IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT JOHANNESBURG CASE NO : J1918/98

In the matter between :

NATIONAL UNION OF MINE WORKERS Applicant

and

COMMISSION FOR CONCILIATION,
MEDIATION AND ARBITRATION First Respondent

A HEYNES N.O. Second Respondent

LOXTON EXPLORATION (PTY) LIMITED Third Respondent

JUDGMENT

JAJBHAY, A.J.

[1] This is an application for the review and setting aside of an award made by the Second Respondent in an arbitration conducted under the auspices of the First Respondent, the CCMA. The Second Respondent had determined that the dismissal of the members of the Applicant by the Third Respondent was procedurally unfair. The Second Respondent determined that the Third Respondent compensate the members of the Applicant.

[2] Before turning to the facts of this matter, I have to determine the approach that has to be taken by this Court to a review applied for in terms of Section 145 of the Labour Relations Act 66 of 1995 (the LRA) and in particular, whether this Court has jurisdiction to condone the late application of an application in terms of Section 145 of the LRA.

[3] It was contended by Mr Maserumule on behalf of the Applicant that this Court has the jurisdiction to condone the late filing of an application in terms of Section 145 of the LRA, whilst Mr Van As on behalf of the Third Respondent contended that this Court did not have the jurisdiction to condone such an application. Section 145 of the LRA which deals with review of arbitration awards sets out :

> "*(1) Any party to a dispute who alleges a defect in any arbitration proceedings under the auspices of the Commission may apply to the Labour Court for an order setting aside the arbitration award* **-**
> *(a) within 6 (six) weeks of the date that the award was served on the Applicant, unless the alleged defect involved corruption; or*
>
> *(b) if the alleged defect involves corruption 6 (six) weeks of the date that the Applicant discovers the corruption.*"

[4] The question that I have to answer is whether the six weeks time frame set out in Section 145 of the LRA is peremptory. In addition, whether there is a general provision in the LRA which would empower this Court to condone non-compliance with the time period contemplated in Section 145 of the LRA.

[5] The Labour Appeal Court has outlined the basic principles that inform its approach to the task of interpreting the provisions of the LRA. The Act requires that the LRA be interpreted to give effect to its primary objects, and in conformity with the Constitution (Constitution of the Republic of South Africa Act 108 of 1996) and South Africa's public law obligations. The purpose of the Act is set out as follows :

> "*The purpose of this Act is to advance economic development, social justice, labour peace and the democratisation of the workplace by fulfilling the primary objects of this Act, which are* **-**
>
> *(a) to give effect to and regulate the fundamental rights*

conferred by Section 27 of the Constitution;

(b) to give effect to obligations incurred by the Republic as a member state of the International Labour Organisation;

(c) to provide a framework within which employees and their trade unions, employers and employers organisations can **-**

(i) collectively bargain to determine wages, terms and conditions of employment and other matters of mutual interest; and

(ii) formulate industrial policy."

[6] Conformity with the Constitution includes the fact that the provisions of the LRA must be considered against the background of the Constitution, which is the supreme law of the land and which itself requires that this Court when interpreting the LRA promote the spirit, purport and objects of the Bill of Rights.

Business South Africa v Congress of South African Trade Unions and Others (1997) 18 ILJ 474 (LAC);
Chemical Workers Industrial Union v Plascon Decorative (Inland) (Pty) Limited (1999) 20 ILJ 321 (LAC);
Carephone (Pty) Limited v Marcus N.O. and Others (1998) 19 ILJ 425 (LAC)

[7] The relevant facts in respect of the application for condonation are briefly as follows :

a. The application was not made within six weeks of the date of the award as required by Section 145 of the LRA.

b. The Applicant received the arbitration award on or about the 20th of May 1998. The Applicant was accordingly required to institute review proceedings on or before the 27th of June 1998.

c. The review application was filed on the 4th of August 1998. This was approximately five weeks out of time.

[8] By reason of the outcome that I have reached in this particular matter, I will not deal with the other details concerning the condonation application.

[9] In the matter of **Queenstown Fuel Distributors CC v Labuschagne N.O. and Others** (1999) 3 BLLR 268 LC, Landman, J in an application for review of an award issued by a CCMA Commissioner, one week outside the six week time limit prescribed by Section 145 of the LRA explained :

> "*Whether condonation may be granted or not depends upon the interpretation of the statute in question. Generally, there appears to be no inherent power residing in a Court to condone a failure to comply with the time limits laid down by statute (See the remarks by Didcott, J in Mohlomi v Minister of Defence 1996 (12) BCLR 1559 (CC) at 1568D-E)*
>
> *The legislature was aware in enacting the Labour Relations Act 66 of 1995 that circumstances might arise where the time limits it sets might not be met by parties subject to the Act, and has, for the most part, provided for the appropriate authority to condone a failure to comply with them - usually on good cause being shown (see for example Sections 111(4) and 191(2) of the Act.*"

[10] In the above matter, Landman, J concluded that this Court does not have jurisdiction to condone the late application in terms of Section 145 of the LRA.

[11] Mr Maserumule referred me to the unreported decision of Mlambo, J in the matter between **Transnet Limited and Hospersa, case number J1385/98**. Mlambo, J was determining an application for review in terms of the Arbitration Act No. 42 of 1965 as amended (the Arbitration Act).

[12] Section 33(2) of the Arbitration Act provides that :

> "*An application pursuant to this section shall be made within six weeks after the publication of the award to the parties; provided that when the setting aside of the award is requested on the ground of corruption, such application shall be made within six weeks after the discovery of the corruption and in case not later than three years after the date on which the award was published.*"

[13] Mlambo, J held that :

"*Section 158(1)(f) accords this Court the power to condone the late filing of any document or the late referral of any dispute to the Court. On that basis it is competent for this Court to entertain a condonation application relating to a matter brought to it in terms of the Arbitration Act. In this regard the empowering act is the LRA being the Act that creates this Court with jurisdiction and power to entertain certain specific matters.*"

[14] In my view, the matter determined by Mlambo, J can be distinguished from the matter on hand. The learned Judge was not dealing with the interpretation of the provisions of Section 145 of the LRA. Section 145 of the LRA deals specifically with a defect in any arbitration proceedings under the auspices of the Commission. The review provisions under the Arbitration Act will be dealt with in terms of the provisions of Section 157(3) of the LRA. This section provides that :

"*Any reference to the Court in the Arbitration Act, 1965 (Act 42 of 1965), must be interpreted as referring to the Labour Court when an arbitration is conducted under that Act in respect of any dispute that may be referred to arbitration in terms of this Act.*"

[15] It is necessary to interpret Section 145 in a manner which is consistent with the Constitution. In the **Carephone** matter ***supra***, at paragraph 28 Froneman, D.J.P explains that :

"*It is capable of such an interpretation. ...* ***It is a lesser evil than ignoring the whole of Section 145, including the sensible provisions relating to time limits.*** *(Emphasis added)*"

[16] In the Constitutional Law of South Africa, Chaskalson and Others state at page 11-11 :

"*A statute is an instrument by means of which a legislature elected by a majority of citizens governs those citizens. It is a set of instructions from the legislature to the officials who enforce the statute and to the citizens who are required to comply with its provisions. When Judges interpret statutes they are attempting to read and understand those instructions, and to assist officials and citizens in understanding and obeying those*

instructions. A Judge interpreting a statute is engaged in the task of attempting to determine legislative intent."

[17] The LRA was the product of compromise and consensus amongst the social partners. The passing of the LRA by Parliament was something of a formality. There are compelling reasons why the time constraints set out in Section 145 should be treated with deference by the Labour Courts. First, the LRA explains in unequivocal terms that the arbitration award issued by the Commissioner is final and binding (Section 143). Secondly we must recognise that the drafters of the LRA consisted of persons representing the social partners, namely labour, business and government. These are the persons who are best placed and aware of the intricacy of labour relations and the delicate balance that must be preserved between the parties for the benefit of society. These are also the individuals that govern the CCMA (Section 116).

[18] The recent amendment to the LRA which came into effect at the beginning of February 1999, expressly makes provision for the referral of a matter for arbitration, or to the Labour Court, for adjudication, within 90 (ninety) days after the council or the commissioner has certified that the dispute remains unresolved. However, in the appropriate circumstances, either the commissioner, or the Labour Court may condone non-observance of the time frame on good cause shown. Nothing of the sort has been added to Section 145 of the LRA.

[19] In order to "*read and understand those instructions, and to assist officials and citizens in understanding and obeying those instructions*" (Chaskalson ***et al supra***), it must be understood that the procedures, and the various institutions created by the LRA were for the expeditious and efficient settlement of labour problems. Problems arising in the labour matters frequently involve more than legal questions. Political, social and economic questions frequently dominate labour disputes. The legislative creation of these institutions, and the statutory time constraints will go a long way in meeting the needs of finalising the review of arbitration awards under the auspices of the CCMA expeditiously, efficiently, and inexpensively. In determining the true meaning of Section 145 of the LRA, this Court should be guided by a pragmatic and functional approach.

[20] Mr Maserumule argued that Section 158(1)(f) of the LRA gives the Labour Court the power to condone the late filing of any document

or the late referral of any dispute to the Labour Court. This section states :

> "*The Labour Court may - subject to the provisions of this Act, condone the late filing of any document with, or the late referral of any dispute to, the Court.*"

[21] In my view, this argument cannot be sustained because the filing of an application for the review of an arbitration award under the auspices of the CCMA does not fall within the ambit of the provisions of the above section. Neither does an application for a review of an arbitration award under the CCMA constitute the referral of a dispute to the Court.

[22] Unresolved disputes fester and spread infection of discontent. They cry out for resolution. Disputes in the field of labour relations are particularly sensitive. Work is an essential ingredient in the lives of most South Africans. Labour disputes deal with a wide variety of work related problems. They pertain to wages and benefits, working conditions, hours of work, job classification and seniority. Many of these issues are emotional and volatile. If these disputes are not resolved quickly and finally they can lead to frustration, hostility and even violence. Both the members of the workforce and management have every right to expect that the differences will be, as they should be, settled expeditiously. Further the provision of goods and services in our complex society can be seriously disrupted if there were no time constraints to expeditiously finalise a review application in terms of Section 145 of the LRA. Thus society as a whole as well as the parties, has an interest in their prompt resolution.

[23] In my judgment, the drafters have recognised the importance of a speedy determination of labour disputes. By the enactment of the LRA they have sought to provide a mechanism for a fair, just and speedy conclusion of the issues. In this particular instance, they have gone further and allowed a maximum time period of six weeks to institute proceedings in terms of Section 145 of the LRA.

[24] There are also good policy reasons in fettering the discretion of this Court in the exercise of its remedial powers. The whole purpose in establishing a system of grievance arbitration under the LRA is to secure prompt, final and binding resolution of disputes arising out of interpretation or application of collective agreements, or disciplinary

action taken by the employer, or to the end that industrial peace may be maintained.

[25] In the **Queenstown Fuel Distributors CC** matter ***supra***, Landman, J observed :

> "*It may be argued that the six week period infringes on the right of access to the Courts (See Section 35 of the Constitution of the Republic of South Africa 108 of 1996). If that be the case, it cannot be resolved by this Court, for this Court is not empowered to adjudicate on the Constitutionality of the laws which it applies.*"

[26] In the light of the above circumstances, it follows that this Court does not have the jurisdiction to condone the late application of the review of the arbitration award determined by the Second Respondent under the auspices of the CCMA.

[27] In the present matter, I do not believe that the dictates of the requirements of law and fairness require that the Applicant be made to pay the costs of this application. It was not unreasonable of the Applicant to have instituted the present proceedings. This is especially so in the light of the uncertainty surrounding the applicability of the time constraints as set out in Section 145 of the LRA. In addition, there appears to be an ongoing relationship between the Applicant and the Third Respondent. In short, there are no considerations of law or fairness which persuade me that the Applicant should bear the costs of this application.

[28] Accordingly I make the following order :

a. The application is dismissed.

b. No order is made as to costs.

M JAJBHAY

Acting Judge of the Labour Court
of South Africa

DATE OF HEARING : 30th April 1999

DATE OF JUDGMENT : 7th day of May 1999

FOR THE APPLICANT : Mr Maserumule of Maserumule and Partners

FOR THE THIRD RESPONDENT : Advocate M Van As instructed by De Vries Serobe

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