

SOUTH AFRICA / JUDGMENT

General Industries Workers Union (GIWUSA) and Others Moulding Profiles (Pty) Ltd (JR2482/07) [2010] ZALCJHB 62 (20 August 2010) [2010] ZALCJHB 62

COURT

Labour Court Johannesburg

BEFORE

Lagrange

CASE / FILE NUMBER

JR 2482/07

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IN

THE LABOUR COURT OF SOUTH AFRICA

(HELD

AT JOHANNESBURG)

CASE NO: JR 2482/07

In the matter between:

GENERAL INDUSTRIES
WORKERS
UNION
(GIWUSA)
1st
Applicant
BULELANI
MASANGWUANA
2nd Applicant
and
MOULDING
PROFILES (PTY) LTD
Respondent

JUDGMENT

LAGRANGE, J

1. This is an application to dismiss a review application.
2. The second applicant was dismissed on 27 February 2007. On 3 August 2007, he was reinstated with retrospective effect to the date of his dismissal and was further awarded back pay for a period of six months. The respondent launched an application to review and set aside the award on 15 October 2007, over 10 weeks later. No application for condonation application has been filed in respect of the four week delay in filing the review application. The review applications cites several grounds of review essentially attacking

the reasonableness of the award, but for the most part lacking in any specific detail about which aspect of the award demonstrates the flaws complained of.

3. On 25 January 2010, the applicants launched an application seeking the dismissal of the review application and an order making the award an order of court. The reasons for this application are that:
4. The rule 7A(2) and (3) notices were served on the parties towards the end of 2007, but two years later the record of the arbitration

proceedings had not been filed.

5. The applicant sent letters to the respondent on 26 November 2007 and 28 May 2008. The first reminded the applicant of its responsibilities

in prosecuting the review and asked to be advised of progress in regard to filing the record. The second letter warning the respondent that unless it advised the applicant of the progress in the matter, the applicants would institute an application to dismiss the review. Telefacsimile transmission slips indicate the correspondence was sent to the respondent.

6. In reply the respondent simply denies ever receiving the notices in relation to Rule 7A(2) and (3). If further denies receiving the correspondence from the applicants' attorneys. It provides no explanation why it never received the documents.
7. More importantly, the respondent provides no explanation whatsoever as to what it did over a period of three years to pursue the review application. It is incomprehensible, if it had any serious intention to pursue the matter that it would not have made appropriate enquiries at the CCMA or the Labour Court when it did not receive the Rule 7A(2) and (3) notices within a reasonable time after it filed its founding affidavit in January 2010. The only reasonable conclusion to draw on the available evidence is that, having filed the review application, the respondent sat on its hands and did nothing to advance the matter further. The most reasonable inference to draw in the circumstances was that the respondent filed the application as a dilatory tactic without a serious intention of bringing it to finality, which

amounts to an abuse of the review mechanism.

8. The respondent also failed to attend the hearing of this application.
9. Accordingly there is no reason to allow the respondent to proceed with the review application.

Order

10. In the circumstances, the following order is made:

10.1. The respondent's application to review and set aside the second respondent's review award dated 3 August 2007 issued under CCMA case number GAJB 9714-07 is dismissed.

10.2. The said award is made an order of court.

10.3. The respondent is to pay the applicant's costs on an attorney and own client scale.

ROBERT LAGRANGE

JUDGE OF THE LABOUR COURT

Date of hearing: 20 August 2010

Date of judgment: 20 August 2010

Appearances:

For the Applicant : D Cartwright

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