



CONDONATION RULING

Panellist: PC Mabitsela

Case no: GPBC1041/2021

Date of ruling: 30/07/2021

In the MATTER between:

Nyalungu Happy

(Applicant)

AND

DEPARTMENT OF AGRICULTURE LAND REFORM AND RURAL DEVELOPMENT

(Respondent)

Union/Applicant's Representative: Letebele Pamela

Union/Applicant's address: P O Box 282

Nelspruit, 1006

Contact number: 013 741 7500 (072 779 0110)

Respondent Representative: ELVIS MATHEBULA

Respondent's address: Private bag x 1050

Pretoria, 0001

Contact number: 074 723 7552



DETAILS OF HEARING AND REPRESENTATION

1. This is an application for condonation of late filing of unfair labour practice that was submitted to the General Public Service Sector Bargaining Council on the 22 July 2021.
2. The application was determined solely based on papers filed of records.

ISSUE TO BE DECIDED

3. I must determine whether to condone the late referral of unfair labour practice dispute to the Council or not.

BACKGROUND TO THE MATTER

4. The applicant is employed by the respondent as Inspection Services. The applicant alleges that, the respondent failed to pay her relocation costs as it was recommended by the Investigation Officer for her to be paid
5. She now seeks condonation for the non-compliance with the time frame.

SURVEY OF EVIDENCE AND SUBMISSION

APPLICANT'S CASE

Happy Nyalungu deposed to an affidavit as follows:

6. She submitted that in 2019 her dispute was investigated, and recommendation was made for her to be paid relocation costs from Mkhuhlu to Beit Bridge Boarder Post, but she never received the payment

DEGREE OF LATENESS

7. The applicant's degree of lateness is +-23 months late since she alleges that, the employer committed an act of unfair labour practice related to benefits towards her.

THE REASONS GIVEN FOR LATENESS

8. The applicant submitted that reasons for her late referral was due to the internal engagements trying to resolve the matter internally, but the employer kept on giving her false hope that she will be paid



PROSPECT OF SUCCESS

9. The applicant submitted that benefit/ entitlement it is stipulated in the policy, and the employer also recommended that the applicant be paid resettlement costs.

PREJUDICE

10. The applicant submitted that if condonation is not granted, she will be prejudiced because she has relocated +-700 km and she is entitled to the costs as per policy.

RESPONDENT'S CASE

11. No opposing documents was received from the respondent

ANALYSIS OF SUBMISSIONS AND ARGUMENTS

12. A referring party loses the right to be heard if a dispute is referred late unless the late referral is condoned. In such cases the referring party must convince a commissioner that condonation should be granted
13. ***In Melane v Santam Insurance Co Ltd 1962 (4) SA 531 (A) at 532B-E*** the view was held that the factors in Rule 9 of the CCMA Rules are interrelated and not individually decisive in granting condonation. What is needed is an objective conspectus of all the facts, the importance of the issue and strong prospect of success may tend to compensate for a long delay.
14. Although the degree of lateness is inordinate, the reasons for the lateness and the prospects of success compensate for the excessive delay. I am convinced that granting condonation in this matter, will be in the interest of justice.



Ruling

15. The application for condonation of the late referral is condoned.

16. The matter may be set down for conciliation

17. I make no order as to costs.



GPSSBC Arbitrator

PC Mabitsela