

Sneller Verbatim/HDJ

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: J4055/99

2002-10-22

In the matter between

ALBERT BENZO & OTHERS

Applicants

and

PAARDEKRAAL CRUSHERS

Respondent

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J U D G M E N T

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REVELAS J:

1. The applicants have brought an application for the condonation of the late referral of their dispute to the Labour Court. The referral of the dispute was 31 days out of time. There were several developments, but it is not necessary to refer to them herein as I intend only to give brief reasons for the order I am about to make.

1. 1. 2. The main objection by Paardekraal Crushers against

my granting condonation was firstly that the applicants have waited so long to bring the application for condonation (two years); and secondly, that the applicants had no prospects of success as they were summarily dismissed during an unprotected strike which the applicants claim, was protected, but that thus far the applicants have failed to produce proof that proper 48 hours notice of the strike was given. The applicants aver in an affidavit that such notice was given. The respondents contend that this affidavit does not necessarily cover the facts of the matter nor does it establish any grounds to believe that proper notice was in fact given. Therefore I should not grant condonation.

3. In determining this issue, I have to consider the degree of lateness, the explanation for the delay, and the prospects of success and the importance of the matter.
4. Insofar as the prospects of success are concerned, the applicants have made out a *prima facie* case and it would be premature at this stage to decide the status of the notice. A copy may very well be produced. The degree of lateness is not substantial. It was thirty one days. The applicants have only brought the application for condonation now two years later, but

the point has only been raised now after the parties have been to court twice and the matter has been set down twice, and subsequently postponed. Pre-trial minutes have been handed up. All these exercises have already been gone through and in these circumstances I believe that I should grant condonation.

5. Therefore I make the following order:

1. 1. The application for condonation of the late referral of the applicants' dismissal to the labour court is hereby condoned.

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E. Revelas