



# Employment Law

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SOUTH AFRICA

- SCA reinforces strict 'no explanation, no condonation' principle for PAJA delays



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# Employment Law

SOUTH AFRICA

## SCA reinforces strict 'no explanation, no condonation' principle for PAJA delays

In the recent decision of *Van der Vyver Transport (Pty) Ltd v The Minister of Labour and Others* (1117/2024) [2026] ZASCA 58, the Supreme Court of Appeal (SCA) considered whether a review application brought under the Promotion of Administrative Justice Act 3 of 2000 (PAJA) could be heard on the merits, where there was an inordinate delay in instituting the review application and no explanation provided for the delay. The case arose in the context of assessments levied under the Compensation for Occupational Injuries and Diseases Act 130 of 1993 (COIDA).



### Facts

The appellant, Van der Vyver Transport (Pty) Ltd (Van der Vyver), is an employer registered under COIDA. In 2000, the Director-General imposed a 20% loading on the Van der Vyver tariff due to a poor accident record at that time. In 2003, this loading was increased to 40%. Despite a marked improvement in its accident and claims record from 2006, the 40% loading remained unchanged for over a decade.

From 2014, Van der Vyver made repeated attempts to engage the Department of Employment and Labour (Department) and the Compensation Commissioner to secure a reassessment. These efforts included correspondence and a complaint to the Public Protector, but no meaningful resolution was achieved. By September 2018, Van der Vyver had been advised that further engagement was unlikely to yield a decision and that legal proceedings should be considered. Notwithstanding this advice, Van der Vyver only instituted review proceedings in the High Court

in May 2020. It sought a declaratory order that the failure by the Director General to reassess the tariff loading constituted unlawful administrative action under PAJA, together with ancillary relief reducing the loading to 0% for the period 2015 to 2019; the repayment, or alternatively a rebate, of the alleged overpayment; and to have the delay in bringing the review application condoned insofar as it may be necessary.

The Department opposed the application and raised two preliminary points: first, that the review application was brought outside the 180 day period contemplated in section 7(1) of PAJA, without a proper application for condonation being launched; and second, that Van der Vyver had failed to exhaust internal remedies under section 91 of COIDA. The High Court dismissed the application on the basis of unreasonable delay in launching the review, doing so without considering the merits. The majority of the Full Court upheld that decision on appeal.





## Legal question

Before the SCA, the central issue was whether the High Court and Full Court were correct to dismiss the review application on the basis that it had been instituted outside the statutory 180-day time limit and that no proper application for an extension of time under section 9 of PAJA, supported by a full and reasonable explanation for the delay, had been made. The court also had to consider, albeit indirectly, the relevance of internal remedies under COIDA.

The appellant contended that, because it sought to review a failure to take a decision, it was difficult to determine when the 180-day period would have commenced.



## Applicable law

Section 7(1) of PAJA requires review proceedings to be instituted within 180 days of the date on which an applicant became aware, or reasonably ought to have become aware, of the administrative action or failure complained of. Section 9 of PAJA permits a court to extend this period, but only if the interests of justice so require. COIDA further provides internal appeal mechanisms in section 91 in respect of certain decisions taken under the Act.



## Application of law to the facts

The SCA approached the issue of delay as a threshold and dispositive consideration. It was common cause that, at the latest by September 2018, Van der Vyver was aware that its efforts to secure a reassessment of the tariff loading had failed and that further administrative engagement would be futile. On that basis, the 180 day period prescribed by PAJA commenced running from that date. Van der Vyver's review application, launched in May 2020, was therefore approximately 20 months out of time.

Critically, Van der Vyver provided no explanation for this delay. Although the notice of motion included a prayer seeking condonation, the founding affidavit contained no factual basis justifying an extension of time. Even after the Department expressly raised the issue of delay as a point *in limine*, Van der Vyver failed to address the issue in reply. In considering whether the delay could nonetheless be condoned, the SCA reiterated that an application for an extension under section 9 of PAJA should be treated as a condonation application and that the applicant bears the onus to provide a full and reasonable explanation covering the entire period of delay.

Relying on established Constitutional Court authority, the SCA emphasised that prospects of success cannot compensate for an inordinate and unexplained delay in instituting proceedings where the time limit is not met. In this matter, the court noted that Van der Vyver's claim was purely financial and did not implicate constitutional rights or broader public interest considerations. The absence of any explanation for the delay was therefore fatal.

Having determined the matter based on the delay, the SCA found it unnecessary to decide whether Van der Vyver had also failed to exhaust internal remedies under COIDA. The appeal was dismissed with costs, including the costs of two counsel.



## Key Takeaways

The judgment confirms that the 180-day time bar under PAJA is strictly enforced, even in cases involving administrative inaction. Applicants must act promptly once it becomes apparent that a decision-maker is not going to act.

A request for condonation must be supported by a full and reasonable explanation covering the entire period of delay. Without such explanation, courts are unlikely to consider the merits of the review.

For employers engaging with regulatory bodies such as the Compensation Fund, it underscores the importance of timely legal intervention where administrative processes fail to yield results.

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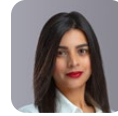
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