

SOUTH AFRICA / JUDGMENT

Gordon v Pindulo VDM (Pty) Ltd (JS 1050/19) [2021] ZALCJHB 229 (4 August 2021) [2021] ZALCJHB 229

COURT

Labour Court Johannesburg

BEFORE

G N Moshwana

CASE / FILE NUMBER

JS 1050/19

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THE

LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not

Reportable

Case

no: JS

1050/19

In

the matter between:

GRAIG

GORDON Applicant

and

PINDULO

VDM (PTY)

LTD Respondent

Heard: 30

July 2021 (On papers)

Delivered: 4

August 2021 (This judgment was handed down electronically by emailing a copy to the parties. The 4th

August 2021 is deemed to be the date of delivery of this judgment).

Summary: Due

to Covid19 lockdown, this application was determined on the papers and the parties agreed to this arrangement. Condonation application

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late delivery of a statement of case – proper case made for condonation. The applicant has reasonable prospects of success. The

delay is insignificantly minimal. The interests of justice commands the granting of the application. Held: (1) The application for condonation is granted. (2) There is no order as to costs.

JUDGMENT

MOSHOANA, J

Introduction

[1] Before me is an application seeking to have the late filing of the statement of case condoned in terms of section 191 (11) (b) of the LRA. In terms thereof the Labour Court may condone non-observance of the prescribed 90 days' timeframe provided good cause is shown. The application is opposed by the employer.

Background

facts

[2] Mr Graig Gordon (Gordon) was employed as a Fleet Controller by Pindulo VDM (Pty) Ltd (Pindulo) effective 1 September 2018. On 16 May 2019, following a meeting, Gordon received a termination letter due to Pindulo's alleged operational requirements. Thereafter, as contended by Gordon, he was threatened with legal action and coerced to sign an agreement agreeing to the dismissal for operational

requirements. Gordon further contends that the real reason for his dismissal is not the operational requirements but an incident

unrelated to operational requirements.

[3] On 4 July 2019, Gordon referred a dispute to the CCMA complaining about the consultation process and the coercion to sign the retrenchment

agreement. Ultimately on 5 September 2019, Gordon referred a dispute to the bargaining council alleging unfair dismissal. Conciliation

failed to resolve the dispute. Owing to the lack of financial resources and lack of knowledge of the timeframe and computation

thereof, Gordon referred the dispute 15 days outside the prescribed timeframe. As a result the present application was launched on 17 March 2020. The application is now opposed by Pindulo.

Evaluation

- [4] Properly considered the opposition of Pindulo is not around the period of the delay but on the fact that there is no dismissal since the parties reached mutual termination agreement. Effectively, the contention is that the Labour Court lacks jurisdiction over the matter since there is no dismissal. The delay is insignificantly slight and is excusable and there is no demonstrable prejudice on the part of Pindulo. Pindulo has already responded to the claim. This Court is satisfied with the explanation proffered by Gordon.
- [5] The question whether the termination was mutual or not is source of factual dispute between the parties. Gordon alleges coercion. Whether a person was coerced into an agreement is a question of fact. If Gordon successfully proves at the trial that he was coerced then the alleged mutual termination agreement shall be unenforceable in law. Additionally, Pindulo may, if so advised, raise a point of jurisdiction. It has already filed a statement of response and had raised a point of law in relation to service.
- [6] Ultimately, the granting of condonation or refusal thereof is guided by the interest of justice. The interest of justice in this matter demands that the question whether Gordon freely terminated his employment should be determined by the application of law as demanded by section 34 of the Constitution of the Republic of South Africa. This Court takes a view that Gordon possesses excellent prospects of success in this matter. Accordingly condonation must be granted.
- [7] In the result the following order is made:

Order

1. The application for condonation is granted.
2. There is no order as to costs.

G. N. Moshoana

Judge of the Labour Court of South Africa

Appearances:

No appearances.

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