



(1) Reportable Yes
(2) Of interest to other Judges: No
(3) Revised

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case No: JR1660/2021

In the matter between:

G4S CASH SOLUTIONS (SA) PTY LTD

Applicant

and

**NATIONAL BARGAINING COUNCIL FOR THE
ROAD FREIGHT INDUSTRY**

First Respondent

PHEEHA DANIEL SEOPELA N.O

Second Respondent

**MTWU OBO NKHANGWELENI GLADSTONE
MAKHESA**

Third Respondent

Heard: 05 March 2026.

Delivered: 09 June 2026.

This judgment was handed down electronically by circulation to the parties' legal representatives by email and publication on the Labour Court's website.

The date for hand-down is deemed to be 09 June 2026.

VARIATION: JUDGMENT

MALULEKE, AJ

Introduction

- [1] This Court is called upon to adjudicate a condonation application for the late filing of a review application. Also is the applicability of the deeming provision regarding late filing of records and a determination on this point, if it is found to be applicable. The applicant is the employer of the third respondent (employee). The applicant is a cash solution company and deals with cash in transit. The third respondent was employed as a Technical Security Officer. On 13 December 2019, third respondent was dismissed.
- [2] Third respondent referred the dispute to the Commission for Conciliation, Mediation and Arbitration (CCMA). The arbitration proceedings were concluded on 24 March 2021. The award was issued in favour of the third respondent with a reinstatement outcome. The first respondent finds that the dismissal was substantively unfair. The award was sent to the parties on 10 May 2021. The employer challenged the outcome and filed an application for review on 18 August 2021. The security bond was also furnished in this regard.
- [3] On 18 August 2021, the applicant had launched an application for review, which was outside the six week period. The application for the review should have been filed on 21 June 2021, according to the applicant. The applicant further submits that the application is late by 42 days.
- [4] The application is being opposed, and the respondent challenges late filing of records outside the 60 day period and the review application outside the six week period. The respondent submits that the deeming provision was triggered by the late filing of the records. The court had already determined this point and held that the deeming provision was not triggered. From the point of records collection as articulated to the point of filing, it was within the 60 days period. Therefore, the respondent's point in this regard is dismissed.

Legal Principle on Condonation

- [5] The criteria that must be met in order to be successful in an application for condonation are widely recognised. In a condonation application, the applicant must specify the extent of the delay and demonstrate that there was a valid reason for the delay. Additionally, the applicant must address the prospect of success on the merits and the potential prejudice to the

respondent. It is common knowledge that condonation is not available for the mere asking. The applicant for condonation is required to demonstrate compelling reasons and arguments in order to be granted condonation by the court.

[6] In *Grootboom v National Prosecuting Authority and another*¹ the Constitutional Court stated that the factors that are to be considered, in the interests of justice, in determining a condonation application include the following:

- '(a) the length of the delay;
- (b) the explanation for, or cause for, the delay;
- (c) the prospects of success for the party seeking condonation;
- (d) the importance of the issue(s) that the matter raises;
- (e) the prejudice to the other party or parties; and
- (f) the effect of the delay on the administration of justice.'

[7] The Constitutional Court², went on further to state that it is required to consider all factors when determining justice's interests. In some cases, some factors may be ignored. If the delay is excessive and unexplained, success may not be considered. If the delay is short, the explanation is unsatisfactory, and there are good prospects of success, condonation should be granted. Despite reasonable prospects of success, condonation may be denied if the delay is excessive.

[8] It is trite that an application for condonation must be brought as soon as the party that applies for it becomes aware of the default.³ In the case of *Melane v Santam Insurance Company Ltd*,⁴ the court said that '*court has a discretion to be exercised judicially upon a consideration of all the facts, and essentially it is a matter of fairness to both sides.*'

¹ (2014) 35 ILJ 121 (CC) at para 50.

² Ibid n1 above at para 51.

³ See: *Seatlolo and Others v Entertainment Logistics Service (A Division of Gallo Africa Ltd)* (2011) 32 ILJ 2206 (LC).

⁴ 1962 (4) SA 531 (A) at para 532 C-F.

[9] In *NUM v Council for Mineral Technology*⁵, the court dealt with the issue of an unsatisfactory explanation. It said that an unsatisfactory and unacceptable explanation for any of the periods of delay will normally exclude the grant of condonation, no matter what the prospects of success on the merits. It was further held that:

‘Without a reasonable and acceptable explanation for the delay, the prospects of success are immaterial, and without prospects of success, no matter how good the explanation for delay, application for condonations should be refused.’

[10] In *Latiff v Donro (Pty) Ltd* (Latiff)⁶ on the reckoning of the number of days required by a statute that does not itself offer a definition for day. In this case the court clarified that the number of days required by a provision of the Labour Relations Act⁷ (LRA) is to be computed with reference to the definition of day contained in the Interpretation Act.⁸ The Interpretation Act provides, in essence, that days for the purposes of the LRA, refers to calendar days rather than Court days as contemplated in the Rules for the Conduct of Proceedings before the Labour Court⁹ (Rules).

The length of the delay

[11] It does not appear to be in dispute that the award was served on the parties on the date of the award, 10 May 2021. The six-week time limit is calculated based on the civil method of calculation, which includes the first day, excludes the last day, and includes weekends and public holidays. Applying this calculation method, the review application should have been submitted on or before 21 June 2021, therefore according to the applicant the delay is only 42 days. The respondent challenged that the days are excessive and there is no reasonable justifiable explanation for the delay.

[12] It is worth noting that the review was filed on 28 July 2021, should calculation be of calendar days, then 42 days would be incorrect. Prior, the court

⁵ [1999] 3 BLLR 209 (LAC) at para 10.

⁶ (2004) 25 ILJ 2219 (LC).

⁷ Act 66 of 1995, as amended.

⁸ Act 33 of 1957.

⁹ Rules for the Conduct of Proceedings in the Labour Court. Repealed and replaced with the Rules Regulating the Conduct of the Proceedings of the Labour Court. Published 3 May 2024 (GN 50608). Effective 17 July 2024. (Refer to *Latiff* case).

determining the argument of parties on degree and reason for the delay, the court shared its view with the parties that the court is of the view that the calculations are not correct. Both parties were afforded an opportunity to address the court by filing supplemented arguments on the days calculation and on the manner that was applied in the calculation which led to the 42 day delays.

[13] This was so because the court on its own accord realised that the calculations were not accurate. Hence, the parties were invited to file supplemented heads within five days to address the issue of reckoning of days, whether it is on calendar days or court days. Also to articulate how the 42 days was arrived at.

[14] This was required due to the fact that, should the applicant's calculations be incorrect, it goes without saying that it would have an impact on the degree of delay, thus would leave other days with no explanation. Therefore, the calculation of 42 days degree of delay are not correct. The correct days are 56 days, thus leaving applicant with 14 days which are not explained at all.

Explanation for the delay:

[15] The applicant's reasons for the delay in short are that after the receipt of the instructions, amongst other reasons, the delays were occasioned by COVID-19 due to lockdown. The deponent only managed a meeting with her superiors on 31 May 2021. This will mean that on this date the review was still within six weeks.

[16] From 28 June 2021, which is a month following meeting with superior, the applicant's legal representatives sought instructions from Mr Smith which took time and only received on 29 June 2021, 4, 6, 8, 22, 27 and 28 July 2021, after a month from date of meeting with superior.

[17] However, the applicant's founding affidavit, could not be prepared without assistance, between 29 June, 4, 5, 6,8,22,27 and 28 July 2021, which caused delays too. It is worth mentioning that no explanation as to why the assistant could not be found.

[18] The applicant's explanation was challenged by the respondent. That it does not make sense for the applicant to argue on COVID-19 while we had teams meetings by then. The applicant on its own submissions confirmed that some of their meetings were held on teams. Some discussions were taking place on WhatsApp. The applicants also state that the July riots also contributed to the nature and risks of its business of cash transit, they could not be in operation then. Evidence of communication confirms that the applicant had means of communicating and sharing documents electronically.

Prospect of success

[19] The employee had duties, among others, including checking the vehicle at the loading bay to ensure that all required equipment is loaded. Also to make sure that cash is in the safe. The employee failed to check the other two employees who went out with cash without the necessary working equipment, which included a trolley and a bulletproof vest.

[20] The applicant's request for condonation, in the literal sense, conveys no reasonable explanation. There are days between the months of May and June that were not explained at all. There are also days between month-end June and month-end July with no explanation. More so, there are almost 14 days that were incorrectly calculated, except for the 42 days, and those days remain as such with no explanation.

Prejudice

[21] The applicant's argument is that should the condonation not be granted it will suffer prejudice. The length of 42 days is not substantial and unreasonable. I agree that these days would not have been substantial with plausible explanation. In absence of explanation to other days, the unexplained delay becomes excessive. Without dealing with the merits of this case, there seems to be prospect of success in the merits, however, in the absence of a plausible and reasonable explanation, prospects are immaterial. It will not be in the interests of justice to delay this matter further, taking into account the interests to be considered are not for one party but both parties. Condonation is to consider the weight of both parties. This matter is long-pending, and the

applicant's unacceptable delays contributed further to the injustice of speedy resolution as intended by the LRA.

Conclusion

[22] Therefore, these submissions on the delay and calculation of days left some days with no explanation. For those identified, the explanation is unacceptable. The applicant's failure to submit the review application timeously as required in law results in this Court lacking jurisdiction to adjudicate it. The Court will only possess jurisdiction to consider a late review application if condonation is requested and granted for justifiable reasons. The explanation is nonexistent, and it would prejudice the other party.

[23] In regard to costs, it is trite that this court ought to take into account the requirements of law and fairness in accordance with the provisions of section 162 of the LRA, and rule of practice that costs follow the result will not apply in this case. To that end, the appropriate order to make is that of each party paying its own costs.

[24] In the premises, the following order is made:

Order

1. The application is dismissed;
2. Each party is to pay its own costs.

Z. D. Maluleke

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Adv S. Saunders

Instructed by: Evershed Sutherland (SA) Inc.

For the Third Respondent: Adv K Maphwanya

Instructed by: Matlatle Attorneys.

LABOUR COURT