**IN THE LABOUR APPEAL COURT OF SOUTH AFRICA**

**HELD AT JOHANNESBURG**

**Case no: JA 60/97**

**In the matter between:**
**CLASSICLEAN (PTY) LTD** **Appellant**
**and**
**CHEMICAL WORKERS INDUSTRIAL UNION**
**Respondents**
**AND OTHERS**

**_____JU**

**DGMENT**

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**FRONEMAN DJP.**

[1] The second to sixth respondents ("the individual employees"), all members of the first respondent ("the trade union") and employees of Classiclean (Pty) Ltd ("the employer"), were dismissed on 1 December 1995 for refusing to work overtime. After their dismissal they followed the normal statutory route, ending up in the industrial court where they obtained a reinstatement order in their favour, as well as compensation equivalent to the wages they would have earned for twelve months. The employer seeks to have these orders overturned on appeal, but has run into some procedural difficulties, all of its own making.

[2] The employer was required to file a power of attorney within 10 days of filing the notice of appeal. It has not done so. The record of appeal had to be filed within 60 days of the date of the filing of the notice of appeal, being 8 July 1997. It was only served on respondents' attorney on 6 November 1997. The employer's attention was drawn to these deficiencies by the respondents' attorney in, respectively, a letter dated 20 November 1997 addressed to the employer's attorneys, and in the respondents' attorney's heads of argument filed on 30 March 1998. No application for condonation was brought prior to the hearing of

the appeal on 9 June 1998.

[3] When the matter was called yesterday senior counsel who appeared for the employer handed up a statement headed "Aansoek om kondonasie" which was apparently signed by an official of the employer. The statement was not on oath, nor was there a notice of motion asking for condonation accompanying it. Counsel could not suggest any legal basis for us having any regard to this statement, nor am I aware of such a basis. Faced with this difficulty counsel asked for the postponement of the matter in order to bring a proper application for condonation. He suggested that there was no real prejudice to the individual respondents which could not be cured by an appropriate costs order and, possibly, a compensation order at the appeal hearing at a later stage. This ignores the fact that the individual respondents would then have the reinstatement order in their favour frustrated even longer than has been the case until now. It also ignores the other requirement for a successful application for a postponement, viz a reasonable or acceptable explanation for the failure to have dealt with the problem necessitating a postponement at an earlier stage. No such explanation was forthcoming. The application for postponement was refused.

[4] In terms of rule 5(17) of the rules of this court, the appeal was deemed to have lapsed on the failure to lodge the record within the sixty day period allowed for this. The rule itself provides for an uncomplicated and inexpensive way to avoid this consequence if the record cannot be prepared in time, viz to approach the opposing side within the sixty day for consent to an extension of time. If this fails, the Judge President may be approached, relatively informally, for an order to that effect. None of this was done.

[5] There seems to be a fairly widespread misconception amongst practitioners that the rules of court are, somehow, unimportant and that insistence on proper compliance amounts to excessive formalism and is indicative of a 'technical' approach, whatever that means. It is true that the rules are for the court and not the other way around. What this truly means is that a slavish adherence to the rules without having regard to their underlying purpose should be avoided. This does not mean that their existence may simply be ignored, only that in appropriate cases where a proper explanation for non-compliance is proferrred and the other requirements for condonation are met, strict adherence to the rules should not stand in the way of dealing with the merits of a particular case. Where there is no such explanation the practitioner fails in his duty towards his or her client and he or she must accept responsibility for the consequences.

[6] In the recent past this Court has had to deal with a depressing and monotonous number of matters where the failure of practitioners and the parties to adhere to the rules has come to the fore. This is another one of them. In my view the rules are drafted in simple, understandable language. They provide procedures such as those outlined in paragraph 4, to deal simply and inexpensively with problems such as those that arose in this matter. Failure to adhere to them will be viewed with an increasingly jaundiced eye in future.

[7] There is, in any event, no merit in the employer's proposed appeal. No evidence was produced in the industrial court to substantiate a contractual obligation to work overtime by the individual employees, as is required by **s. 8(1)** of the **Basic Conditions of Employment**

**Act, 3 of 1983**. The fact that prior, to their dismissal, some of them worked overtime is not a sufficient basis for concluding that they did so in fulfilment of a contractual obligation, especially in view of the evidence that they did so voluntarily only when they needed money. Nor did the employer refute the respondents' evidence that agreement was reached between the employer and the trade union that no further disciplinary steps would be taken until the resolution of the dispute relating to the retrenchment of certain employees - the original cause for dissatisfaction leading to the refusal to work overtime. Dismissal in breach of that agreement by the employer was clearly unfair.

[8] There are no grounds for the reinstatement of the appeal. The employer is ordered to pay the respondents' costs relating to their opposition to the appeal.

[9] Respondents also noted a cross-appeal, directed against that part of the presiding officer's *reasoning,* where he did not accept the respondents' contention that there was an agreement not to proceed with disciplinary proceedings until the outcome of the retrenchment dispute. The cross-appeal is misconceived. Where a respondent supports the outcome or determination in the industrial court, albeit for different reasons than set out in the judgment, no cross-appeal is necessary. It is only where the determination itself is challenged in whole or in part that a cross-appeal is necessary.

[10] No costs order is made in respect of the cross-appeal. The determination of the industrial court is confirmed.

FRONEMAN DJP.

I agree

MYBURGH JP.

I agree

NICHOLSON JA.

Date of hearing: 9 June 1998.

Date of judgment: 10 June 1998.

**Appearances**

For the appellant: C.P Rabie S.C instructed by Molenaar & Griffiths

For the respondents: Mr. P Maserumule from Tshabalala Maserumule Attorneys