



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

Signature 24/08/2026

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Case no: C456/2021

In the matter between:

WILMOT HENRY BASSON

APPLICANT

and

THE SOUTH AFRICAN POLICE SERVICES

RESPONDENT

Heard: 20 August 2026

Delivered: 24 August 2026

Review and condonation - application two weeks late - explanation incomplete - poor prospects of successfully reviewing the commissioner's exercise of discretion on compensation awarded - condonation refused.

JUDGMENT

HARVEY, J

Introduction

[1] This is an application for condonation for the late filing of an application to review an arbitration award.

- [2] The applicant received the award on 28 June 2021 and launched his review application on 24 August 2021. Section 145 of the Labour Relations Act requires a review application to be launched within six weeks of service of the award. Six weeks from 28 June 2021 expired on 9 August 2021. The review application was therefore delivered approximately two weeks late. When it came before this Court in August 2024, it was removed from the roll because it had been launched outside of the 6-week time period without an application for condonation.
- [3] A condonation application was delivered during August 2024. When the matter came before me on 20 August 2026, the applicant appeared without his legal representatives and with no affidavit to explain their absence. The applicant requested that the matter be postponed, alternatively that it be determined on the papers.
- [4] Despite not having filed any affidavits in opposition to the condonation application, counsel appeared for first to third respondents (also not accompanied by his instructing attorney) and sought to hand up heads of argument and to argue in opposition to condonation. The respondents had, however, filed affidavits and heads in opposition to the review application.
- [5] By agreement between the parties, both waived oral argument and requested that the court determine the matter on the papers.
- [6] I first consider the condonation application.

Degree of lateness

- [7] The applicant disputes that the application was launched late - he submits that because the word “week” is not defined in the LRA or the Labour Court Rules, a week must be understood as comprising days. He then relies on the definition of a court day in the Labour Court Rules, which excludes Saturdays, Sundays and public holidays, and submits that those days must be excluded when calculating the six-week period.
- [8] The respondents submit that the applicant's computation is incorrect and that the six-week period in section 145 is six calendar weeks.

- [9] That submission is correct. Where a period is expressed in weeks, the common-law civil method of computation applies, and weekends and public holidays are included. In *Kock v Commission for Conciliation, Mediation and Arbitration and Others*¹ this Court explained that:

The time limit of six weeks as contemplated by section 145(1) of the LRA applies from the date when the applicant received the award. On her own version, that was 13 February 2018. The six weeks' time limit is calculated based on the civil method of calculation, which includes the first day and excludes the last day, and includes weekends and public holidays. Applying this method of calculation, the review application was due on 28 March 2018. Considering it was only properly served and filed on 25 April 2018, the review application is four weeks late. Where it comes to review applications, this is bordering on becoming excessive, and certainly requires a proper explanation.

- [10] A similar finding was made in *G4S Cash Solutions (SA) (Pty) Ltd v National Bargaining Council for Road Freight Industry and Others*.² Six weeks means six calendar weeks. It is not converted into a period of court days.
- [11] The applicant therefore requires condonation for the late delivery of the review application.
- [12] The respondents submit that, as the applicant did not seek condonation until August 2024, the application is in fact approximately three years late. They rely on the principle that an application for condonation should be brought as soon as a party becomes aware of the need for it. In this case, however, I am prepared to accept that the applicant first became aware that the application was late when it came before this Court in August 2024. As soon as it was pointed out that condonation was required, an application was filed that same month.

¹ *Kock v Commission for Conciliation, Mediation and Arbitration and Others* (JR764/18) [2021] ZALCJHB 101 (31 May 2021) at para 27.

² *G4S Cash Solutions (SA) (Pty) Ltd v National Bargaining Council for Road Freight Industry and Others* (Variation) (JR1660/2021) [2026] ZALCJHB 180 (9 June 2026) at par 11.

[13] I shall approach the matter on the basis most favourable to the applicant and treat the relevant delay as the delay in launching the review, rather than the subsequent period before condonation was sought.

[14] On that basis, the review was approximately two weeks late. Although the delay is relatively short, it is not insignificant in the context of the six-week time limit prescribed for reviews.

Explanation

[15] As to the explanation for the delay, the applicant says that he contracted COVID-19 and was hospitalised in July 2021. The hospital documentation records his admission on 21 July and discharge on 28 July. He says that he thereafter had to self-isolate for 14 days, which prevented the consultations with his attorney necessary to complete the review application.

[16] The respondents submit that this explanation is inadequate. They point out that it does not account for the entire period between receipt of the award and the institution of the review, and in particular does not explain what occurred between 28 June 2021 and the applicant's hospitalisation on 21 July 2021. They further submit that the applicant was legally represented and has not adequately explained why his circumstances prevented him from consulting with his attorneys or taking the steps necessary to institute the review timeously.

[17] I agree with the respondents that it does not account for the entire relevant period. The partial explanation is not entirely satisfactory. In particular, there is no explanation why consultation could not have taken place remotely at a time when remote consultations had become commonplace. The applicant has also not accounted for the whole period of the delay, in particular the period between 28 June and his hospitalisation on 21 July.

Prospects of success

[18] The applicant relies on four grounds of review. First, he contends that the commissioner misconstrued the evidence or ignored his contention that the chairperson of the expeditious disciplinary process was biased. Second, he

contends that the commissioner erred in finding that SAPS had complied with the applicable time limit for the disciplinary process. Third, he contends that the commissioner failed to comply with section 39(2) of the Constitution. Fourth, he contends that the commissioner failed properly to apply her mind in exercising her discretion as to compensation and that the award of one and a half months' remuneration was unjust and inequitable.

- [19] The respondents submit that the applicant has failed to establish reasonable prospects of success. They emphasise that the substantive fairness of the dismissal was not in issue, and that the commissioner found in the applicant's favour in respect of procedural fairness only. They contend that the applicant's complaint is directed at the amount of compensation awarded and that he has failed to identify a reviewable irregularity in the commissioner's exercise of her discretion in determining compensation.
- [20] The applicant is not required to establish the merits of his grounds for review in the condonation application. He need only show that he has pleaded grounds which, if established, would entitle him to relief.
- [21] I have had regard to the award, the record, and the answering affidavit in the review application. It is correct that the only issue before the commissioner was procedural fairness. The commissioner considered the evidence and arguments concerning the disciplinary process in considerable detail and found in the applicant's favour. In particular, she found that the chairperson had acted unfairly in his treatment of the applicant's request for legal representation. She accordingly found the dismissal procedurally unfair.
- [22] The applicant therefore seeks to review an award in which he succeeded on the issue that was before the commissioner. His complaints about other alleged procedural defects do not demonstrate a reviewable irregularity affecting the result. Nor does the reference to section 39(2) of the Constitution, without more, establish one. The commissioner awarded the applicant compensation for the unfair procedure in the amount of one and a half months' remuneration, amounting to R39 085.50. The applicant challenges this outcome in his review application.

- [23] The determination of compensation for a procedurally unfair dismissal involves the exercise of a discretion as to what is just and equitable in all the circumstances. A reviewing court does not interfere merely because it might itself have awarded a different amount. There must be a reviewable irregularity in the exercise of that discretion.
- [24] None is apparent. The commissioner considered the evidence and arguments before her, identified the procedural unfairness, found in the applicant's favour and exercised her discretion as to compensation. Dissatisfaction with the amount awarded does not establish a reviewable defect.
- [25] The respondents also oppose the applicant's subsequent attempt to amend the relief claimed to seek reinstatement. They point out that the substantive fairness of his dismissal was no longer in dispute before the commissioner. The award under review concerns procedural fairness and compensation. Absent a challenge to substantive fairness, there is no basis upon which this review could result in reinstatement.
- [26] The applicant has therefore failed to demonstrate reasonable prospects of success.

Prejudice

- [27] The applicant does not deal with prejudice in his condonation application.
- [28] The respondents submit that SAPS will be prejudiced if condonation is granted. They rely on the period that has elapsed since the dismissal and the arbitration award and the consequent prolongation of the dispute. The applicant, having failed to address prejudice, has placed nothing before the Court to counter that submission. This factor therefore does not weigh in favour of granting condonation.

Conclusion

- [29] Taking all the factors together: the delay was significant, but not excessive. The explanation provided for the delay is incomplete and not compelling. Most significantly, the applicant has failed to establish reasonable prospects of

success in reviewing the commissioner's exercise of her discretion in awarding him monetary compensation for a procedurally unfair dismissal.

[30] I am not persuaded that the applicant has established good cause for condonation.

Costs

[31] The respondents seek an order for costs. Having regard to the requirements of law and fairness, I am not persuaded that a costs order is warranted.

Order

[1] The application for condonation for the late filing of the review application is dismissed.

[2] There is no order as to costs.

SJ Harvey

Judge of the Labour Court of South Africa

Appearances:

For the Applicant: (in person)

For the 1st to 3rd Respondents: Adv Green instructed by the State Attorney