



# CONDONATION RULING

**Case Number:** GPBC506-2025

**Panelist:** Dorothy Khosa

**Date of Ruling:** 08 May 2025

**In the matter between**

PSA OBO L P Nicholson

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**(the applicants/ employees)**

And

Department of Local Government, Western Cape Province

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**(Respondent/employer)**

## BACKGROUND TO THE ISSUE

- 1) This is the condonation ruling for the late referral of an alleged unfair labour practice dispute to the Council, by the Applicant. The Applicant referred the matter to the Council and applied for condonation for the late referral on 26 March 2025. This was after the Respondent had allegedly failed to pay her an acting allowance, after she had acted in a higher position.

- 2) The application was referred in terms of Section 191(1)(b)(ii) of the Labour Relations Act, as amended ('LRA').<sup>1</sup> The application was considered on paper in terms of Rule 32 (10) of the Council. The application remained unopposed.
- 3) The referral was made outside the stipulated 90-day period.

### **ISSUE TO BE DECIDED**

- 4) Whether condonation should be granted for the late referral of the alleged unfair labour practice dispute, and the relief thereof, if there is any.

### **SURVEY OF EVIDENCE AND ARGUMENT**

What follows below is only a brief summary of the submissions made. All submissions were considered, even if not pertinently mentioned below.

#### ***Applicant's Submission***

##### **5) Degree of lateness**

The Applicant submitted that the dispute arose on 08 March 2024. It was referred to the Council on 26 March 2025. The Applicant stated that the referral was late by 290 days.

##### **6) Reasons for lateness**

The Applicant stated that she submitted a grievance to the Directorate: Employee Relations of the Respondent on 27 March 2024. It was on 06 May 2024 when the Respondent requested an extension to deal with her matter. She agreed to the request. The Applicant stated that between 03 June and 22 July 2024 she requested feedback from the Respondent. She was informed that the investigation was concluded and that she was to receive feedback after the meeting with the Head of Department (HOD). She was later informed that her dispute was referred to the Premier due to its nature. Between 26 July and 11 December 2024, there was still no feedback shared with her. It was on 12 December 2024 when she was informed that the Respondent had received a legal opinion

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<sup>1</sup> Act 66 of 1995.

and that she was to be informed about the way forward. On 12 February 2025 her union contacted the Respondent for an update, but there was no feedback.

#### **7) Prospects of success on merits of case**

The Applicant believes that she has good prospects of success because she had acted in the position in dispute for periods approved by the HOD of the Respondent. That was from 01 September to 31 October 2023, 01 November to 31 December 2023 and 01 January to 28 February 2024. Her appointment letters indicated that she was to be remunerated according to the applicable policies.

The interviews for the position in dispute were conducted in November 2023, however the Premier only approved the post as critical in February 2024. The Applicant stated that the Respondent informed her that she was not paid the acting allowance from November 2023 until February 2024 because the Premier only approved the post as critical on 12 February 2024.

The Applicant stated that she failed to understand why the interviews proceeded in November 2023, when the post in question was not yet declared critical. She could only be paid the acting allowance again from 20 February 2024, because that was when the Premier issued a directive approving the post. The Applicant stated that she was aware that for one to qualify for an acting allowance one should have acted in a position for a period longer than six weeks. This was applicable to her, and she had been acting in the post several months before the decision was taken.

#### **8) Prejudice**

The Applicant submitted that if condonation is not granted, she will suffer prejudice because she had performed duties in her acting capacity and that was in line with the applicable collective agreement that deals with payment of acting allowances.

### **ANALYSIS OF EVIDENCE AND ARGUMENT**

9) The Applicant bears the onus to satisfy the Council that condonation should be granted.

10) Section 191 (1)(b)(ii) of the LRA states that if an employee wants to refer an unfair labour practice dispute, he/she has to do so within 90 days of the date of the act or omission

which allegedly constitutes the unfair labour practice or, if it is a later date, within 90 days of the date on which the employee became aware of the act or occurrence. The LRA however further states that upon good cause shown, the applicant may be permitted to pursue his or her dispute even after the prescribed period has expired.

11) The LRA does not state what good cause is, but the courts have developed principles that should be addressed when one has to show good cause. These principles are the degree of lateness, the reasons thereof, the prospects of success and the prejudice that might be caused as a result of the decision to grant or not to grant the application. These principles are so intertwined that they should not be considered in a piecemeal. 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 the delay, an application for condonation should be refused.<sup>2</sup>

12) The courts further expressed the view that in explaining the reason for the delay it is necessary for the party seeking condonation to fully explain the reason in order for the court to be in a proper position to assess whether or not the explanation is a good one.<sup>3</sup>

13) In the Constitutional Court, it was held that:

*'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 example, 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.'*<sup>4</sup>

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<sup>2</sup> National Union of Mineworkers v Council for Mineral Technology (1999) 3 BCLR 2019 (LAC).

<sup>3</sup> Independent Municipality & Allied Trade Union obo Zungu v SA Local Government Bargaining Council & Others (2010) 31 ILJ 1413(LC).

<sup>4</sup> Grootboom v National Prosecuting Authority and Another (CCT08/13) [2013] ZACC paragraph 52.

- 14) In *casu*, the Applicant submitted that the dispute arose on 08 March 2024 and that it was late by 290 days. She referred the dispute to the Council and applied for a condonation on 26 March 2025. Considering these dates, the matter was late by 290 days. The calculations are influenced by the 90-day period in which the matter should have been properly referred to the Council. The delay seems to be excessive, but the reasons provided by the Applicant for lateness are persuasive. I do consider the argument in **NTEU obo Moeketsi v CCMA and Others**,<sup>5</sup> where the court has clarified the issue of time frames that need to be adhered to. It was the responsibility of the Applicant to refer the matter timeously when it was found that the internal processes were taking long and overlapped the prescribed period of 90 days of referring the dispute to the Council. The Applicant proved that she contacted the Respondent for her grievance to be attended to from the time she lodged it until she referred the matter to the Council. At some point the Respondent requested an extension to deal with her grievance, of which she accepted. She was later informed that there was a legal opinion pertaining to her grievance, but the Respondent was waiting for a directive from the Premier. That was in December 2024. The Applicant's union intervened without success.
- 15) With regard to the prospects of success the applicant must present evidence to show that the case which is sought to be advanced has some merit.<sup>6</sup> It is not in dispute that the Applicant received acting letters that were issued by the HOD of the Respondent. The letters indicated that she would be remunerated during her acting period. I am aware of the directive to consider critical posts to be filled. From the submissions, such directives were issued before the Applicant received appointment letters to act. The Respondent failed to respond to the condonation application after being asked to do so, to rebut the Applicant's arguments.
- 16) The Applicant's argument that she will be prejudiced if condonation was not granted does hold weight. The Applicant had at all times willing to finalise her grievance, but the Respondent delayed and kept on making promises to attend to it.
- 17) In considering the totality of the submissions before me, it is therefore my finding that the Applicant has succeeded in showing good cause to justify granting of condonation. It would be entirely in the interest of justice to grant it.

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<sup>5</sup> (JR1157/20) [2022] ZALCJHB 226 (16 August 2022).

<sup>6</sup> *Oldfield v Roth* NO (1995) 11 J 76 (LAC) paragraph 80; *Chetty v Law Society*, TVL 1985 (2) SA 756 (A).

## **RULING**

18) The application for condonation is granted.

19) The Council is requested to set down the matter for conciliation.

**Signature:** 

**Panelist:** Adv Dorothy Khosa

**Sector:** GPSSBC