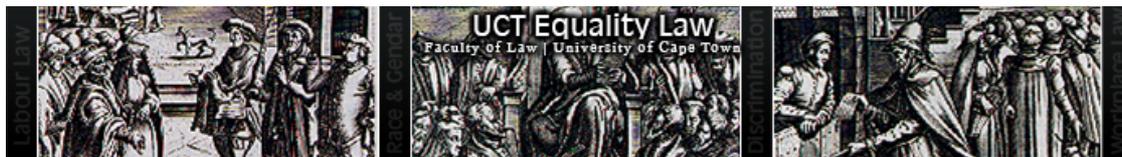




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SABC LTD v CCMA

Created by Jenny Erasmus [Administrator], last modified on May 06, 2013

YEAR: 2010PLAINTIFF / APPLICANT / APPELLANT: SABCDEFENDANT / RESPONDENT: CCMACOURT: LABOUR APPEAL COURTCITATION: (2010) 31 ILJ 592 (LAC); (2010) 3 BLLR 251 (LAC)POST / PRIOR ACTION: CCMA and Labour CourtJUDGE(S): Waglay ADJP (Patel JA and Sangoni AJA concurred)GROUND(S) OF DISCRIMINATION: qualifications, skillSTATEMENT OF FACTS:

In 1998 the appellant promoted/upgraded the salary scales of three (3) artisans. It neglected to promote/upgrade four (4) other employees performing the same or similar work and who had the same or better qualifications. In 2005 the aforementioned four (4) employees, represented by their union, referred a dispute to the CCMA alleging that the appellant's actions amounted to an unfair labour practice in terms of the Labour Relations Act, alternatively an act of discrimination on the basis of qualification and expertise, as set out in the Employment Equity Act.

The commissioner at the CCMA issued a certificate of outcome reflecting the parties agreement to refer the matter to the Labour Court. It further determined that the Union that timeously referred the alleged unfair labour practice dispute to the CCMA despite the promotion occurring in 1998 and the dispute being referred in 2005. The commissioner held that the Union had only become aware of the unfair labour practice in 2005, and on the facts the relevant time periods were complied with.

Following the delivery of the Statement of Case and Statement of Opposition, the appellant made application to the Labour Court to review and set aside the commissioner's certificate of outcome and the commissioner's decision as to the timeous referral of the dispute to the CCMA.

The appellant did not launch the review application within the prescribed time, and the application to condone the late filing was further delayed. The appellant argued its application was delayed as it was waiting on the Union to file its Statement of Case. It argued that once it received same was it able to establish that the Union was pursuing an unfair labour practice claim. Only then was it in a position to pursue the review application. It was further delayed due to the actions of its attorneys. The Labour Court held that the appellant had failed to provide a reasonable explanation as to the delay in filling the application, and there was no basis on which to review the commissioner's decision and certificate of outcome.

The appellant appealed the decision of the Labour Court.

ISSUE OF LAW:

- Whether the application for condonation of the late filing of the appellant's review application should be granted.
- Whether the Labour Court should have set aside the commissioner's decision.

DECISION, RATIO AND OUTCOME (including minority judgment where applicable):

The Labour Appeal Court held that:

- The appellant's explanation as to the delay in filing the review application was unsatisfactory;
- In respect of the time period in which an unfair labour practice is required to be referred to the CCMA, namely within 90 days 'of the act or omission which allegedly institutes the unfair labour practice or, if it is a later date, within 90 days of the date on which the employee became aware of the act or occurrence.' (s 191 (5) of the Labour Relations Act):- the commissioner was incorrect at considering the time at which the Union come to know of the unfair labour practice. The date the Union become aware of the unfair labour practice was irrelevant. The date the employee becomes aware of the unfair labour practice is what is of relevance;
- An act of discrimination can be continuous and repetitive. For example, and as per the facts, an employer who pays employees performing similar work and of similar qualifications different wages based on race or any other arbitrary ground is committing an act of discrimination each time the different wages are paid. On the facts of the case, the date of the dispute, when referring it to the CCMA within the prescribed time, was correctly regarded by the respondents as 'ongoing'. (The date of the dispute was ongoing and did not coincide with the date on which the respondents were denied the promotion.) As the discrimination was ongoing and as such the referral of the dispute to the CCMA within the prescribed time periods, the commissioner's determination that the Union was not required to file an application for condonation in respect of s 191 (5) of the LRA was correct;
- There was no basis to review the certificate of outcome. The appellant had willingly agreed to refer the dispute to the Labour Court as was evidenced by its representative's signature on the document.

In light of the above, the appeal was dismissed with costs.

LINK TO FULL DECISION: <http://www.saflii.org.za/za/cases/ZALAC/2009/13.html>

LABELS: