



Case Number PSCB 307-09/10

In the matter between:

PSA obo Mtsatse & 9 others

Applicant

and

Department of Justice

Respondent

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## CONDONATION RULING

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### **DETAILS OF PARTIES AND REPRESENTATION**

This is a determination in respect of an application for condonation made by the applicant in this matter, Public Servants Association of South Africa (“the PSA”) on behalf of K Mtsatse and 9 others. The employer is Department of Justice and Constitutional Development (“the department”). The department did not oppose the condonation application.

### **THE LAW IN RESPECT OF CONDONATION APPLICATIONS**

Section 136(1)(b) of the Labour Relations Act 1995, as amended, (“the LRA”) provides that a request for arbitration must be made within 90 days after the date on which the certificate was issued. The council may condone the filing of a dismissal dispute outside the 90-day period on “good cause” shown.

There are several criteria that must be dealt with in an application for condonation. These are the degree of lateness, the reasons for the lateness, the referring party's prospects of succeeding with the referral and obtaining the relief sought against the other party and the balance of convenience.

I turn now to deal with the above criteria.

### **BACKGROUND AND DEGREE OF LATENESS**

The conciliation in this matter took place on 28 March 2010. The certificate was issued on the same day. The union's referral states that it was issued on 30 March 2010 but this is not correct. The arbitration referral (and completed condonation application) was received by the PSCBC on 19 August 2010. The dates for calculating the time period is from 28 March to 19 August 2010. The application for arbitration is accordingly approximately 54 days late.

### **SUBMISSIONS OF THE PARTIES- REASONS FOR THE DELAY AND MERITS**

The reasons for delay are set out as "PSA notified the state as employer of our intention to embark on industrial action. It required all officials within the PSA to assist with logistical arrangements for protest marches and to mobilize members".

Regarding the merits the PSA set out that Mtsatse and others registered a formal grievance on 22 October 2008. They did not receive an outcome to their grievance. The PSA alleges that the department is in breach of collective agreement 14 of 2002.

### **PREJUDICE**

The PSA argued that Mtsatse and others are entitled to be informed of the outcome of their grievance. They remain dissatisfied. The department is bound by the collective agreement.

### **ANALYSIS OF REASONS FOR THE DELAY AND PROSPECTS OF SUCCESS**

A late referral prejudices the other party. This is particularly so given the rationale behind the time limits prescribed by the LRA. Delays in referring disputes can result in expense and in uncertainty regarding outcomes. Here the referral is substantially late. Yet it appears that the union first lodged the arbitration referral on about 5 July 2010 (this would make the referral only slightly late). It was then advised by the PSCBC to apply for condonation. The department knew about the referral to arbitration from 5 July 2010. Compelling reasons are required to justify a late condonation application. I accept that a public sector strike is compelling and out of the ordinary, justifying the non compliance with time limits. In the absence of a reply from the department I believe too that the union has made out a prima facie case for unfairness. Mtsatse and others are entitled to know the outcome of their grievance.

In the circumstances, the reasons for the delay constitute "good cause".

### **PREJUDICE TO THE PARTIES**

The matter has been in the pipeline for some time. The delay has not overly prejudiced the department in that it has known about the dispute for some time. I believe that the applicant will suffer greater prejudice than the department if the matter is not heard.

### **ANY OTHER RELEVANT FACTORS / PUBLIC INTEREST / THE BALANCE OF CONVENIENCE**

Given the reasons for the delay and other factors, I am satisfied that the balance of convenience favours the applicant and that there are good reasons to grant condonation.

**CONDONATION RULING**

Condonation is granted.

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**Commissioner U Bulbring**  
**15 October 2010**