

IN THE LABOUR COURT OF SOUTH AFRICA

(HELD AT JOHANNESBURG)

CASE NO: JR 2473/06

In the matter between:

M E F COLLINS

Applicant

and

SOUTH AFRICAN LOCAL GOVERNMENT

BARGAINING COUNCIL

1st Respondent

COMMISSIONER T J SEKHABISA

2nd Respondent

EMFULENI LOCAL MUNICIPALITY

3rd Respondent

JUDGMENT

LAGRANGE,AJ

Background

1. This is an unopposed review application in which the applicant, an employee of the third respondent seeks to set aside a condonation ruling of second respondent dated 7 June 2006, in respect of her late referral of an unfair labour practice dispute relating to her acting in a dual capacity both as an Administrative Officer (post level 6) in the Housing Section of the third respondent and performing duties at a higher level in the Properties Section of the third respondent.
2. This review application was only filed on 11 October 2006, which further necessitated this court condoning the late filing of this application too.

The Second Respondent's Condonation Ruling

3. The main findings of the second respondent in considering the condonation application are set out below.
4. The applicant was aware of the discrepancy between the work she had been employed to do and the work she was actually performing by early December 2002.
5. The dispute was only referred to the bargaining council in May 2006 even though the condonation application was served on the third respondent on 25 November 2005.
6. It appears that the applicant had previously referred the dispute to the CCMA in error though the date of this referral was not set out in the material before the second respondent. The applicant explains that she referred the matter to the CCMA on the advice of the Deputy Municipal Manager of the third respondent.
7. A grievance hearing concerning the dispute was held in October 2004. The second respondent observed that “(t)he applicant could not give an adequate explanation why it took her more than a year to refer the matter to the CCMA let alone this bargaining council.” It appears that the applicant made use of a union and attorneys in pursuing her grievance and referring her claim.
8. The second respondent concluded that the explanation given by the applicant was not reasonable or acceptable and that nothing had prevented her from referring the dispute while negotiating with the third respondent.
9. The merits of the applicant’s claim were set out in the most summary fashion in her condonation application and state that she is productive and doing more responsible work than the work she is appointed for. The second respondent noted these claims without comment in narrating her prospects of success.
10. The second respondent concluded that the applicant had failed to show good cause why her referral was so late.

Grounds of Review

11. The applicant seeks to review the condonation ruling on the basis that the second respondent did not apply his mind to all the facts before him. Nowhere in her founding affidavit in the review application does the applicant indicate that anything more was before the second respondent than what was set out in her written condonation application. There is nothing on the record before this court to suggest that the second respondent had other facts to consider apart from those which are set out in the applicant's condonation affidavit.

12. The applicant takes the second respondent to task over his finding that the dispute arose on 3 December 2002. In her founding affidavit in the review application the applicant states that this was the date she started working. She further elaborates that when she became aware that the third respondent was acting unreasonably she followed the internal grievance procedures as a result of which various meetings were held and promises were made by the third respondent which weren't kept. However there is no indication even this brief account outline was placed before the second respondent and even in her founding affidavit these claims are stated in the barest outline without mentioning any dates or specifics. Not only was this omitted in her condonation application, but her founding affidavit specifically identifies the date when she became aware of the act or omission constituting the unfair labour practice as 3 December 2002 and further states that the employer failed to correct the practice from December 2002 to date. The arbitrator can hardly be faulted for making the findings he did on the material before him.

13. In the applicant's supplementary affidavit in these review proceedings the applicant sets out more details of other developments regarding her grievance which took place in May 2006 and which demonstrate some prospects that her grievance was still being attended to and was still a live issue at that time. However, there is no evidence that any of this was placed before the second respondent when considered her condonation application. In reviewing the second respondent's ruling I can only have regard to the record that was before him.

14. On what was before the second respondent I cannot say he did not apply his mind. In truth there was very little material favouring the grant of condonation which he could have applied his mind to. Taking his ruling on review does not provide an opportunity to expand on the original grounds that were laid before him to compensate for the complete inadequacy of the founding affidavit in the original condonation application.
15. It must also be said that the substantive claim as set out in the affidavit in support of the condonation application only set out in the broadest outline a claim for higher remuneration. On what was stated there it cannot be said that it was sufficient to outweigh the wholly inadequate explanation tendered for the late referral and the second respondent cannot be faulted in my view for not finding that the prospects of success were sufficient to outweigh the other factors he had to consider.
16. I note in passing that it is only in the applicant's supplementary affidavit filed in this review that the applicant provides some tangible evidence of the basis on which she might claim higher remuneration. As mentioned when this matter was argued before me, the applicant might well still have a contractual entitlement to higher remuneration based on a resolution of the of 2 February 2006 that she refers to in her supplementary affidavit. Such a claim, if indeed valid, might well be pursued irrespective of the fate of her unfair labour practice claim.
17. I am mindful that the application for condonation was unopposed, but that may just as well have been due to a belief on the part of the third respondent that it was without merit, and I cannot assume from that fact that the third respondent was indifferent to the outcome. Even if it was an indication that the third respondent did not indicate it would be prejudiced by the grant of condonation, the absence of other good reasons for granting condonation cannot rescue what was an extremely weak application.
18. In the circumstances, I have no alternative but to dismiss the review application.

Order

19. Accordingly, the following order is made:

19.1. The application to review and set aside the second respondent's condonation ruling dated 7 June 2006 is dismissed

19.2. No order is made as to costs.



ROBERT LAGRANGE
ACTING JUDGE OF THE LABOUR COURT

Date of hearing : 23 February 2010

Date of judgment: 23 March 2010

Appearances:

For the applicant: Ms K McLean instructed by Willem Pretorius