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IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT CAPE TOWN **CASE NO. 471/03**

In the matter between:

THE NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE	**APPLICANT**
and	
WILLIAM MARITZ NO	**FIRST RESPONDENT**
SAFETY AND SECURITY SECTORAL BARGAINING COUNCIL	**SECOND RESPONDENT**
CHARMAINE DANIELS	**THIRD RESPONDENT**
THE POLICE AND PRISONS CIVIL RIGHTS UNION	**FOURTH RESPONDENT**

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JUDGMENT

LANDMAN J:

The applicant in this matter is the National Commissioner of the South African Police Service. The respondent's are William Maritz NO the first respondent, the Safety and Security Sectoral Bargaining Council the second respondent, Charmaine Daniels the third respondent and the Police and Prisons Civil Rights Union the fourth respondent. This is an application in terms of s157(3) of the Labour Relations Act 66 of 1995 read with s 33 of the Arbitration Act 42 of 1965 for the review and setting aside of the arbitration award by first respondent under case number PSSS 1982.

The application is opposed by the third respondent. She filed her answering affidavit fifty-four days late. She seeks condonation for the late filing. Her explanation for her delay shows that she was keen on opposing the application. She made enquiries from her union, the Labour Court, and the applicant's in-house legal representative before consulting an attorney. The attorney took a few days to draft her answering affidavit and her application for condonation. Her error was not to read the applicant's notice in terms of Rule 7A(8), (9) which clearly informs her what steps she must take. But once this was overlooked, she would remain in default until she discovered her error, or her attention was drawn to it. When she learnt what to do, she set about the task expeditiously.

Her prospects of success are good. The main application is out of time and a condonation application has not been filed. But thereafter her prospects of retaining the award are slimmer on account of the commissioner's failure to revert to the parties about a material fact, i.e. the identity of one Meyer who was promoted to captain. Nevertheless the third respondent has a reasonable prospect of securing the remittal of the dispute to the bargaining council. The other factors, which are usually relevant to these applications are established, and they favour the granting of the application. I am of the view that the late filing should be condoned and that each party should pay their own costs.

I turn to explain why the application for review is late. It is common cause that the application was filed a few days later than six weeks after publication of the award. I have mentioned at the outset that the application was launched under s 33 of the Arbitration Act of 1965 read with s 157(3) of the LRA. Section 33(2) of the Arbitration Act requires an application to be brought within six weeks of publication of the award to the parties. The application is therefore late.

The Labour Appeal Court decided in **Reddy v KwaZulu-Natal Department of Education and Culture and others** (2003) 24 ILJ 1358 (LAC) that reviews of bargaining council awards are governed by s 158(1)(g) of the LRA and not the Arbitration Act. I am of the view that this decision was wrongly decided but there is no need to again set out my reasons for this view. Section 158(1)(g) does not prescribe when such an application must be launched. But, in accordance with the common law, an application must be launched within a reasonable time. On this basis, the application would have been launched timeously.

However, **Reddy's** case has, in my opinion, been overtaken by the amendment to s 51 of the LRA. Subsection (8) was added to s 51, which deals with dispute resolution

functions of bargaining councils, by s 12 of Act 12 of 2002. The subsection came into operation on 1 August 2002. It reads as follows:

"(8)Unless otherwise agreed to in a collective agreement, sections 142A and 143 to 146 apply to any arbitration conducted under the auspices of a bargaining council."

The applicant relies on s 33 of the Arbitration Act which is similar, in some respects, to s 145. In both sections the time limit is six weeks from the date of publication of an award. The application is clearly late and should be postponed to enable the applicant to apply for condonation.

I must point out that it is immaterial, in this case, whether the applicant relies on s 33 or s 145 as regards the time limit. It may be that there is no collective agreement so that s145 applies. The papers are silent on this aspect.

I should also point out that there is an important difference between s 33 and s 145 as regards the power of the court to substitute its own relief for the relief which a commissioner ought to have granted. Section 33(4) reads:

"If the award is set aside the dispute shall, at the request of either party, be submitted to a new arbitration tribunal constituted in the manner directed by the court."

Whilst s 145(4) reads:

"If the award is set aside the Labour Court may-

(a) determine the dispute in a manner it considers appropriate; or
(b) make any order it considers appropriate about the procedures to be followed to determine the dispute."

In the premise:

1. The late filing of the third respondent's late application is condoned. No order is made as to costs.

2. The main application is postponed sine die. The applicant is to pay the wasted costs.

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A A LANDMAN
Judge of the Labour Court

Date of hearing:	15 June 2004
Date of judgement:	18 June 2004
For the applicant:	Adv R Nyman instructed by the State Attorney
For the third respondent:	Adv K Constable instructed by Garon Nortje and Associates