

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT PORT ELIZABETH

Case Number: P190/98

In the matter between

T. DANIEL

Applicant

and

COMMISSIONER WYNFORD

First respondent

M. WOOD

Second respondent

J U D G M E N T

LANDMAN J

1 Timothy Daniel was employed as a security guard by Broubart Security. During the course of his employment he entered into a written contract of service which has been filed together with the answering affidavit. He took part in a strike which lasted some time. He was dismissed on 30 March 1998. He believes that he was dismissed because he

took part in the strike. His employer states that, having regard to his contract of employment, his services were terminated because one of the company's clients terminated its relationship with the employer and therefore the terms of the contract of employment for the services of the applicant were terminated, but it says he was offered re-employment.

2 Mr Daniel referred his dispute to the Commission for Conciliation, Mediation and Arbitration ("the CCMA") on 11 May 1998, which was about 12 days late. He made certain representations to the CCMA and a commissioner was appointed to consider the matter. The commissioner did so and came to the conclusion that condonation for the late referral should not be granted. In arriving at this decision, the commissioner said that Mr Daniel did not deal with the potential prospects of success of his case. He did, however, deal with the delay and said that that was to be laid at the door of his union. The employer did, however, deal with the prospects of success. The commissioner says:

The respondent operates in the security industry. According to the respondent the applicant was employed in terms of a contract according to which the employee's services are automatically terminated if the respondent's client terminates the contract in terms of which the employee is required to provide a services (sic). The respondent's client cancelled the contract in respect of which the applicant was rendering services. The applicant refused to apply for another contract.

3 The commissioner weighed this up and, *inter alia*, stated:

The reason for delay I find not to be a good reason but what weighted (sic) fairly heavily against condonation is that on the information available to me the employee's prospects of success are not good.

4 This application for review of the decision of the commissioner is made in terms of sec 158(1)(g) of the Labour Relations Act 66 of 1995. It is incumbent on me to interfere if a ground for such interference is permissible at law. I have examined the reasoning of the commissioner, but I can find no reason to intervene. It is perhaps unfortunate that Mr Daniel was not advised to set out precisely what his prospects of success were, but the fact of the matter is that he did not do so. His employer did so. That submission seems to indicate that the employee does not have good prospects of success. I can find no reason for interfering with the commissioner's decision and the application is dismissed.

A.A. Landman

Judge of the Labour Court

SIGNED AND DATED AT PORT ELIZABETH THIS 19TH DAY OF NOVEMBER
1998

Date of Hearing: 19 November 1998

Date of Judgment: 19 November 1998

For the Applicant: Mr. Daniels (Applicant)

For the 2nd Respondent: **Mr. M. Wood (2nd Respondent)**