

**IN THE LABOUR COURT
(HELD IN BRAAMFONTEIN)**

CASE NO. : JS711/01

In the matter between :

ZARINA LATIFF

Applicant

And

DONRO (PTY) LTD

Respondent

JUDGMENT

MAYA J.

[1] This is an application brought in terms of **section 187(1)(e)** of the **Labour Relations Act 66 of 1995** (“the Act”). The applicant claims that her dismissal by the respondent constitutes an automatically unfair dismissal because it was based on her “*pregnancy, intended pregnancy or a reason based on her pregnancy*”.

[2] It is common cause that the respondent employed the applicant as a personal assistant during January 2000 and dismissed her on 27 February 2001, for “unacceptable performance an attitude”. The precise nature of the reason for the applicant’s dismissal is, together with other facts of the case which I need not detail for present purposes, a matter of hot dispute.

[3] The applicant referred the matter to the CCMA on 26 March 2001. A certificate of the outcome of the dispute, that the matter remained unresolved, was issued on 2 May 2001. The applicant launched these proceedings on 6 September 2001.

[4] At the commencement of the hearing of the matter I was called upon to deal with an *in limine* objection raised by the respondent. It was contended that the applicant had referred the matter to this court out of time and that in the absence of an application for a condonation thereof the case stood to be dismissed with costs.

2.

[5] **Section 191(5)(b)(i)** of the Act entitles an employee who has alleged that the reason for dismissal is automatically unfair to refer the dispute to the Labour Court.

Section 191(11) provides :

“(a) The referral, in terms of subsection (5)(b), of a dispute to the Labour Court for adjudication, must be made within 90 days after the council (as the case may be) or the commissioner has certified that the dispute remains unresolved.

(b) However, the Labour Court may condone non-observance of that timeframe on good cause shown.”

[6] It was argued on the applicant’s behalf that this objection has no merit as the referral had been made well within the 90-day period contemplated in **section 191(11)(a)**. Reliance for this submission was placed on **Rule 1** of the **Annotated Rules of the Labour Court** in which the word “day” is defined as follows:

“ ‘day’ means any day other than a Saturday, Sunday or public holiday, and when any particular number of days is prescribed for the doing of any act, the number of days must be calculated by excluding the first day and including the last day;.

[7] The Act bears no definition of this word. This cannot however mean that a definition may be transplanted from ordinary rules of court to apply to the performance of any act under any statutory provisions other than those rules. As the learned authors **Landman & Van Niekerk**, point out in the “**Practice In The Labour Courts**” at **D3**, “ *Rule 1 applies to the rules and not to the LRA. The converse is not true – if an expression in the rules is defined in the LRA, it bears the same meaning for the purposes of the rules.*”. The same principle is equally applicable to the Uniform Rules of Court.

[8] It is well established that **sections 1 and 4** of the **Interpretation Act 33 of 1957** govern the computation of days prescribed for any purpose in legislation which contains nothing to indicate that a different method was meant to be employed. In the decided case of **Nedcor Bank Ltd v The Master And Others 2002(1) SA 390 SA, Mthiyane JA**, considering the correct interpretation to ascribe to the provisions of s40(2) of the Insolvency Act 24 of 1936, said at 394I-395A :

3.

“When reckoning days in a statutory provision a Court is enjoined to apply the provisions of s 4 of the Interpretation Act unless there is something in the language or context of the particular provision repugnant to such provision or unless a contrary intention appears therein. Having regard to all the factors in this case, the appellant has not established, and I have not been able to find, anything either in the language or context of s 40(2) of the Act to suggest that the application of s 4 would lead to a

repugnancy justifying a departure from the method of computation prescribed in the Interpretation Act. In the interests of legal certainty such departure is not readily to be assumed by the Court.”

See also **Rossouw & Prinsloo v Potgieter 1984(2) SA 603 (T) 604; Amalgamated Engineering Union Of SA obo Fourie v Sappi Fine Paper (Pty) Ltd, Adam Mill (1992) 13 ILJ 1029 (IC).**

[9] **Section 1** of the **Interpretation Act** provides :

“The provisions of this Act shall apply to the interpretation of every law in force, at or after the commencement of this Act, in the Republic or any portion thereof, and to the interpretation of all by-laws, rules, regulations or orders made under the authority of any such law, unless there is something in the language or context of the law, by-law, rule, regulation or order repugnant to such provisions or unless the contrary intention appears therein.”

Section 4 thereof reads :

“Reckoning of number of days

When any particular number of days is prescribed for the doing of any act, or for any other purpose, the same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day happens to fall on a Sunday or on any public holiday, in which case the time shall be reckoned exclusively of the first day and exclusively also of every such Sunday or public holiday.”

[10] In my view, the provisions of section 191(11)(a) of the Act are no different in nature from those of the statutes considered by the Courts in the cases mentioned in paragraph 8 above. There is nothing in the language or context of these provisions which would justify a departure from the method of calculation of days envisaged in **section 4** of the **Interpretation Act**.

4.

[11] In the result, the respondent’s point *in limine* is upheld. The applicant’s referral is dismissed with costs.

ACTING JUDGE OF THE LABOUR COURT

For the Applicant : Mr Hinds (Anthony Hinds Attorneys)

For the Respondent : Mr Kruger (instructed by Hofmeyr Herbstein

& Gihwala Inc.)

Heard on 5 August 2004

Delivered on 6 August 2004

he respondent raised an *in limine* objection