



**THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG**

**JUDGMENT**

**Not reportable**

Case no: JR 968/15

In the matter between

**WILLEM HENDRICK BOSHOFF**

**Applicant**

and

**COMMISSION FOR CONCILIATION,  
MEDIATION AND ARBITRATION**

**First Respondent**

**S OOSTHUIZEN N.O**

**Second Respondent**

**PROFESSIONAL INDUSTRIAL SERVICES**

**Third Respondent**

**MAXAM DANTEX CIVIL EXPLOSIVES**

**Fourth Respondent**

**Heard: 30 August 2016**

**Judgment: 6 September 2016**

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## JUDGMENT

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### VAN NIEKERK J

- [1] This is an application to review and set aside an arbitration award issued by the second respondent on 10 April 2015. In the award, the second respondent held that the applicant had failed to discharge the onus of proving the existence of a constructive dismissal.
- [2] The present application was filed on 18 August 2015; the notice of motion is dated 11 August 2015. In the founding affidavit filed in support of the review application, the applicant provides a chronology of material facts. He also articulates his grounds for review, primary among which are assertions to the effect that the commissioner failed to understand technical aspects of the case and that the proceedings were irregularly conducted for a number of reasons that are spelled out in the founding affidavit.
- [3] When the matter was called during the course of a pre-enrolment hearing, I put to the applicant that the award had been filed outside of the time limit prescribed by s145 of the Labour Relations Act, 66 of 1995. The applicant did not dispute this and was unable to proffer any proof to the contrary. The onus is on the applicant to show that the review application had been launched timeously, because this is a fact that goes to establishing the jurisdiction of this court. The delay is not insignificant – the six-week time limit expired during the course of May 2015. By my reckoning, the application was filed at least 2 ½ months late.
- [4] The legal principle applicable is that if an application such as the present is filed outside of a statutorily prescribed time limit, in the absence of any application for condonation, this court has no jurisdiction to entertain the application. As the Labour Appeal Court put it in *SATAWU v Tokiso Dispute Settlement & others* (JA 117/13, 5 May 2015), where a step constitutes a jurisdictional step (such as a

time limit), and a party is out of time, in the absence of an application for condonation, the court cannot come to a party's assistance. (See paragraph [19] of the judgment.) In the present instance, there is no application for condonation. In the circumstances, the issue is one of jurisdiction and the period of delay is irrelevant, as are the applicant's prospects of success, if any, in the review application.

- [5] The applicant appears on his own behalf. In these circumstances, the interests of the law and fairness would not be served by ordering him to bear the respondents' costs. I intend therefore to make no order as to costs.

For these brief reasons, I make the following order:

1. The application is dismissed.

ANDRÉ VAN NIEKERK  
JUDGE OF THE LABOUR COURT