

REPORTABLE

IN THE LABOUR COURT OF SOUTH AFRICA
SITTING IN JOHANNESBURG

CASE NO **J2927/2000**

In the matter between:

MERLEA GREENS

Applicant

and

CCMA - PIETERSBURG
GERHARD LOMBAARD
Respondent
WILLEM FOUCHÉ
Respondent

First Respondent
Second
Third

ON BEHALF OF APPLICANT

MR J L PIENAAR

ON BEHALF OF RESPONDENT

MS BEAN

TRANSCRIBER
SNELLER RECORDINGS (PROPRIETARY) LTD - DURBAN
J U D G M E N T

GERING AJ

- [1] By agreement between the parties the applicant's application for review in terms of section 145 of the Labour Relations Act, Act 66 of 1995 (hereinafter referred to as the Act) and the respondent's application to have the arbitration award made an order of Court in terms of section 158(1)(c) would be argued together.
- [2] Prior to the hearing of the review it was necessary to have argument on the question of condonation and I heard this in Johannesburg on 29 April 2002, after which I reserved judgment.
- [3] There is a bundle relating to the application in terms of section 158, which has been numbered "A" and there is a

further bundle relating to the review application which has been numbered "B". Page references to these bundles will be denoted by capital letter "A" or capital letter "B" followed by the relevant page reference.

- [4] The award dated 3 April 2000 appears in A7-A13. In this award the CCMA Commissioner ordered the employer, Merlea Greens to pay compensation to the employee, Willem Fouché, having held that the employee had been unlawfully dismissed without any compliance with the provisions of the Act.
- [5] I may mention that in the bundle of documents, B86 and B92, the applicant is described as the fifth largest producer of green beans in South Africa, having a staff of some 60 people. The co-owners of the firm are Mr and Mrs Strathearn.
- [6] I may mention that the correct procedure for a party to adopt against whom an award has been made, is to apply to court to stay the execution of the award. See the case of *Siyakha Cleaning Services CC v Ndlanga* [2002] 5 BLLR 482 at 483 (para.4) In the Notice of Motion filed in these matters no such application was made.

[7] The principles governing the grant of condonation for late compliance with the rules are set out in *Melane v Santam Insurance Company Limited* 1962(4) SA 531 (A) at 532. This was followed in the Labour Appeal Court case of *Mziya v PUTCO Limited* [1992] 2 BLLR 103 [LAC] at 106-107. See also the case of *United Plant Hire (Pty) Limited v Hills* 1976(1) SA 717 (A) at 720.

[8] In addition the following authorities are relevant.

"In the absence of an acceptable explanation for non-compliance with the rules of Court, condonation will not be granted."

See *Allround Tooling (Pty) Limited v NUMSA* [1998] 8 BLLR 847 at 850 (para.10).

[9] In *Classiclean (Pty) Limited v CWIU* [1999] 4 BLLR 291 at 293 (para.6) the Labour Appeal Court stated:

"In the recent past this Court has had to deal with a depressing and monotonous number of matters where the failure of practitioners and the parties to adhere to the rules has come to the fore. In my view the rules are drafted in simple, understandable language. They provide procedures to deal simply and inexpensively with problems such as those that

arose in this matter. Failure to adhere to them will be viewed with an increasingly jaundiced eye in the future."

[10] In *CWIU v Ryan* [2001] 3 BLLR 337 at 340 PILLAY J stated:

"While there are many similarities about the practice in the High Court and the Labour Court, there are some important differences. A significant difference is the acknowledgment by the Legislature that labour disputes must be resolved effectively. [Section 1(d)(iv)] That is not to suggest that disputes in the High Court are not resolved effectively. What it means is that there are special considerations that apply to labour disputes that may not apply to other disputes."

Then again at page 342 (para.36):

"Of late proceedings in this court are too frequently prefaced by applications for condonation. Rather than being an exceptional procedure, it is fast becoming a standard practice. More often than not, fault rests with the representatives and not the litigants personally. This is posing an unnecessary burden on the Labour Court and its diminishing resources. The time has come when such representatives should not be allowed to go unscathed for their own sins."

[11] In the present case the award dated 3 April 2000 was received by the employer/applicant for condonation on 20 April 2000. The last day of the six-week period was 1 June 2000. The application for review and condonation was made on 3 August 2000. It is common cause that the application is 64 days late, in other words just more than nine weeks (or two months). This is a substantial period and requires a full and proper explanation for the entire period of the delay in question.

[12] No explanation is given in the very scanty application for condonation, either by the applicant herself or her attorney, for the delay from 25 April 2000, when she saw her attorney, until 29 May 2000 when she left for the United Kingdom.

[13] No explanation is given either by herself or by her attorney as to why her full details could not be obtained by phone, letter or fax. Furthermore, no explanation has been given either by her or by her attorney for the period after her return on 21 June 2000 until the consultation was held on 28 July 2000.

[14] The applicant herself seems very articulate and capable of writing detailed letters and memoranda. (See B15-B22).

[15] Already on 18 May 2000 she had been advised to approach the Labour Court. (See B12) It appears that her application for review and condonation only came after the application to make the award an order of Court in terms of Section 158 had been served on her on 17 July.

[16] No explanation has been given by the applicant's attorney that he informed the applicant of the time limits applicable.

[17] The affidavit in support of the condonation (B7-B8 and B133-B134) is very inadequate and thin in detail.

[18] At the hearing the applicant attempted to rely on a later affidavit which was filed after the matter had come to court, namely on 2 April 2002. In my view this affidavit should not be admitted but in any event it is extremely thin and does not give any adequate explanation in response to the periods mentioned above, nor as to why it was necessary to wait to have a consultation with counsel and that nothing could be done prior to that.

[19] In the exercise of my discretion I hold that the condonation of

64 days, which has been inadequately explained, should not be condoned.

[20] In my view the employee is entitled to have the award granted on 3 April 2000 made an order of Court pursuant to the application in terms of section 158(1)(c). I accordingly so order.

[***Sgd**] GERING AJ

ACTING JUDGE LABOUR COURT

31/7/2002
