

SOUTH AFRICA / JUDGMENT

SACCAWU obo Mogale and Others v Commission for Conciliation, Mediation and Arbitration and Others (JR1520/12) [2016] ZALCJHB 532 (6 September 2016)

[2016] ZALCJHB 532

COURT

Labour Court Johannesburg

BEFORE

Van Niekerk

CASE / FILE NUMBER

JR1520/12

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THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not reportable

Case no: JR1520/12

In the matter between

SACCAWU OBO MOGALE, T AND 35 OTHERS Applicant

and

COMMISSION FOR CONCILIATION, First

Respondent

MEDIATION AND ARBITRATION

MATLALA L N.O

Second Respondent

PICK N' PAY RETAILERS (PTY) LTD Third

Respondent

Heard: 1 September 2016

Judgment:

6 September 2016

VAN NIEKERK J

- [1] This is an application to review and set aside an arbitration award issued by the second respondent on 26 January 2012. The present application was filed only on 26 June 2012, some 15 weeks outside of the prescribed time period. The applicant has filed an application for condonation for the late filing of the review.
- [2] The explanation for the delay is briefly the following. The union official responsible for the case avers that the award was served on the applicant on 31 January 2012. At this point, he was on leave and returned only on 19 March 2012. He found the award in his pigeonhole when he returned to work on that date. On 26 March 2012, the union's office bearers agreed that the matter could be taken further and during April and May 2012, when efforts were made to trace the individual applicants. A consultation meeting was held on 30 May 2012, and a second meeting held on 8 June 2012. On 20 June 2012, a legal opinion was received on the prospects of success in a review application. The application was served on 25 June 2012 and filed a day later.
- [3] The period of delay is not insignificant; it is more than double the period within which reviews ought to be filed. The explanation for the delay, in my view, is unsatisfactory. There is simply no attempt by the deponent to explain what, if any, arrangements were made for the receipt of an arbitration award that must have been anticipated, given that in the CCMA, awards are required to be handed down within 14 days. The applicant union is a large union and ought to be aware of the importance of the timeframes that regulate review applications. The union had a responsibility on receipt of the award, which was sent to its general fax number, and clearly marked and identifiable as an arbitration award, to ensure that the individual applicants were notified or at the very least, that another union official was apprised of the award. Indeed, the official responsible for the handling of the case ought to have made arrangements for one of his colleagues to oversee the matter in his absence. Given the fact that the issuing of the award was imminent, his failure to do so was negligent and does not serve to provide a valid justification for the late filing of the review. The efforts to trace individual applicants during the course of April and May are not the subject of any detailed explanation. The union official must have been aware, at the time that the award came to his attention, any review would already be out of time. That notwithstanding, he appears to have conducted himself as if the statutory time limit did not exist.
- [4] In terms of the applicable authorities, an unacceptable delay coupled with an unsatisfactory explanation for the delay has the effect that it is not necessary for me to consider the applicant's prospects of success in the review application (see *Colett v CCMA & others* [2014] 523 (LAC)).

I make the following order:

1. Condonation for the late filing of the review application is refused.
2. The review application is dismissed.

ANDRÉ VAN NIEKERK

JUDGE OF THE LABOUR COURT

APPEARANCES

For the Applicant: Mr M S Molebaloa, MS Molebaloa Inc.

For the Respondent: Mr K Makapane, Bowman Gilfilan Inc.

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Prepared on 12 October 2026 · Esheria