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The Clock Is Ticking: Labour Disputes and the Perils of Miscalculating Timeframes

22 April 2025 *3 min read*

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The recent Labour Court decision in *Nelson Mandela Bay Municipality v SAMWU obo Bukula and Others* (PR174/2023) provides a sobering reminder of the importance of calculating statutory timeframes with precision—particularly in the context of unfair labour practice disputes.

A Long Road to Arbitration

The matter arose from the 2014 re-designation of Mr Bukula's position from "Director" (task grade 18) to "Deputy Director" (task grade 16). Although his salary and benefits remained unchanged, Bukula viewed this as a demotion and eventually initiated steps to challenge it—albeit years later.

After a series of internal processes, grievances, and a re-evaluation request in 2019, the dispute was referred to the South African Local Government Bargaining Council (SALGBC) in late 2020. At arbitration, the Municipality raised a preliminary point: the dispute was hopelessly late, having been referred more than six years after the 2014 act giving rise to the complaint. The arbitrator, however, ruled that condonation was unnecessary, citing procedural delays and unresolved internal steps.

The Labour Court's View: No Room for Creative Calculations

The Labour Court disagreed – decisively. In a judgment that emphasises the primacy of statutory language over perceived procedural fairness, the Court found that the arbitrator had erred in both fact and law.

Factually, the Court held that Bukula's initial review in 2016 was not diligently pursued, and his later grievance in 2020—long after the 2014 demotion—did not restart the statutory clock. His application for post re-evaluation in 2019 was considered a separate process and irrelevant to the original unfair labour practice claim.

Legally, the Court relied on section 191(1)(b)(ii) of the Labour Relations Act (LRA), which requires that an unfair labour practice be referred within 90 days of the employee becoming aware of the act in question. It firmly rejected the notion that internal grievance steps suspend this timeframe. As confirmed in *NTEU obo Moeketsi v CCMA*, internal processes are not a prerequisite to referral, nor do they stop the clock.

Crucially, the Labour Court found the arbitrator's acceptance of a grievance hearing date in 2020 as the referral trigger to be "astounding", noting that this directly contradicted the plain wording of the LRA. The Court reiterated that failure to refer a dispute within the prescribed time—without a condonation application—renders the referral invalid, as previously confirmed in *Pick 'n Pay Supermarkets v CCMA*.

This case is not simply about a six-year delay or an administrative oversight. It underscores the critical role that **statutory timeframes** play in the architecture of labour dispute resolution. The LRA was crafted to promote **expeditious** resolution of disputes, and courts are unwilling to entertain creative interpretations that undercut that goal.

For employees, the message is clear: once you are aware of an act that may constitute an unfair labour practice, the 90-day countdown begins. Internal grievance processes are not a substitute for formal referral—and do not extend the timeframe.

For employers and HR practitioners, this case provides a valuable shield: a reminder that stale claims can and should be met with jurisdictional challenges where time limits have not been observed.

Final Thought

The *Bukula* matter serves as a cautionary tale on the importance of process, precision, and understanding the legal framework within which labour disputes are resolved. As always, adherence to statutory obligations is not optional—and delay, however justified it may seem, can be fatal.

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