

SOUTH AFRICA / JUDGMENT

SATAWU obo Murulani and Others v First Help (Pty) Ltd (593/2021) [2024] ZALCJHB 216 (30 May 2024) [2024] ZALCJHB 216

COURT

Labour Court Johannesburg

BEFORE

A van Niekerk

CASE / FILE NUMBER

JS 593/2021

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THE LABOUR COURT OF SOUTH AFRICA,
JOHANNESBURG

Not Reportable

Case

no: JS

593/2021

In

the matter between:

SATAWU
obo DANIEL MURULANI & 38 OTHERS Applicants
and
FIRST
HELP (PTY)
LTD
Respondent
Heard

and delivered ex-tempore: 25 August 2023

Edited: 30 May 2024

JUDGMENT

VAN NIEKERK J

- [1] This is matter number JS593/2021. It is an application for condonation for the late referral of a dispute to this Court in terms of Rule 6, a substantive dispute between the parties concerns with what is alleged to be an unfair dismissal on the grounds of the respondent's operational requirements.
- [2] The application for the referral was made a year late. By any account that is an inordinate delay. The LRA requires disputes of this nature to be referred to the court within 90 days of the date of the certificate of outcome issued by the CCMA.
- [3] The approach that the Court is required to adopt is well established. It is that set out in the well-known case of *Melane v Santam Insurance*. The Court must take into account the period of the delay, the reasons proffered for the delay, the applicant's prospects of success in the main action and any prejudice that would be caused to the parties should condonation be granted or refused as the case may be.
- [4] None of these factors are in themselves determinative. The Court is required to have regard to all of them into account, to adopt a broad conspectus, and to exercise a discretion in a judicial manner on that basis.
- [5] In the present instance, as I have indicated, the period of the delay is inordinate. The reason for the delay relates to the workings of the applicants' union and in particular what were referred to as "challenges" faced by the union in the face of the resignation of the litigation officer. That is the sole reason proffered for the delay. The official representing the union in these proceedings was appointed only on 28 June 2022 and the matter received attention only then.
- [6] While I accept that no blame can be apportioned to the union official presently, conducting the matter, the reason for the delay is really no reason at all. The union is well-established and it is adequately resourced and there is no reason why the resignation of the litigation officer ought to have occasioned a delay of one year in referring a matter to the Court for determination.
- [7] Every day individuals refer matters to this court without the assistance of union officials or legal representatives, for that matter. It is not a difficult exercise to undertake and any union official would have been able to make the necessary referral.
- [8] The explanation for the delay is also inadequate being failing as it does, to explain the whole period of the delay. There is no explanation, for example, as to what measures the union took to further interests of its members. The Court is being asked simply to accept that delay of one year is reasonable in the circumstances where a single union official resigned and was unable to deal with the dispute. As I have indicated, that is no explanation at all.

- [9] In regard to the prospects of success, these are not dealt with in the final affidavit other than by way of the submission to the effect that the applicant enjoys excellent prospects of success.
- [10] This Court has previously held that where an applicant relies on prospects of success in order to secure the condonation for the late referral or process, those prospects must be set out and dealt with in detail in the founding affidavit. It is not sufficient as the applicants have in this instance, simply to cross-refer to the statement of case and claim that on that basis there are prospects of success, or as in this case that the prospects of success are excellent.
- [11] A cursory examination of the statement of case in any event, reveals that this is not so. The retrenchment that gives rise to the main dispute was conducted in terms of section 189A under the auspices of a facilitator. It is well-established that in those circumstances there is no claim for the procedural unfairness, matters of procedures must necessarily be dealt with at the time that the consultation process is conducted and within the time period established by section 189A.
- [12] So, to the extent then that the applicant's claim in the main application is that the retrenchment is unfair because the respondent did not follow a fair procedure, that is not a claim that the union is entitled to raise at this late stage.
- [13] There is nothing else in the statement of claim which indicates that in any substantive sense the retrenchment was unfair.
- [14] In regard to prejudice, well it is axiomatic that any refusal of condonation would be prejudicial to the union and its members, but on the other hand the respondent has an interest in finality and certainty. There are also the statutory imperatives of expeditious dispute resolution to be considered. The Labour Relations Act is crafted on a basis that requires parties to act expeditiously to refer any disputes that they may have. The statutory system is one that recognises that labour disputes ought properly to be determined on an expeditious basis and that lengthy delays are in the interest of neither party.
- [15] In short, the applicants have failed to make out a case for the condonation of the late referral of their dispute. There is no reason why costs should not follow the result. The application was misguided.

Order

- [16] The order is as follows:

1. The application for condonation is dismissed with costs.

A van Niekerk

Judge of the Labour Court of South Africa.

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