

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

CASE NO: JR 1629/02

In the matter between

W.M Buthelezi

Applicant

and

**METAL & ENGINEERING INDUSTRIES
BARGAINING COUNCIL**

1st

Respondent

ADV K. GUNASE

2nd

Respondent

TRIDENT STEEL (PTY) LTD

3rd

Respondent

JUDGMENT

PILLAY, A.J:

This is an application for review of an award by the Commissioner in terms of Section 191 of the Labour Relations Act. It was brought 188 days outside the prescribed time limit. The application for condonation of the late referral was refused. It is this decision which is now sought to be reviewed.

In considering the latter application, it is necessary to consider (a) the length of delay, (b) the reason for the delay, and (c) the prospects of success in the main application.

The applicant was employed by the Respondent on a contractual basis, from time to time. It seems that because of the frequency of short-term employment contracts, he felt that he would eventually be employed on a permanent basis. The last period he worked for the Respondent was from September 2001 to December 2001. In the meantime he had raised the prospects of being permanently employed with the representatives of the Respondent and was told that the Respondents policy was to employ people on contract first and thereafter on a permanent basis.

The applicant alleges that people who were first employed on a contract after him were permanently employed by the Respondent before him. What is more, he was not re-employed in January 2001 as he expected to be. This seems to have to have been the cause of his dissatisfaction.

He referred the matter to the Metal and Engineering Industries Bargaining Council (Council) when he was not re-employed by the Respondent.

His primary reason for his late referral was that he was that he thought that he would be offered a permanent position by the Respondent during this period, subject to a vacancy becoming available.

However he was appraised of the situation as far back as February 2002 and

only referred the matter to the Council in July 2002 after two other people were permanently employed.

In argument on review, he also added that as a layman he was at the time unaware of the time limits within which he should have referred the dispute to the Council.

It is trite that it is incumbent on an aggrieved party to take urgent steps to promote and protect his or her interest in this respect.

His delay was clearly occasioned by his attempt to obtain employment with the Respondent during the period of delay. This conduct seems to suggest that he knew what the position was and could not have expected to have any right to be employed by the Respondent in 2002. In view of my decision herein, I do not find it necessary to decide on whether he ought to have been employed or not except to say that his prospects of success in that regard, are rather remote.

He did not provide the Commissioner with any coherent information as to why he did not refer the issue to the Council much earlier. He did nothing in this period to activate the legal procedures when he was appraised of the situation. He still tried to obtain work from the Respondent. His conduct in this regard raises doubt as to whether he had any intention of lodging dispute proceedings or that he felt aggrieved.

The lack of a reasonable explanation for the long delay makes it difficult to come to his assistance.

I do not think that the Commissioner committed any irregularities in coming to her conclusion.

The delay was far too long and it remains void of any reasonable explanation. The application for condonation must therefore fail.

In the result, the application for condonation is refused.

R PILLAY

ACTING JUDGE OF THE LABOUR COURT

FOR THE APPLICANT	:	In Person
FOR THE RESPONDENT	:	Mr D. Woodhouse
		Perrott, Van Niekerk & Woodhouse
DATE OF HEARING	:	16 October 2003
DATE OF JUDGMENT	:	28 November 2003