

FOR PSA MEMBERS: DEPARTMENT OF DEFENCE (DOD)

02-09-2019

Demilitarisation Labour Court case: The day arrived!

Members were kept informed about the pending court date in previous editions of the *Informus*.

Demilitarisation of then-Finance Division

Respective advocates parties appeared on 30 August 2019. The Presiding Judge granted the employer the opportunity to present, on special pleas as raised. The presentation was based on the *Prescription Act 68 of 1969* and condonation.

It argued that the PSA should have filed its action latest during November 2001. It contested the cause of action whether is it Unfair Labour Practice (ULP) or a Contractual claim. Its reliance was on section 14 of the *Act*, which provides that the running of the prescription shall be interrupted by an express or tacit acknowledgement of liability by the debtor. It alleges that it never acknowledged any debt from members. On the other hand, the granting of condonation must be based on the following interrelated facts:

- Lateness;
- Explanation thereof;
- Prospects; and
- Importance.

The advocates pleaded that the consideration of the *Act* must be decisive for dismissal of the matter. Thereafter no need to proceed with condonation. If not, to consider lateness and prospects.

The PSA's advocates emphasized on self-explanatory submitted Statement of Case and the employer's acknowledgement of members' grievances, where it responded in that these were receiving attention. During 2014, the submitted Court papers attested that the demilitarised personnel salaries were worse off.

The Presiding Judge referred both advocates parties to the Appellate decision of *Melanie v SANTAM Insurance Company Ltd (1962)(4) SA 531(A)*, where it was held that deciding whether sufficient cause has been shown, the basic principle is that the court has a discretion, to be exercised judicially upon consideration of all facts. It is a matter of fairness to both sides, as well considering the above-mentioned four interrelated facts.

Judgement has been reserved. The Labour Court will revert to parties with the decision presumably within reasonable period.

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