



GENERAL PUBLIC SERVICE
SECTOR BARGAINING COUNCIL

IN THE GENERAL PUBLIC SERVICE SECTOR BARGAINING COUNCIL

Case No GPBC213/2020

In the matter between

PSA obo MAMPOKE

Applicant

and

DEPARTMENT OF HOME AFFAIRS

Respondent

PANELIST: D P Van Tonder

HEARD: HEARD ON THE PAPERS

DELIVERED: 30 April 2020

CONDONATION RULING

Introduction

- [1] At the request of the General Secretary of the GPSSBC, I decided this condonation application on the papers.

Background

- [2] The GPSSBC received a referral from applicant. An application for condonation was also received. The dispute was referred late, and accordingly it may not be resolved by the GPSSBC unless condonation is granted.

The Legal Principles applicable to Condonation

- [3] Provided that good cause is shown, this Council may permit an employee to refer a dispute outside the time limits provided for in the Labour Relations Act.¹ In order to determine whether good cause is shown the following factors together with any other relevant factors are taken into account: the degree of lateness, the reasons for the lateness, the prospects of success, any prejudice that the respondent may suffer, and the respondent's interests in finality.²

¹ Section 191(2) of the Labour Relations Act No 66 of 1995; GPSSBC Rule 9

² *Melane v Santam Insurance Company Limited* 1962 (4) SA 531 (A) at 552; GPSSBC Rule 9(3)

[4] All these factors are interrelated. Thus, a slight delay and a good explanation may help to compensate for prospects which are not strong, and strong prospects of success may tend to compensate for a long delay.³ However if there are no prospects of success, there is no purpose in granting the condonation application.⁴ Furthermore, regardless of good prospects of success on the merits, condonation cannot be granted in the absence of an acceptable explanation for the delay.⁵

The degree of lateness

[5] It is generally accepted that the longer the delay, the less the prospects are that condonation will be granted,⁶ and the more the need for the applicant to have a good explanation.⁷ Applicant has referred an alleged unfair dismissal dispute. According to the LRA such disputes must be referred within 30 days of the date of dismissal.⁸ Applicant claims that the dismissal took place on 3 December 2019 and that the referral is 24 days late.

³ *Melane v Santam supra*

⁴ *Melane v Santam supra*

⁵ *Nampak Corrugated Wadeville v Khoza* (1999) 20 ILJ 578 (LAC); *Mziya v Putco Ltd* [1999] BLLR 103 (LAC); *Waverley Blankets Ltd v Ndimma* [1999] 11 BLLR 1143 (LAC); *NEHAWU obo Mofokeng v Charlotte Theron Children's Home* [2003] 8 BLLR 781 (LC); *NUM v Council for Mineral Technology* [1999] 3 BLLR 209 (LAC); *Superb Meat Supplies cc v Maritz* (2003) 25 ILJ 96 (LAC)

⁶ *Melane v Santam supra*

⁷ *Melane v Santam supra*; *S v Mantsha* [2009] 1 All SA 356 (SCA) para 7; *Baur Research CC v CCMA* (2014) 35 ILJ 1528 (LC) at para 3; *Mthembu v South African Red Cross Society* (J3012/12) [2014] ZALCJHB 407 (17 October 2014) para 4

⁸ See section 191(1)(b)(ii) of the LRA

The prospects of success

[6] In considering prospects of success in a condonation application, it is not necessary for an applicant to prove on a balance of probabilities that he will be successful in the main action. What is required is that the applicant must present evidence to show that the case which is sought to be advanced has some merit.⁹ The test is not that the applicant will succeed in the main action on the merits, but that he could succeed. It is a preliminary and not final assessment of the merits of an applicant's case.

[7] Applicant claims that the sanction is too harsh and that the employer delayed too long before instituting disciplinary proceedings against the applicant. I am satisfied that if these allegations are accepted at arbitration, a reasonable arbitrator may find for applicant. Accordingly there are prospects of success.

⁹ *Oldfield v Roth NO* (1995) 16 ILJ 76 (LAC) at 80; *Chetty v Law Society, Tvl* 1985 (2) SA 756 (A)

The explanation for the delay

- [8] Applicant explains that she was represented by a colleague at the disciplinary hearing who was not aware of the correct procedures to have the matter referred. After the outcome of the appeal, applicant consulted an attorney, who referred her back to the union. Thereafter the union referred the matter to the council but it was already too late, and condonation had to be applied for. Given the short delay, I am satisfied that these are acceptable reasons for the delay.

Conclusion

- [9] For these reasons I am of the view that good cause has been shown and that condonation should be granted.

ORDER

Accordingly, I make to following order:

1. Condonation is granted



D P Van Tonder
Panellist: GPSSBC