

SOUTH AFRICA / JUDGMENT

Queenstown Fuel Distributors CC v Labuschagne N.O and Others (P270/98) [1998] ZALC 121 (2 December 1998)

[1998] ZALC 121

COURT
Labour Court

BEFORE
LANDMAN

CASE / FILE NUMBER
P270/98

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IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT PORT ELIZABETH

Case Number: P270/98

In the matter between

Queenstown Fuel Distributors CC Applicant

and

J. Labuschagne NO 1st Respondent

The Commission for Conciliation, Mediation and Arbitration

and Arbitration

Food and Allied Workers Union 3rd Respondent

J Hiliza and 4 Others 4th to 8th Respondents

JUDGMENT

LANDMAN J

- [1] Queenstown Fuel Distributors CC has launched an application to review a decision of a Commissioner of the Commission for Conciliation, Mediation and Arbitration (“the CCMA”) who awarded compensation to several employees who had been dismissed for operational requirements.

- [2] The Commissioner appears to have made his award available to the CCMA on 12 June 1998. I have been supplied with an unsigned copy. The application for review was signed on 24 August and faxed to the registrar and all other parties on 26 August 1998. The application is one governed by s145 of the Labour Relations Act 66 of 1995 ("the Act"). This section provides that in a case such as the present one the aggrieved party must apply for review within six weeks of the date of the award being served on the applicant. I assume that "apply" means file the papers with all relevant parties and file the papers with the registrar. The filing and service of an application is what is intended by the word "apply". See *Peters v Union and National South British Insurance* 1978 (2) SA 58 (D). Six weeks is a relatively brief period within which to apply for a review. This points to an intention to interpret the word "apply" more liberally. It would not mean that the application must be set down in court as was held in *Theunissen v Pagne* 1946 TPD 680 and *Lange and Another v President Insurance Co Ltd* 1976 (3) SA 732 (E). It is unnecessary to decide whether an application is made if an application is filed but not served within the relevant time. This point was also left open in *Fisher v Commercial Union Assurance Co of SA Ltd* 1977 (2) SA 499 (C) and Peter's case, *supra*, at 60D. Fax transmission of the documentation is regarded as proper filing. See Rule 5(1)(c) of the Labour Court Rules read with Rule 5(3).
- [3] An award by a Commissioner of the CCMA must be signed and issued by the Commissioner. See s138(7)(a) of the Act. "Issue" means make available to the CCMA for service. See *Free State Buying Association Ltd t/a Alpha Pharmacy v SA Commercial Catering and Allied workers Union and Another* (An unreported decision of the Labour Court, Case No. J973/97). After receipt of the award the CCMA must serve a copy of the award on each party to the dispute or the person who represented that party in the arbitration proceedings. See s138(7)(b) of the Act.
- [4] "Serve" is defined in s213 of the Act and means "to send by registered post, telegram, telex, telefax or to deliver by hand". The award was served on the applicant on 4 July 1998 when the applicant received it.
- [5] The application is more than one week late. Does the court have the power to condone the late filing of the application? I have assumed in the past, without the matter being argued, that this court has such a power. The point has now been pertinently and properly raised by Dr Grogan, who appears for the applicant, in this unopposed application.
- [6] Dr Grogan submitted that this court has an inherent power to condone the application, and he dealt with facts which would be relevant if the ordinary considerations regarding condonation were to come into play.
- [7] Litigation is invariably subject to time constraints. For a discussion on the aims and objects of prescription clauses, see *Saner Prescription in South Africa* at para 1.2. Common law reviews are subject to a time limitation. They must be brought within a reasonable time. See *Wolgroeiërs Afslaers (Edms) Bpk v Munisipaliteit van Kaapstad* 1978 (1) SA 13 (A). A statutory review, such as the present application, must be brought within the time permitted by the

relevant Act. Where it is brought out of time the question of condonation arises. Whether condonation may be granted or not depends upon the interpretation of the statute in question. Generally, there appears to be no inherent power residing in a court to condone a failure to comply with the time limits laid down by statute. See the remarks by Didcott J in *Mhohlomi v Minister of Defence* [1996] ZACC 23; 1996 (12) BCLR 1559 (CC) at 1568D-E.

- [8] The legislature was aware in enacting the Labour Relations Act 66 of 1995 that circumstances might arise where the time limits it sets might not be met by parties subject to the Act, and has, for the most part, provided for the appropriate authority to condone a failure to comply with them - usually on good cause being shown. See for example ss111(4) and 191(2) of the Act.
- [9] The inevitable conclusion to be drawn from the omission of the legislature to do so in relation to s145(1) must be that it intended the six week period to be complied with, and that the court should not have the power to condone a failure to comply with the time periods specified in that section. See *Pep Stores (Pty) Ltd v Laka & Others* (1998) 19 ILJ 1532 (LC), at 1540 F, where Mlambo J stated the following:

The provision for a time frame in s145 is an important confirmation of the legislative objective of finality in dispute resolution. Any legal challenge by way of rescission (s144) or review (s145) must be brought within this period. If there is no such challenge the award remains final and binding in terms of s143.

- [10] It may be argued that the six week period infringes on the right of access to the courts. See s35 of the Constitution of the Republic of South Africa, 1996. If that be the case, it cannot be resolved by this court, for this court is not empowered to adjudicate on the constitutionality of the laws which it applies.
- [11] It follows that this court has no jurisdiction to condone the late application and the application must be dismissed.

A A LANDMAN

Judge of the Labour Court

SIGNED AND DATED THIS 2nd DAY OF DECEMBER 1998

DATE OF HEARING: 26 November 1998

DATE OF JUDGMENT: 2 December 1998

For the Applicant: Dr. J Grogan

Instructed by: Wheeldon Rushmere & Cole

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