



CONDONATION RULING

Case Number: *ECEL1261-24*

Commissioner: *Elizabeth Tom*

Date of Ruling: *18 April 24*

In the matter between

PSA obo Njikazi ADT

(Union/Applicant)

and

South African Police Service

(Respondent)

Details of the Hearing and representation

- 1) This matter came before the CCMA for an in Limine in terms of section 191((5)(a) of the Labour Relations Act 66, 1995. It was scheduled before me on 09 April 2024 at the CCMA offices in Asante Building Mthatha.
- 2) The applicant appeared in person and was represented by B. Mkhendlane from PSA as a union official. The respondent attended and was represented by Lt Col Z.M Gatya.
- 3) The process was digitally and manually recorded.

Background issues

- 4) The applicant was dismissed 31 January 2024. She first referred her case before to the SSSBC and was referred there within the stipulated time frames.
- 5) She waited for a set down until such time on 7 March enquired and was informed that SSSBC does not have jurisdiction to determine her case because PSA was not a member of the SSSBC.
- 6) The respondent did not oppose the application, however, because they were present at the hearing, I allowed the representative to make oral submissions.

Submissions by the applicant.

Degree of lateness

- 7) The applicant's case according to the applicant is 40 days late from the 31 January 2024. The 30 days within which the applicant should have referred her case to the CCMA expired on 1 March 2024.
- 8) The case was referred to the CCMA on 12 March 2024. From 2 March 2024 to 12 March 2024, the dispute is 11 days late. That is not an excessive delay.

Reasons for late referral

- 9) The applicant stated that the reason that they were late was that; the matter was initially . It was at the time referred within the required time frames. He enquired from the Bargaining Council on 07 March about the progress of the case. Same day he was given feedback that the Bargaining Council has no jurisdiction to determine the matter, hence on 12 March 2024; they referred it to the CCMA. They were informed that, it was because PSA was not a member to the Bargaining Council were not part of the Collective Agreement, resolution 1 of 2012.

- 10) The respondent submitted on its oral submissions that; PSA should have known that they were not members of the council. That the reason given by the applicant was not valid, they should have known where to refer their dispute.
- 11) I find that the reason given by the applicant was valid, because the respondent on the other hand did not present evidence to indicate that the applicant after the hearing was informed to refer the case to the CCMA. Had evidence been presented I may have had a different view.
- 12) I further accept the reason because the applicant was an active litigant to ensure of seeking progress of the case.

Prospects of Success

- 13) The applicant stated that the applicant has prospects of success in this matter because the applicant was not near the crime that she was accused of. Further that the chairperson during the hearing was bias as he was the investigator of the case.
- 14) That the applicant was not given an opportunity to state case.
- 15) That the applicant's witnesses were not called.
- 16) The respondent disputed the applicant has prospects and stated that it will be a waste of time to grant condonation in this case because the applicant has no prospects.
- 17) Without going into the merits of the case, I am of the view that refusing condonation in this matter will be against justice. The applicant may have prospects if both parties are given the opportunity to present evidence before the commission.\

Prejudice

- 18) The applicant stated that, should condonation not be granted the applicant will remain unemployed.
- 19) The respondent denied that there will be prejudice suffered by the applicant because the policy within SAPS allows that the investigator be the chairperson.
- 20) I find that after evidence is heard by the commission it will come clear as to whether which of the parties is prejudiced by having this matter heard.

21) In weighing all evidence presented before me I am of the view that, denying condonation in this matter will be unfair.

22) In the circumstances I issue the following ruling

Ruling

23) Condonation under ECEL1261-24 is granted.

24) The applicant must refer his dispute to arbitration within 90 days from the date of this ruling.

A handwritten signature in black ink, consisting of several overlapping loops and a vertical line, positioned to the left of the signature line.

Signature: _____

Commissioner: ***Elizabeth Tom*** _____