



**IN THE LABOUR COURT OF SOUTH AFRICA
(HELD AT CAPE TOWN)**

Not Reportable

Case Number: **C315 /2019**

In the matter between:

RAYMOND JEROME SAULS

Applicant

and

**NATIONAL BARGAINING COUNCIL FOR THE
CHEMISTRY INDUSTRY**

First Respondent

COMMISSIONER GAIL MCEWAN, N.O.

Second Respondent

CHEVRON SOUTH AFRICA (PTY) LIMITED

Third Respondent

Date heard: 14 October 2021

Date of Judgment: This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on the Labour Court website and release to SAFLII. The date and time for handing down judgment is deemed to be 10h00 on 4 November 2021

Summary: Review – Failure to timeously process review as required by section 145(5) of the LRA and clauses 11.2.7 and 16.1 of the Practice Manual.

Application struck from the roll.

JUDGMENT

CONRADIE, AJ

Introduction

1. In this matter the Applicant (Mr Sauls) seeks to review an arbitration award handed down by the Second Respondent (the arbitrator) on 20 November 2017 in terms of which she found that his dismissal was both procedurally and substantively fair.
2. The Third Respondent (Chevron) has raised an *in limine* point which has a bearing on my jurisdiction to hear the review. I first set out a brief background to the matter before dealing with the *in limine* point.

Background

3. Mr Sauls commenced employment with Chevron on 15 November 1997 as a DCS Console Operator in its Operations Division.
4. On 26 May 2016 Chevron received an anonymous complaint regarding allegations of sexual harassment within its Operations Department at its refinery in Cape Town.
5. The complaint included the following:

"Sexual advances and inappropriate comments have been passed about me and other females who work in the department. Even after boundaries have been made very clear the harassment has continued."

"Inappropriate and unwelcome sexual comments have been passed amongst all shifts in the department. Physical contact has also gone beyond the appropriate level allowed in the workplace. I personally feel uncomfortable and intimidated to talk to any of the supervisors as it has become a norm in the workplace. I also do not feel very comfortable talking about the issue and it has led to a lot of discomfort at work. This issue does not only involve the females in the department but females in other departments as well. I would not like to report anyone directly or give names of people involved directly or indirectly with the issue but would like to know if some sort of training is in place for everyone to go on before this matter gets out of hand any further. As previously mentioned boundaries have been made very clear to the males but that has not made it any better, in fact it may have just highlighted me as an easier target."

6. Chevron investigated the complaint and as part of the investigation it interviewed Mr Sauls. It also interviewed a process engineer, Ms Jamie Plaatjies (Ms Plaatjies) and a field operator, Ms Mari-Chanel Swart (Ms Swart). As it turned out, Ms Swart was the anonymous complainant.
7. The investigation revealed that both Ms Swart and Ms Plaatjies had been sexually harassed by Mr Sauls. They provided Chevron with written statements detailing the sexual harassment that they were subjected to. They also provided Chevron with WhatsApp communications which were exchanged between them and Mr Sauls.
8. It was clear from the WhatsApp messages provided by Ms Swart that she repeatedly told Mr Sauls that his messages were inappropriate and made her feel uncomfortable. Further, that she was not interested in being in a romantic relationship with him and specifically asked him to leave her alone. Mr Sauls ignored her pleas and persisted with his harassment. Ms Swart even blocked

his mobile number, but this did not deter him as he obtained a new cell phone number and continued harassing her. The harassment included Mr Sauls bombarding Ms Swart with messages about her appearance and taking a picture of her without her knowledge.

9. Following on the investigation, Mr Sauls was called to a disciplinary hearing to answer to the following charges:

“A Sexual harassment in that during the period June 2015 to May 2016 you made persistent offensive and unwelcome sexual advances towards two of your female colleagues by sending them short text messages.”

B. Sexual harassment and/or stalking in that on or about March 2016:

i) you took or obtained a picture of one of the female colleagues in question without her knowledge and consent and you forwarded it back to her with unwanted sexual comments and advances;

(ii) you obtained both of the female colleagues' private mobile phone numbers for work related purposes but misuse (sic) them to stalk and harass them. After one of the colleagues in questions (sic) blocked your number, you proceeded to get a new number in order to send her unwanted sexual messages.”

10. Mr Sauls was found guilty of the charges and summarily dismissed. After an unsuccessful appeal, he referred a dismissal dispute to the bargaining council.
11. As stated above, the arbitrator found that the dismissal of Mr Sauls was procedurally and substantively fair.
12. Unhappy with the arbitrator's award, Mr Sauls approached this court to review the award.

The *in limine* point

13. Chevron argues that the review application has lapsed due to non-compliance by Mr Sauls with clauses 11.2.7 and 16.1 of the Practice Manual and section 145(5) of the LRA.
14. Clause 11.2.7 reads as follows:

“A review application is by its nature an urgent application. An applicant in a review application is therefore required to ensure that all the necessary papers in the application are filed within twelve (12) months of the date of the launch of the application (excluding Heads of Arguments) and the registrar is informed in writing that the application is ready for allocation for hearing. Where this time limit is not complied with, the application will be archived and be regarded as lapsed unless good cause is shown why the application should not to be archived or be removed from the archive.”

15. Clause 16 reads as follows:

“16.1 In spite of any other provision in this manual, the Registrar will archive a file in the following circumstances:

- in the case of an application in terms of Rule 7 or Rule 7A, when a period of six months has elapsed without any steps taken by the applicant from the date of filing the application, or the date of the last process filed.*

16.2 A party to a dispute in which the file has been archived may submit an application, on affidavit, for the retrieval of the file, on notice to all other parties to the dispute. The provisions of Rule 7 will apply to an application brought in terms of this provision.

16.3 *Where a file has been placed in archives, it shall have the same consequences as to further conduct by any respondent party as to the matter having been dismissed."*

16. Section 145(5) of the LRA reads as follows:

"Subject to the rules of the Labour Court, a party who brings an application under subsection (1) must apply for a date for the matter to be heard within six months of delivery of the application, and the Labour Court may, on good cause shown, condone a late application for a date for the matter to be heard."

Evaluation

17. For me the starting point is the LRA.

18. Section 145(5) was introduced as part of the 2014 amendments to the LRA to speed up the finalisation of review applications brought to this Court.¹

19. If a date is not applied for within 6 months, then the applicant would have to apply for condonation. This was intended to put pressure on an applicant to timeously comply with the requirements for launching a review application failing which the Applicant would have to explain to a court why this was not possible and ask for condonation. In ***Van Tonder v Compass Group (Pty) Ltd and Others***², the Labour Appeal Court held that:

"In terms of section 145(5) of the LRA, Metrobus was obliged to apply for a date for the review to be heard within six months of the lodging of the review, subject to the rules of the Labour Court. The unduly long delay undermined the LRA's objective of a speedy resolution of disputes and severely prejudiced the appellant."

20. Mr Sauls has failed to comply with section 145(5).

¹ Memorandum of Objects: Labour Relations Amendment Bill, 2012 at pages 13 and 14.

² [2017] 10 BLLR 1024 (LAC).

21. Clause 11.2.7 provides that within 12 months of launching a review application the applicant must file all the necessary papers (excluding Heads of Argument) and inform the registrar in writing that the application is ready for allocation for hearing. In the case of ***Raio v Transnet Port Terminals and Others***³ Van Niekerk J held that:

"The practice manual contains a series of directives, which the Judge President is entitled to issue. In essence, the manual sets out what is expected of practitioners so as to meet the imperatives of respect for the court as an institution, and an expeditious resolution of labour disputes (see paragraph 1.3). While the manual acknowledges the need for flexibility in its application (see paragraph 1.2) its provisions are not cast in the form of a guideline, to be adhered to or ignored by parties at their convenience."

22. In *Macsteel Trading Wadeville v Van der Merwe NO and others*³, the Labour Appeal Court held that:

"The underlying objective of the Practice Manual is the promotion of the statutory imperative of expeditious dispute resolution. It enforces and gives effect to the Rules of the Labour Court and the provisions of the LRA. It is binding on the parties and the Labour Court. The Labour Court does, however, have a residual discretion to apply and interpret the provisions of the Practice Manual, depending on the facts and circumstances of a particular case before the court".

23. In *Samuels v Old Mutual Bank*⁴ the Labour Appeal Court held that:

³ [2019] 40 ILJ 798 (LAC) at para 22.

⁴ 7 BLLR 681 (LAC).

“[14] The consolidated practice manual which came into operation on 2 April 2013 constitutes a series of directives issued by the Judge President over a period of time. Its purpose is, inter alia, to provide access to justice by all those whom the Labour Court serves; promote uniformity and/or consistency in practice and procedure and set guidelines on standards of conduct expected of those who practise and litigate in the Labour Court. Its objective is to improve the quality of the court's service to the public, and promote the statutory imperative of expeditious dispute resolution.

[15] The practice manual is not intended to change or amend the existing Rules of the Labour Court but to enforce and give effect to the Rules, the Labour Relations Act as well as various decisions of the courts on the matters addressed in the practice manual and the Rules. Its provisions therefore, are binding. The Labour Court's discretion in interpreting and applying the provisions of the practice manual remains intact, depending on the facts and circumstances of a particular matter before the court.”

24. The Practice Manual is therefore binding and applies to Mr Sauls' review application.
25. Mr Sauls launched his review application on 7 June 2019 and was therefore required to file all the necessary papers (excluding Heads of Argument) and inform the registrar in writing that the application was ready for allocation for hearing by 7 June 2020.
26. He failed to inform the Registrar, in writing, that the review application was

ready for the allocation of a set down date by 7 June 2020. His review application has accordingly lapsed.

27. Clause 16.1 imposes another requirement on applicants in review applications. It provides that the Registrar will archive a review application when a period of 6 months has lapsed, without any steps being taken by the applicant, from either the date of filing the review application, or the date of the last process filed.
28. The last process that was filed in respect of the review application was the Third Respondent's replying affidavit on 17 October 2019. Thereafter, Mr Sauls took no further steps for approximately two years.
29. Mr Sauls' review application has therefore also been archived in terms of clause 16.1 of the Practice Manual.
30. Irrespective of whether one has regard to clause 11.2.7 or clause 16.1 of the Practice Manual or section 145(5) of the LRA, the end result is the same. In the absence of an application for condonation or for reinstatement of the review, as the case may be, this Court lacks jurisdiction to deal with the review application. As mentioned by the LAC in *Macsteel* this Court is obliged to strike the matter from the roll on the grounds of lack of jurisdiction.
31. In the circumstances I make the following order.

Order

1. The application is struck from the roll.
2. There is no order as to costs.

BN. Conradie

Acting Judge of the Labour Court of South African

Appearances:

For the Applicant:

In person

For the Third Respondent:

Ms Taryn York of Cliffe Dekker Hofmeyer Inc.

LABOURT COURT