



IN THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Not Reportable

Case no: C301/2017

In the matter between:

RICKS CAFÉ AMERICAIN (PTY) LTD

Applicant

and

JACQUES PIENAAR N.O.

First Respondent

CCMA

Second Respondent

TSHINDAYA MOISE KANYEMIBA

Third Respondent

Date heard: 5 May 2020 in Chambers

Delivered: By email on 7 May 2020

JUDGMENT

RABKIN-NAICKER, J

- [1] This is an unopposed application for condonation for the late launching of a review application. The applicant further seeks leave to supplement its founding affidavit. On 13 February 2018, the unopposed review was set down for hearing and postponed sine die in order for the applicant to file this application. The applicant company had only instructed an attorney at that stage.

- [2] The applicant with the assistance of a consultant applied for a case number on the 31 March 2017, within the prescribed six week period, having received the award sought to be reviewed on the 30 March 2017. A copy of same and a case transmission slip is annexed to the founding papers. For some reason, the case number was not received by the Registrar of the Court. It is evident from the papers that the applicant followed up by telephone on the 25 May 2017 having still not received a case number and was told that the original fax had not been received. On that day, the 25 May 2017 the company's consultant wrote another fax 'urgently' requesting the case number.
- [3] It is averred that the applicant's general manager then attended the Court on a number of occasions to seek assistance from the front desk at the Court. No precise dates are given. The founding affidavit was deposed to on June 26 2017 and on the next day the application was launched and duly served on the respondents by registered post. It is emphasized in this application that applicant was contacted by someone purporting to represent the third respondent after serving the founding papers.
- [4] The launching of the application was thus two months late. This is not a short period but cannot be described as an excessive delay. The explanation for the delay is not as detailed as it should be but in the Court's view does not amount to no explanation at all. I take into account the issue of administrative problems at the Court in providing the applicant with a case number.
- [5] I have further considered the prospects of success in the review and find that prima facie, these are reasonable. This is particularly the case given the nature of the misconduct for which the employee was dismissed (an alleged assault by him on a fellow female employee) and the first respondent's characterization of same. The applicant was ordered to pay the employee three months remuneration, being an amount of R15,000.00.
- [6] As the review and condonation application have not been opposed and there is thus no prejudice to the third respondent, I believe it is in the interests of justice that condonation be granted. I make the following order:

Order

1. The application for condonation is granted.
2. The applicant is given leave to supplement his founding papers in the review within 15 days of receipt of this order.



H. Rabkin-Naicker

Judge of the Labour Court

Representation:

Applicant: Van der Spuy & Partners