

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not reportable

Case no: JR2753/19

In the matter between:

CHIKANE ALBERT CHIKANE

Applicant

and

**GENERAL PUBLIC SERVICE SECTOR
BARGAINING COUNCIL**

First Respondent

MEC FOR ROADS & TRANSPORT (GAUTENG)

Second Respondent

COMMISSIONER MAREE NO

Third Respondent

Heard: 7 May 2024

Delivered: 8 May 2024 (This judgment was handed down electronically by emailing a copy to the parties.

Summary: Non-compliance with Practice Manual. In the absence of an application to reinstate, this court has no jurisdiction. Matter struck from the roll.

JUDGMENT

DANIELS J

Introduction

[1] Until his dismissal, the applicant was employed by the second respondent as the Chief Executive Officer of “G-fleet” the trading entity of the Department of Roads and Transport (hereafter “the Department”).

[2] Following a disciplinary hearing, the Department dismissed the applicant on charges styled as “gross negligence”. The applicant unsuccessfully challenged the fairness of his dismissal before the first respondent (hereafter “the Bargaining Council”). Thereafter, the applicant launched an application to review and set aside the arbitration award issued by the third respondent.

[3] The review application was enrolled before me. The second respondent raised the applicant’s alleged non-compliance with clauses 11.2.2 and 11.2.7 of the Practice Manual. This was foreshadowed by the second respondent in its answering affidavit.

[4] The applicant argued that the review application was, in fact, compliant with the Practice Manual. In addition, the applicant referred to an explanatory affidavit filed by the Bargaining Council, in which it attempted to explain the delay in the filing of the complete arbitration record.

Material facts

[5] The litigation in this matter took the following trajectory:

5.1 The review application was launched on or about 27 November 2019.

5.2 The Bargaining Council did not comply with the direction (in the notice of motion) to file the arbitration record, nor did the Registrar of this court advise the applicant that the record had been filed, as contemplated in Rule 7A(5).

5.3 On 17 June 2020, the applicant delivered a notice in terms of Rule 7A(8)(b), advising the respondents that it did not intend to supplement its founding papers.

5.4 Thereafter, on or about 18 August 2020, the applicant served on the second respondent a copy of the bundle of documents used at the arbitration.

5.5 On 15 September 2020, the applicant's attorneys emailed the Bargaining Council advising that the record was incomplete.

5.6 It appears that, between October 2020 and late 2021, that there were several other exchanges between the applicant's attorneys, the Bargaining Council and the third respondent. During these exchanges, the applicant advised the Bargaining Council that he had made his own recordings of the arbitration on the two days for which evidence was missing (namely 14 May 2019 and 2 October 2019). Ultimately, the applicant's audio recording for these days were transcribed and sent to the Bargaining Council for the third respondent's perusal and validation. For her part, the third respondent provided the applicant with a copy of her handwritten notes. The handwritten notes were compared against the transcript.

5.7 The applicant urged the court to take into consideration that the time periods, during which the abovementioned exchanges occurred, related to a period when the Covid19 pandemic was at its most virulent and various restrictions were imposed.¹

5.8 On 29 September 2021, the Bargaining Council filed a bundle of transcripts and the commissioner's handwritten notes. On 18 November 2021, the applicant served and filed a further bundle of documents used at the arbitration.

¹ By 27 March 2020, the country was gripped by panic, with the outbreak of the COVID19 pandemic. The State President announced a hard lockdown from 27 March 2020 until 16 April 2020. The lockdown was extended from 16 April until 30 April 2020. From 1 May 2020, the country moved to Alert Level 4, and some economic activity was permitted. However, restrictions in some form or other continued well into 2021.

5.9 On 10 February 2022, the second respondent served and filed its answering affidavit. The applicant did not raise any objection to the late filing of the answering affidavit. On 16 February 2022, the applicant delivered its replying affidavit.

Legal principles and analysis

[6] The Practice Manual constitutes a series of directives issued by the Judge President to provide access to justice, promote consistency, establish guidelines for the standards of conduct of those who litigate in the Labour Court. It aims to improve the quality of service to the public and promote expeditious dispute resolution. Its provisions are binding, though the Labour Court's discretion in interpreting and applying the provisions of the manual remains intact.² It is necessary to set out some of the applicable provisions of the manual:

Clause 11.2.2: For the purposes of Rule 7A(6), records must be filed within 60 days of the date on which the applicant is advised by the Registrar that the record has been filed.

Clause 11.2.3: If the applicant fails to file a record within the prescribed period, the applicant will be deemed to have withdrawn the application.....

Clause 11.2.7: A review application is by its very nature an urgent application. An applicant in a review application is therefore required to ensure that all the necessary papers are filed within twelve (12) months of the date of the launch of the application (excluding heads of argument) and the registrar is informed in writing that the application is ready for allocation for hearing. Where this time limit is not complied with, the application will be archived and be regarded as lapsed unless good cause is shown why the application should not be archived or be removed from the archive.

² *Samuels v Old Mutual Bank* (2017) 38 ILJ 1790 (LAC)

Clause 16.2: A party to a dispute in which the file has been archived may submit an application, on affidavit, for the retrieval of the file, on notice to all other parties to the dispute. The provisions of Rule 7 will apply to an application brought in terms of this provision.”

(Own emphasis)

[7] It has been held that the Practice Manual must be strictly construed and applied. However, this does not mean it must be selectively applied. Accordingly, where the Practice Manual operates to the applicant's benefit, then he must reap that benefit.

[8] In this matter, the applicant filed the record at different times, as and when the record came into his possession. This conduct stretched from the launch of the review applicant during 2019 until late in 2021.

[9] The contents of the court file reveals that the Registrar did not make the record available to the applicant in the manner contemplated by Rule 7A(5). In the circumstances, it cannot be said that there has been non-compliance with the 60-day period contemplated in clause 11.2.2 of the Practice Manual.

[10] However, that is not the end of the matter. It is clear the applicant has not complied with clause 11.2.7 of the Practice Manual. He has not ensured that all the necessary papers are filed within 12 months of the launch of the review, and he has not requested the Registrar to enroll the application for hearing.

[11] In *E Tradex (Pty) Ltd t/a Global Trade Solution v Finch and others*³ the LAC held that the archiving of a court file does not refer to administrative action by the Registrar. Instead, it is the legal consequence of non-compliance with the Practice Manual. In the circumstances, as a result of clause 11.2.7, the application is archived and must be regarded as having lapsed.

³ (2022) 43 ILJ 2727 (LAC)

[12] The applicant is entitled to bring an application to reinstate the review. To do so, the applicant must bring a formal application in which he must show that the application is bona fide, that he has reasonable prospects of success, and that there is a full and proper explanation for the entire period of the default. The applicant is not required to prove his case, he must merely set out facts which, if established, would result in his success at the hearing of the main dispute.

Order

[13] In the absence of an application to reinstate the review, this court lacks jurisdiction to hear the review. In the result, the application is struck from the roll. There is no order as to costs.

R Daniels
Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Adv Maake,
T Radzilani Inc

For the Respondent: Adv Matyolo,
H Maponya, State Attorney's Office