

SOUTH AFRICA / JUDGMENT

Ncube v CCMA (JR761/02) [2002]

ZALCJHB 18 (20 November 2002)

[2002] ZALCJHB 18

COURT

Labour Court Johannesburg

BEFORE

Landman

CASE / FILE NUMBER

JR761/02

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[COMMENT1] Sneller Verbatim/MLS

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: JR 761/02

DATE: 2002-11-20

In the matter between

T NCUBE Applicant

and

CCMA Respondent

J U D G M E N T

LANDMAN J: This is an application which Mr Ncube has brought to review and set aside a condonation ruling which was handed by a commissioner of the CCMA on 28 December 2001.

It appears that Mr Ncube was dismissed by his employer, Mr Samson. He has filled in his application form indicating that he does not know the reason why he was dismissed.

He has also set out in his application form for condonation the fact that he presented himself timeously at the CCMA offices but that its computer was down and he was asked to come back. He went back within a week and filed his referral of his dispute against his employer.

The CCMA decided that his referral was late and a commissioner was appointed to consider the matter. The commissioner made the following determination and she did so although Mr Samson, the employer, had not made any representations.

She says:

"I have considered the applicants's submissions and I have decided to refuse condonation in this matter for the following reasons:

1. The degree of delay in this matter is a substantial one.
2. The explanation that the applicant had advanced is not acceptable, an explanation for the delay of some 30 days while accepted that the CCMA computers may have been off line when she (sic) returned her forms on 25 September 2001, however, she could have handed her forms in. Moreover, she has stated that she filled in the CCMA forms on 25 September but she has not accounted this as to why it took her until 25 September 2001 before she approached the CCMA.

The applicant did not provide any details about the circumstances of her dismissal. The statement no hearing held is vague. This submission has weakened the applicant's chances of showing good cause as to why the dispute should be condoned considerably.

I have also consider the issue of prejudice and I accept that if condonation were refused the applicant may be prejudiced. However, in this case these does not outweigh the substantial delay and the poor explanation for the delay.

In this matter the applicant has not shown good cause as to why the dispute should be condoned. Condonation is refused."

In my opinion the condonation ruling is reviewable. Firstly, as it is accepted that the CCMA contributed to the late referral of the dispute insofar as its computers were down and it did not accept the documents at that stage.

What the precise circumstances are is not known but whatever they were, they were within the knowledge of the CCMA and they should have been placed before the commissioner in some detail.

In addition it is the applicant's case that he does not know why he was dismissed. The Act provides that if an employee has been dismissed and does not know the reason for the dismissal, the employee may refer a dispute about this dismissal to the CCMA. Once this is accepted then it must follow that an employee whose condonation for condonation is out of time, and says that he or she does not know what the reason is cannot be expected to provide a reason and it follows in my opinion that the commissioner overlooked this and that this constitutes a gross irregularity.

In the circumstances therefore the commissioner's ruling dated 28 December 2001 is reviewed and set aside and the CCMA is ordered to convene an arbitration hearing within 30 days of today.

Mr Ncube is to obtain a copy of this award to take it to the CCMA.

[COMMENT1]BEGIN DEUR 'N "HEADER" TE MAAK

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