



GENERAL PUBLIC SERVICE
SECTOR BARGAINING COUNCIL

IN THE GENERAL PUBLIC SERVICE SECTOR BARGAINING COUNCIL

Case No GPBC918/2021

In the matter between

PSA obo HARWOOD

Applicant

and

DEPARTMENT OF CORRECTIONAL SERVICES

Respondent

PANELIST: D P Van Tonder

HEARD: HEARD ON THE PAPERS

DELIVERED: 22 May 2022

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 The condonation application is in respect of a referral to arbitration. Such referrals must be made within 90 days. PSA admits that the referral is 30 days late. This is not a very long delay.

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 Ndimu* [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*

The prospects of success

[6] It is alleged that the applicant was unfairly dismissed. My task is not to make a final determination about the merits. 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.⁸ 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. I am indeed satisfied that there are some prospects of success.

The explanation for the delay

[7] In explaining the delay, the union in essence states that they did not timeously receive the certificate of conciliation from the council and that this and remote working due to covid resulted in the delay. In this regard the union states:

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

The members after following the prescribed appeal process after his dismissal referred a dispute to the GPSSBC on the Unfair Dismissal.

The conciliation certificate was issued on 5 July 2021 but not forwarded to the applicant or the applicants representative.

The applicant enquired at different times from the GPSSC for the application and eventually on 5 November 2021 referred the matter for arbitration without an outcome certificate.

The outcome certificate was then only received after the arbitration application has been done.

The GPSSBC rules provide for a period of 90 days after the certificate was issued to refer a dispute for arbitration. With the certificate issued on 5 July 2021 the referral should have been done on or before 5 October 2021. The referral was then only referred on 5 November 2021 and only 30 days late.

One would also consider that both the GPSSBC and the union were working remotely due to the COVID 19 regulations and not in the office during the specified periods and it became very difficult for staff on both sides to function properly mistake and lateness occurred regularly

- [8] I am satisfied that these are acceptable explanations for the delay in referring the dispute.

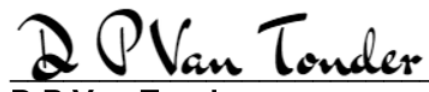
Conclusion

- [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.
2. No order as to costs is made.

A handwritten signature in black ink, reading "D P Van Tonder". The signature is written in a cursive style with a large, stylized 'D' and 'P'.

D P Van Tonder
GPSSBC Panellist