



EMPLOYMENT

Deadlines Are Not Suggestions (And Finality Still Matters)

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The Labour Appeal Court's decision in NUMSA obo Members v Macsteel Service Centres South Africa (Pty) Ltd offers a useful reminder that while labour law remains a fairness-driven system, it is not one that excuses indifference to statutory time limits. For employers, the judgment reinforces the continued relevance of procedural discipline and the importance of finality in large-scale dismissal disputes.

The case arose from the dismissal of more than 100 employees following an unprotected strike. When the union failed to refer its automatically unfair dismissal claim to the Labour Court within the prescribed 90-day period, it sought condonation. The Labour Court refused. On appeal, the majority of the Labour Appeal Court overturned that decision, finding that the court a quo had misdirected itself in its approach to condonation.

At first glance, the outcome may appear unfavourable to employers. However, a closer reading reveals several important employer-friendly principles. The judgment confirms that condonation is never automatic. The LRA permits late referrals only on "good cause shown", and the onus remains firmly on the defaulting party to provide a proper explanation. While the Court accepted that explanations need not account for every hour of delay, it emphasised that they must cover the period meaningfully and candidly. Employers should take comfort in the

Court's repeated endorsement of the principle that litigation under the LRA is subject to strict scrutiny, precisely because delay undermines the statutory objective of speedy dispute resolution.

The Court clarified that the 90-day time limit in section 191 of the LRA is not to be conflated with the more flexible "unreasonable delay" standard under PAJA. This distinction matters for employers. The LRA creates defined windows for action, and while those windows may be extended by a court, they do not lose their force simply because a party later becomes ready to litigate. Compliance remains the starting point, not an optional aspiration.

Perhaps most importantly, the judgment reinforces that condonation requires a holistic assessment. Delay, explanation, prospects of success, prejudice and the interests of justice must be weighed together. For employers, this means that procedural objections remain a powerful defence — particularly where delay is substantial, explanations are weak, or prejudice is real. The dissenting judgment is especially instructive in this regard, emphasising that unexplained shifts in legal strategy and failures to act timeously can, on their own, justify refusal of condonation.

The case also underscores the evidentiary advantage employers gain from clear contemporaneous records. The employer's consistent position — that the dismissals arose from participation in an unprotected strike — was repeatedly documented through correspondence, strike notices, interdict proceedings and referrals. This consistency proved central to challenging the credibility of the union's later reformulation of the dispute. Employers who document decisional pathways carefully are better positioned to resist attempts to recast disputes after the fact.

Finally, the judgment highlights that while courts remain alive to the prejudice suffered by dismissed employees, employer prejudice is not treated lightly. The right to finality, certainty and the orderly management of litigation remains a legitimate interest. Employers are not required to litigate indefinitely simply because a dispute is large or emotive.

The broader lesson is a familiar but often contested one. Labour litigation rewards diligence. Employers who act promptly, keep proper records and enforce procedural rules are not being technical; they are aligning themselves with the statutory design of the LRA. This decision confirms that, even in mass dismissal cases, procedural discipline remains a cornerstone of fairness — not its enemy.



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