

SOUTH AFRICA / JUDGMENT

Mvundlela v South African Road Passanger Bargaining Council (SARPBC) and Others (JR1693/13) [2018] ZALCJHB 85 (6 February 2018) [2018] ZALCJHB 85

COURT

Labour Court Johannesburg

BEFORE

Lallie

CASE / FILE NUMBER

JR1693/13

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IN

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

CASE NO: JR 1693/13

In

the matter between

SEDUPI

JACK

MVUNDLELA Applicant

and

SOUTH

AFRICAN ROAD PASSANGER

BARGAINING

COUNCIL (SARPBC)

First

Respondent

M

D ALLI N.O

Second

Respondent

PUTCO

LIMITED

Third

Respondent

Heard:

16 March 2017

Delivered:	6 February 2018
Summary:	The applicant's conduct of refusing condonation of the late filing of a rescission application based on the applicant's failure to give reasonable explanation for excessive delay is not unreasonable.

JUDGMENT

Lallie, J

- [1] This is an application to review and set aside a rescission ruling of the second respondent who will be referred to as the arbitrator in this judgment. It is opposed by the third respondent.
- [2] The applicant was employed by the third respondent as a bus driver. He was subjected to a disciplinary enquiry and dismissed after being involved in a collision while driving one of the third respondent's buses. He referred an unfair dismissal dispute to the first respondent. An arbitrator, Mr J Tsabadi, acting under the auspices of the first respondent dismissed the applicant's matter owing to the failure of the applicant and his trade union official to attend arbitration on 24 November 2011 after it had been adjourned on 17 October 2011. The applicant filed an application for the rescission of the dismissal ruling. The first respondent required the applicant to file an application for condonation of the late filing of his rescission application. He complied. The condonation and rescission applications were decided by the arbitrator on the papers. He dismissed both applications. In this application, the applicant seeks an order reviewing and setting aside the rescission ruling.
- [3] The applicant's grounds for review are that the arbitrator committed misconduct in relation to his duties as a commissioner. He committed an error of law and a gross irregularity in the conduct of the arbitration and exceeded his powers. He disregarded relevant evidence and issued an unreasonable award. The third respondent's grounds for opposing the application are that the applicant failed to establish facts and legal grounds to have the rescission ruling reviewed and set aside.
- [4] Two applications served before the arbitrator, namely, the application for condonation of the late filing of the rescission

application as well as the rescission application. He considered the condonation application first. He took into account that the first respondent received the rescission application on 28 March 2013 and informed the applicant to file the condonation application on 16 April 2013. Both applications were before the first respondent on 12 June 2013. The arbitrator considered that the ruling dismissing the applicant's matter was issued on 29 November 2011 and sent by registered mail to the address given by the applicant in the referral form. He noted that the applicant had 14 days to file his rescission application. He, however, submitted that he became aware of the award in February 2013 but failed to give reasons for the delay in following up on his matter and to

explain how and why he made enquiries after more than 15 months of the issuing of the dismissal award. The arbitrator found that the condonation application was more than 20 months late and that the applicant had not provided reasons for deciding to follow up on his matter after 15 months. He concluded that without good reason for the delay, the applicant's prospects of success became immaterial. He refused condonation and dismissed the application for rescission.

[5] The applicant's main arguments were that the arbitrator erred in finding that the dismissal ruling was forwarded to him by registered mail as his finding was not supported by evidence. He submitted that the bargaining council's efforts to send him the dismissal ruling by fax were unsuccessful. He insisted that he complied with Rule 34 (1) of the bargaining council's rules in that he filed his application for rescission within the 14 day prescribed period. He therefore argued that the arbitrator's

conduct constituted misconduct which rendered his ruling reviewable. The third respondent submitted that the applicant elected to exclude from his papers, a copy of the fax transmission report from the bargaining council's record reflecting that the dismissal ruling was successfully faxed on 9 March 2012, to the fax number provided in his request for arbitration. It further submitted that on 24 November 2011, the bargaining council informed Tiso of the dismissal of the applicant's matter and he responded by requesting a copy of the ruling. The applicant did not deny the allegations in his replying affidavit. He sought to rely on the arbitrator's conduct of deciding his rescission application on technicalities and not on the merits.

[6] The third respondent proved that the applicant's main grounds for review were untrue in that the bargaining council communicated

the dismissal of the applicant's matter through the fax number of the applicant's choice and to his union representative on 9 March 2012 and 24 November 2011 respectively. The applicant filed his application for the rescission of a dismissal ruling issued on 29 November 2011 only on 28 March 2013. The arbitrator's error that the dismissal ruling was communicated to the applicant by registered mail instead of through fax did not have an impact on the reasonableness of his ruling. It does not affect the basis of his decision that the dismissal ruling was communicated to the applicant through the means of his choice. Only errors which lead arbitrators reach unreasonable decisions constitute valid grounds for review. The applicant's attempts to conceal the truth were unsuccessful. The arbitrator did not violate the bargaining council's rules in finding that the rescission application was filed very late. The arbitrator's decision cannot be faulted because the dismissal

ruling

was forwarded to a fax number and representative of the applicant's choice. His decision refusing to condone excessive lateness in the absence of reasonable explanation cannot be faulted. It is consistent with the following dictum in *Grootboom v National Prosecuting Authority and Another*[1]:

[23] It is now trite that condonation cannot be had for the mere asking. A party seeking condonation must make out a case entitling it to the court's indulgence. It must show sufficient cause. This requires a party to give a full explanation for the non-compliance

with the rules or court's directions. Of great significance, the explanation must be reasonable enough to excuse the default.'

The arbitrator's error did not vitiate the award. The applicant failed to establish valid grounds for review. His application cannot succeed.

[8] In the premises, the following order is made:

1. The application for review is dismissed.

Z Lallie

Judge of the Labour Court of South Africa

Appearances

For the Applicant: Mr Mthimunya of Masombuka & Mthimunya Attorneys

For the Third Respondent: Mr Carr of Bowman Gilfillan Inc.

[1]

[2014] 1 BLLR 1 (CC) at para 23.

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