

| Sneller Verbatim/JduP

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: JR224/02

2003.03.19

In the matter between

LENTSHA NORMAN

Applicant

and

THE COMMISSION FOR CONCILIATION,

MEDIATION AND ARBITRATION

1st Respondent

ADV. W J HUTCHINSON

2nd Respondent

MARTIN'S FUNERAL UNDERTAKERS

3rd Respondent

J U D G M E N T

EX TEMPORE

REVELAS, J:

1. The applicant referred a dispute about an alleged unfair dismissal to the Commissioner for Conciliation, Mediation and Arbitration ("the CCMA"). His application was brought two months out of the time period prescribed by the Labour Relations

Act. He then had to bring an application for condonation. Condonation was refused, and the commissioner who refused to grant condonation based his refusal on the excellent prospects of success of the respondent who had filed an affidavit with the CCMA in support of its opposition for the condonation application brought by the applicant.

2. The applicant explained that his referral was out of time due to a delay on the part of his union. That is apparent from the ruling of the arbitrator. The applicant alleged that the delay occurred because there were several telephone calls made to and by his union, which did not contribute to resolve the matter. His version in this regard did not persuade me. What is more, it did not persuade the commissioner, who exercised his discretion, as he did not condone the late referral, and that is a discretion with which this court will not lightly interfere.
3. The commissioner, as I have already mentioned, had before him an affidavit by the respondent deposed to by Mr Collins. In this affidavit it is alleged that the applicant had resigned by way of a letter, the contents of which were clear, and a meeting was held. Attached to the affidavit is a copy of the letter allegedly written on the instructions of the applicant where, in the last paragraph, he indicates that he is working "under notice", which tends to

support the respondent's version placed before the commissioner.

4. There is also a handwritten note on the letter, signed by Mr Collins. This signature is similar to that on the affidavit and appears to be the same signature on the note of 28 March 2001, where he wrote the following on the applicant's letter:

"Resignation is accepted as from 28/3/01. You will be expected to work 2 weeks' notice as per Basic Conditions of Employment Act."

5. The applicant has done little to refute the contents of the letter, and it is common cause that he indeed wrote a letter in which he alleged that he warned his employer (respondent) that he would report the respondent to the CCMA for certain conduct. That is correct, that is borne out by the letter in which he does warn his employer about referring the matter to the CCMA.
6. In all the circumstances I am unable to interfere with the decision of the commissioner. He took into account the degree of lateness, (it was substantial) the explanation for the delay, (which was improbable). It is trite that a party may not be excused for delays due to the laxity of his or her representative. The prospects of success are not good, as found by the arbitrator, in that it appears that the applicant resigned and later regretted his decision.
7. In the circumstances the application to review the

ruling of the commissioner is dismissed.

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E. Revelas