

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT JOHANNESBURG

CASE NUMBER: J3869/99

In the matter between:

NATIONAL UNION OF METAL

First Appliant

Second Applicant

and

INDEPENDENT GALVANISING

Respondent

J U D G M E N T

unfair dismissal dispute to the Labour Court. The referral was made on 4 October 1999. The dismissal occurred on the 21st of May 1998. The application for condonation before me on 21st of June 2002, is the amended condonation application filed on the 12th of March 2001. This amended condonation application is in substitution for an earlier condonation application filed on the 11th of May 2000. Both applications for condonation were opposed by the Respondent.

2 As is apparent, at the time this matter is being heard, it is not quite three years since the dispute was referred to the Labour Court, and over four years since the dismissal occurred.

3 Whether or not condonation should be granted is dependent upon a reasonable explanation for the delay and a sufficient basis to conclude that there are some prospects of success on the merits. In my view, the Applicants have demonstrated neither.

4 The reason why the delay up to the 4th of October occurred is that after conciliation, the Applicant trade union referred the matter to arbitration before the CCMA. That arbitration was concluded by an award handed down on 14 July 1999, not surprisingly holding that as the dispute was one which alleged dismissal for trade union activities, that is to say victimisation, the true character of the

dispute was an automatically unfair dismissal, over which the CCMA had no jurisdiction to arbitrate. The Applicants then took thereafter almost three months to refer the matter to the Labour Court. Although there is nothing in the papers to explain why that was not done more expeditiously, I am told from the Bar that the reason was that the Applicant trade union believed that the ninety days in which it had to refer the dispute ran afresh from the date of the arbitration award.

5 It is plain, that the Applicant trade union was seriously in error in referring a dispute which it itself characterised as an automatically unfair dispute to the CCMA, and was equally in error in believing that the award refusing jurisdiction in the CCMA in any way played a role in the calculation of any period in which it ought to have referred the matter to the Labour Court. I shall accept the explanations are truthful, however they are distressing when offered by an institution, such as a trade union, whose business is the practice of industrial relations.

6 Even if I were to adopt a more generous approach, the only explanation for the reason that the matter took so long to be arbitrated, almost a year after the dismissal, was that it was due to the ineptitude of the CCMA. That bald allegation is inadequate to properly explain what steps were taken to prosecute the arbitration.

7 Accordingly, having regard to the paucity of information furnished in the explanation, together with the self-evident misconceptions of the trade union about jurisdiction and time periods, I am not satisfied that the explanation for the delay ought to be regarded as either adequate or reasonable.

8 An examination of the prospects of success of the Applicants' case afford a similar negative perspective.

9 There are three sources of information available to me. The averments made out in the statement of claim, and what is stated in each of the first and second condonation applications.

10 A reading of the statement of case furnishes a few scant details concerning events pertinent to the dismissal, which appears to reflect that the Respondent dismissed the Second Applicant ostensibly for absenteeism. The bald allegation is made that the Respondent dismissed the Second Applicant in truth because of his union membership and his participation in union activities. The statement of case simply does not marry the conclusion with the factual averments as set out. The first condonation application makes no meaningful reference to the facts upon which any evaluation of the case to be advanced by the Applicant might be made. Paragraph 6 of that application which is headed "*Prospects of Success*" simply contains contentions and no facts. The second condonation application repeats in

substantial form the contents of the statement of case and concludes with the contention that it is clear that the Second Applicant was dismissed for his union activities.

- 11 If the Applicant has a case for victimisation on the grounds of union activities, it is certainly not apparent upon what factual foundation it can cogently be established from the information contained in the three sources referred to above.
- 12 In addition to those difficulties which it was the responsibility of the Applicant to set out in full, there are two further issues which stand in the way of its prospects of success.
- 13 The first issue is the contention advanced by the Respondent in its opposing affidavits that the issue which was referred to conciliation was not an automatically unfair dismissal dispute and that the issue which has come before the Labour Court, is not the issue which was conciliated. Whether or not this is so, is not possible for me to determine, because the papers which have been placed before me for adjudication omit the referral to conciliation, omit the certificate of outcome, and omit the referral to the CCMA for arbitration. I am told from the Bar that the Bargaining Council who dealt with the dispute has destroyed the documentation, the union has no copies and allegedly, the Respondent does not

have copies either.

14 The second issue relates to the question of the identity of the Respondent. One of the matters to which the Commissioner referred in his award was that the Respondent, that is to say Independent Galvanising (Pty) Limited, who was before him at the arbitration, was not identified as a party to the dispute in respect of which the certificate of outcome had been issued. The Respondents in their opposing affidavits contend that they were not a party to the conciliation in respect of which the certificate was issued. Again, I am not adequately informed on the papers before me to pronounce on these issues.

15 It is plain that the manner in which this case has been dealt with is a travesty.

16 In summary, I am of the view that the application lacks any basis upon which, however generous I might be, it would warrant a discretion being exercised in favour of the Applicant.

17 Accordingly, I make an order as follows:

17.1 The application for condonation for the late filing of the referral of the dispute to the Labour Court is refused.

17.2 There will be no order as to costs.

**ROLAND SUTHERLAND
ACTING JUDGE OF THE
LABOUR COURT OF
SOUTH AFRICA**

25 June 2002