

RULING

(APPLICATION FOR CONDONATION)

Panellist/s: E. Tlhotlhemaje
Case No.: PSCB607-10/11
Date of Ruling: 28 NOVEMBER 2011

In the ARBITRATION between:

G.P.J GIBSON
(Union/Employee)

And

THE SOUTH AFRICAN POLICE SERVICES
(Employer)

The Application:

[1] The Employee had referred a dispute in terms of s24 (2) of the LRA pertaining to the interpretation and/or application of Resolution 7 of 2000. The dispute was referred to the Council on 28 February 2011. A certificate of non-resolution of the dispute was issued on 12 May 2011.

[2] The Applicant did not refer the dispute for arbitration until on or about 04 October 2011. In his affidavit in support of the application for condonation, the Employee averred that the referral for arbitration was about 59 days out of time.

[3] In regard to the explanation for the late referral, the Employee had further averred that at the conciliation meeting, the Employer after an exchange of a bundle of documents had agreed to reconsider the facts of his case and application for long term incapacity. This was not done despite the Employee's several enquiries with the Employer. The employee attributed the delay to the fact that since the date of conciliation, attempts had been made to find an amicable solution and it is only when it became apparent to the Employee that a favourable reconsideration of his matter was not forthcoming that he referred the dispute for arbitration.

[4] In regards to prospects of success, the Employee averred that he had met all the requirements in applying for long term incapacity, which the Employer had however declined without justification.

[5] In regards to prejudice to the parties, he contended that he would be severely prejudiced as it was the Employer that had neglected to attend to his matter after an undertaking at the conciliation meeting.

Analysis of the submissions:

[6] In considering applications for condonation, the issue to be determined is whether an applicant has shown good cause having taken into account the following factors;

- The degree of lateness.
- The explanation for the delay.
- Prospects of success.
- Prejudice to the parties.
- Any other factor relevant to the application.

[7] A delay of 59 days in referring the dispute appears to be excessive. Be that as it may, a reasonable and acceptable explanation would be required in this regard. The Employee's explanation was that following upon the conciliation of the dispute, an undertaking was made by the Employer to reconsider his application for long term incapacity. Documents and correspondence between his legal representative and the Employer were attached to the affidavit in support of his contentions. To the extent that the application is unopposed, and in view of the supporting documents, I am of the view that the Employee has proffered a reasonable and acceptable explanation for the delay in referring the dispute for arbitration. There appears to be no reason why the Employee had not believed that his case would be revisited by the Employer internally.

[8] In regards to prospects of success, it would be difficult to make a *prima facie* finding given the nature of the dispute referred. In the circumstances, it is my view that both parties should be afforded an opportunity to fully ventilate the facts of their respective cases. To the extent that the Employee has furnished a reasonable

and acceptable explanation for the delay, and further it being prudent that the parties be granted an avenue to fully deal with the merits of the case, I am satisfied that the Employee has shown good cause as to why his application should succeed. In the absence of an opposition to the application, it is not known what prejudice the Employer would suffer if the application is granted. To this end, the following ruling is made;

Ruling:

- i. The application for condonation is granted.
- ii. This matter should be set-down for arbitration.

Dated and signed at Johannesburg on this the 28th day of November 2011

A handwritten signature in black ink, appearing to read 'E. Tlhotlhalemaje', with a stylized, cursive script.

E. Tlhotlhalemaje

Panellist: