

**REPUBLIC OF SOUTH AFRICA
IN THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN**

JUDGMENT

Not Reportable
C336/2020

In the matter between:

MANELISI BIYANA

Applicant

and

**PUBLIC HEALTH & SOCIAL DEVELOPMENT
SECTORAL BARGAINING COUNCIL**

First Respondent

M. MBULI N.O.

Second Respondent

**DEPARTMENT OF HEALTH
(WESTERN CAPE)**

Third Respondent

Heard: 2 March 2022

Delivered 31 May 2022 by email; deemed received at 10.00hr on the 1 June 2022

JUDGMENT

RABKIN-NAICKER J

[1] This is an opposed application to review a Condonation Ruling under Case Number: PSHS112-20/21 dated 28 August 2020.

[2] The second respondent (the Commissioner) refused an unopposed application for condonation by the applicant.

[3] The dispute giving rise to the application involved an alleged unfair labour practice relating to benefits in that he was refused pay progression. The applicant applied, unopposed, for condonation for the late referral of his dispute to the bargaining council. The Commissioner noted in his Award that:

“This is a matter that involves an alleged unfair labour practice related to benefits. The applicant alleges he was denied pay progression for the period 2017/2018 and 2018/2019 on allegations of poor performance. The applicant failed to refer the matter to the council within 90 days. The dispute was referred for conciliation 10 months late.”

[4] The referral to the conciliation, dated 19 May 2020, notes that the dispute arose in August 2018. The Ruling records that the reasons given by the applicant for the late referral were that he had been suspended for two months “and he had hope that the matter can be resolve internally. He also did not want to sound disrespectful to his employer and he is also not familiar with the grievance process. The delay was also caused by the lockdown”.

[5] In his analysis of the submissions by the applicant, the Commissioner notes that the referral is in fact some 18 months late in respect of the date when the dispute first arose, the 13 August 2018. He finds that the applicant failed to submit any acceptable reasons for his excessive delay and on that basis, with reference to case law, he states that there is no need to consider the prospects of success.

[6] Attached to his referral to conciliation is a memo written by the applicant of the facts of the dispute with his employer. From this it is evident that his suspension was in August and September 2019, some 8 months before his referral of the dispute. His grievance and related correspondence in respect of the alleged unfair labour practice took place in 2019 prior to the suspension.

[7] In his pro-forma application to review the ruling, the applicant has simply set out the history of the dispute once again. He does not take issue with the Ruling on any grounds in law in general, or in respect of a review in particular. He appeared in Court without representation and I gave him leave to file written argument. However, these simply referred to various documents reflecting the course of the dispute.

[8] The applicant has simply not made out a case for the review of the dispute in fact or in law in his founding papers before Court. The application must fail on this ground alone. In addition, I note that the third respondent has comprehensively answered the applicant's founding papers despite their shortcomings, setting out the relevant dates and facts pertaining to the dispute and also seeks condonation for the late filing thereof¹. No replying affidavit was filed. The answering papers confirm the significant dates of the course of the dispute.

[9] In sum, the Commissioner was correct in fact and in law to refuse the condonation application on the grounds that the referral was excessively late and no reasonable explanation was provided for the period of delay². The review application stands to be dismissed. There is no basis in law or equity to order costs in this matter. I make the following order:

Order

The review application is dismissed.

H. Rabkin-Naicker
Judge of the Labour Court of South Africa

Appearances

Applicant: In person

Third Respondent: ML Davis instructed by State Attorney

¹ This was not necessary given no objection to the late filing was made.

² Colett v Commission for Conciliation, Mediation & Arbitration & others (2014) 35 ILJ 1948 (LAC) at paragraph 38.