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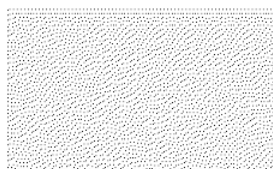
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CONDONATION RULING

Panellist/s: SS THOKA
Case No: GPBC 894/2019
Date of Ruling: 07/10/2020

In the matter between:

PSA obo W Williams and 22 Others: **Applicant**

(Union / Applicant)
And

Department of Agriculture, Forestry and Fisheries: **Respondent**
(Respondent)

DETAILS OF HEARING AND REPRESENTATION

[1] This is the ruling in the application by the Applicant for the late referral of the dispute relating to interpretation of a collective agreement (Resolution 03 of 2009) to the Council. The application is in terms of rule 32 (1) read with rule 9 of the Council Rules. The deponent deposed to an affidavit dated 13 August 2020. The application was served on the Respondent on 22 September 2020 and the Respondent did not oppose the application. The application was determined on papers.

ISSUE TO BE DECIDED

[2] The issue to be decided is whether or not the late referral of the dispute relating to interpretation of the collective agreement (Resolution 03 of 2009) should be condoned.

APPLICANTS' SUBMISSIONS

[3] In terms of the affidavit, the deponent submitted, *inter-alia* as follows:

[4] The deponent submitted that the dispute arose on 14 December 2018 and the employees lodged grievances between 17 January and 01 April 2019 without success. With regard to the degree of lateness, it was stated that the referral is 55 days late. In dealing with the reasons for lateness, the deponent explained that the employees became aware of their claim on 14 December 2018. The matter was referred to the Council on 07 May 2019 and it was set down for arbitration on 29 October 2019.

[5] The deponent further explained that at the commencement of the arbitration, the Respondent raised a point *in limine* relating to the late referral of the dispute to the Council. It was further stated that the commissioner instructed parties to file written submissions with the Council on agreed dates in December 2019 and the matter would be set down for argument. However, the Respondent failed to file the written submissions.

[6] The deponent further more explained that the Respondent delayed the process by failing to file the written submissions timeously to enable the Applicant to file the answering affidavit in December 2019 in terms of the agreement. It was furthermore stated that the matter was set down for 22 May 2020 but the proceedings could not take place due to Covid 19. Realising that the Respondent did not file the written submissions, the Applicant requested the Council that the matter must be decided on papers as it had already filed its written submission and same had already been served to the Respondent in December 2019.

[7] The matter was allocated to Commissioner van Tonder to be decided on papers and he ruled that the Applicant conceded that the referral was late and the Applicant must apply for condonation in terms of rule 32 of the Council Rules. The deponent further explained that the Respondent's supervisors failed to enlighten employees on Resolution 03 of 2009 and they led employees to believe that the Resolution does not apply to them. It was furthermore stated that the employees only became aware the Resolution applies to them from their colleagues who perform the same work. The employees' colleagues had been translated to the OSD in 2018 and 2019 after they referred the dispute to the Council

[8] In terms of the prospects of success, it was stated that there are prospects of succeeding in the main case because Resolution 03 of 2009 applies to employees as scientists and they perform the duties of scientists as stipulated in the implementation directive.

[9] With regard to prejudice, the deponent submitted that if condonation is not granted the employees would be severely prejudiced as they would be deprived of an opportunity to prove that the Respondent incorrectly interpreted Resolution 03 of 2009. He further pointed that the employees

would be severely prejudiced as they hold similar positions as those who had been successfully translated in terms of the OSD.

ANALYSIS OF THE APPLICANT'S SUBMISSIONS

Applicable legal principles

[10] In terms of rule 9 of the Council Rules for the Conduct of Proceedings before the GPSSBC, the application for condonation must set out the grounds for seeking condonation; which include the degree of lateness, the reasons for lateness, the prospects of success in the main case, prejudice to the other party and any other relevant factors.

[11] It is trite that the aforesaid grounds should be interpreted to include good cause and that the test for good cause involves the consideration of an explanation for default and the presence or otherwise of a prima-facie defence. It should be pointed out that case law has repeatedly emphasised the importance of reasonable and acceptable explanation for the delay.

[12] It would be apposite to state that the test to be applied when considering a condonation application was set out in **Grootboom v National Prosecuting Authority and Another (2014) 35 ILJ 121 (CC)** as follows:

'50...the test for determining whether condonation should be granted or refused is the interests of justice. If it is in the interest of justice that condonation be granted, it will be granted...

51 The interests of justice must be determined with reference to all relevant factors. However, some of the factors may justifiably be left out of consideration in certain circumstances. For examples, where the delay is unacceptably excessive and there is no explanation for the delay, there may be no need to consider the prospects of success. If the period of delay is short and there is an unsatisfactory explanation but there are reasonable prospects of success, condonation should be granted. However, despite the presence of reasonable prospects of success, condonation may be refused where the delay is excessive, the explanation is non-existent and granting condonation would prejudice the other party. As a general proposition the various factors are not individually decisive but should all be taken into account to arrive at a conclusion as to what is in the interests of justice.'

[13] It is clear from the submissions that although the deponent indicates that the dispute arose on 14 December 2018, perusal of the referral reveals that the Applicant stated that the dispute arose on 12 December 2018. Further consideration of the submissions shows that the dispute relates to interpretation of a collective agreement (Resolution 03 of 2009) in terms of section 24 of the Labour Relations Act (LRA).

[14] It would be apposite to mention that section 24(2) does not stipulate the time frame within which a dispute about interpretation or application must be referred to the Council. It is trite that disputes about interpretation or application of collective agreements must be referred to a dispute resolution forum within a reasonable period. Authorities have consistently held that 90 days should be regarded as reasonable period within which such disputes must be referred to the relevant forum.

[14] Based on the Applicant's submissions, it is clear that the dispute arose on 12 December 2018 and it was referred on 07 May 2019. If my calculations are accurate, the degree of lateness is excessive. In light of the aforesaid legal principles, the critical question is whether or not it would be in the interest of justice to grant condonation.

[15] Having considered the Applicant's submissions and the above mentioned legal principles in totality, it is my considered view that the Applicant provided acceptable and reasonable explanation for the late referral of the dispute. It is further my view that there are reasonable prospects of succeeding in the main claim and the denial of condonation would severely prejudice the Applicant. I should point out that the excessive nature of the delay was attributable to the Respondent's point in limine and it failed to file the written submission as agreed between the parties. In the premises, I find that the granting of condonation would be in the interest of justice.

RULING

[16] In light of the aforesaid analysis of the Applicant's submissions, I make the following ruling:

- a) the application for condonation is granted.
- b) the Council is directed to set down the matter in terms of its rules.
- c) there is no order as to costs

Signature:



Panellist/s: SS THOKA

