensure the timeous referral. The union official in question has deposed to an affidavit. He avers that the file was lost when the union moved offices. The files were packed into boxes and there was no need to unpack the closed boxes as the files were not in use. However, the matter was diarised for 1 May in the union's books and the files were only located on the computer during October, according to the affidavit.

1. 6. The applicant's own explanation for not finding the file before March 2001 is that the filing clerk had to search through 750 files.
7. I accept the argument of counsel appearing on behalf of the respondent that this explanation is somewhat far fetched. It should not take five months to search through 750 files. The union was negligent. This much I accept. But the applicant sat by, passively and did not make any effort to find out how her matter was progressing.
8. The evidence indicates that since the certificate was issued, the applicant waited for 13 months before she acted. It has been held in several cases, that a litigant may not rely on the laxity of his or her representative if they just passively by and did

nothing to ensure that the matter proceeds.

9. In my view the applicant has not shown good cause for the late referral of the dispute. Furthermore the prospects of success are not dealt with, save for a bold allegation that her prospects of success are good.
10. In the circumstances I make the following order:
 1. The application for condonation for the late referral of the applicant's dismissal dispute to the Labour Court is dismissed.

E. Revelas