

CONDONATION RULING

Panellist/s: SS THOKA
Case No: GPBC386/2024
Date of Ruling: 18/042024

In the matter between:

PSA obo SJ Skosana: _____ Applicant

(Union / Applicant)

And

Mpumalanga Department of Education : _____ Respondent
(Respondent)

DETAILS OF HEARING AND REPRESENTATION

[1] This is the condonation ruling in the application for the late referral to the Council of alleged unfair dismissal dispute. The referral was made outside the stipulated 90-day period. The application is in terms of rule 32 (1) read with rule 9 of the Council Rules. The deponent instituted the application by deposing to an Affidavit on 06 March 2024. The Respondent filed the opposing Affidavit on 14 March 2024 and I determined the application on papers.

ISSUE TO BE DECIDED

[2] The issue to be decided is whether the late referral dispute relating to alleged unfair dismissal should be condoned.

APPLICANTS' SUBMISSIONS

[3] In terms of the letter, the deponent (Ms. Pamela Letebele) submitted, *inter-alia* as follows:

[4] She stated that dispute arose on 03 January 2024 which is a date on which the Applicant was dismissed. In terms of the degree of lateness, it was submitted that the referral is 60 days late. With regard to the reasons for the delay, the deponent explained that the delay is attributed to the fact that the Applicant lodged a grievance and thereafter

approached PSA for assistance after 30 days. She further submitted that the Applicant is a lay person and was not aware that a withdrawal letter is the same as a dismissal letter.

- [5] The deponent submitted that there are reasonable prospects of succeeding in the main claim in that the dismissal was substantively and procedurally unfair. The deponent further state that the Applicant was not paid for period he worked and the Applicant is currently unemployed.
- [6] In terms of prejudice, the deponent submitted that the denial of condonation would prejudice the Applicant. She explained that the Applicant had resigned from his previous employment by virtue of the offer of employment.
- [7] In replying to the Respondent's submissions, it was stated that the Applicant received the withdrawal letter on 03 January 2024. The deponent further submitted that the referral is not 73 but 33 days late. The deponent maintained the Applicant's position regarding the reasons for lateness, prospects of success and the fact that denial of condonation would prejudice the Applicant.

RESPONDENT'S SUBMISSIONS

- [8] In opposing the application, the Respondent (per Mr. Shabangu) submitted that the referral is 73 days late considering the required time frame. The deponent the Applicant stated that the Applicant should have applied for condonation even if the referral is 1 day late. In terms of prospects of success, it was explained that the matter lacks prospects of succeeding in the main case. He stated that the Applicant referred an unfair dismissal whereas the matter relates to a withdrawal of a preliminary offer of employment. It was further submitted that the preliminary offer had a pre-condition of the outcome of the background screening.
- [9] The deponent submitted that the grant of condonation would prejudice the Respondent in that the Respondent will incur wasteful expenditure on a frivolous and vexatious case.

ANALYSIS OF THE APPLICANT'S SUBMISSIONS

Applicable legal principles

- [10] Section 191(1) (b) of the Labour Relations Act 66 of 1995 (the Act) provides that the employee alleging unfair dismissal must refer the dispute in writing to the Council within 30 days from the date of the dismissal, or if it is a later date, within 30 days of the employer making a final decision to dismiss or uphold the dismissal.
- [11] 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

[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 (Own emphasis). 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] After careful evaluation the Applicant's submissions, I found that the Respondent did not dispute the fact that the Applicant received the withdrawal letter on 03 January 2024. The Applicant referred the dispute to the Council together with condonation application on 06 March 2024.

(14) If my calculation is accurate, the 30th day is on 02 February 2024. It is clear that referral is 44 days late calculating from 03 February to 06 March 2024. Perusal of the documentation reveals that in terms of the preliminary offer of employment, the Applicant was required to assume duty on 15 September 2023 and the withdrawal letter was signed on 22 November 2023. Further assessment of the submissions shows that the Applicant received the withdrawal letter after assumption of duty on 15 September 2023. It is instructive to mention that according to the preliminary offer of employment, the Respondent stated that disciplinary action may be instituted against the Applicant. Although condonation application does not deal the merits of a case, prospects of success (chances) warrant consideration.

[15] Having considered the submissions, documentation and the legal principles in totality, I find that the degree of lateness is not excessive. It is my considered view that the grant of condonation would be in the interest of justice to afford parties an opportunity to ventilate their cases.

RULING

[16] In the premises, 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.



Signature:
Panellist/s: SS THOKA

