

LABOUR COURT OF SOUTH AFRICA

(HELD AT BRAAMFONTEIN)

Case: J1665/11

In the matter between:

**BYTES TECHNOLOGIES GROUP
SOUTH AFRICA (PTY) LTD**

Applicant

and

**THE SOUTH AFRICAN COMMERCIAL CATERING
AND ALLIED WORKERS UNION**

First Respondent

PHILLIMON NYEMBE & OTHERS

Second to further Respondents

JUDGMENT

LAGRANGE, J:

[1] Having considered the matter, I have reached the conclusions, which are summarised below, and accordingly I grant the consequential relief set out below. More detailed reasons for my judgment will be provided shortly.

Conclusions

[2] For the purposes of interdicting unlawful conduct in the context of a protected strike, as opposed to conduct in support of an unprotected strike, it is

not necessary for an applicant to satisfy the pre-requisites of Section 68(2) of the Labour Relations Act 66 of 1995 ('the LRA').

[3] It is generally undesirable for this court to get involved in determining detailed picketing arrangements because the primary institution for addressing this is the Commission for Conciliation, Mediation and Arbitration in terms of the provisions of Section 69 of the LRA, though the court may unavoidably have to set some minimum parameters where the conduct of striking workers exceeds the bounds of a peaceful demonstration and urgent relief is justified, or when adjudicating a dispute in terms of Section 69(11) of the LRA.

[4] In this matter, I believe that on an assessment of the evidence available, the applicant has demonstrated that it has a clear right to not to have its business interfered with by unlawful action of the kind in question directed against its employees or third parties. This is distinct from the lawful disruption of a business that is an ordinary consequence of protected strike action and legitimate conduct in support of the strike.

[5] In this instance, I am satisfied that the applicant has demonstrated that it has a reasonable apprehension that the strikers gathered outside its premises might prevent the entrance and exit of persons and vehicles from its premises and might obstruct the passage of vehicles on the way to its premises in the streets where its premises are situated. I am also satisfied that it has a reasonable apprehension that persons seeking to enter its premises might be intimidated by direct or indirect threats not to do so.

[6] I also accept that the measures set out in the interim order went beyond what was required and may have prevented any meaningful peaceful demonstration by the strikers. Accordingly, a modification of the relief is necessary.

Order

[7] In the circumstances, the following order replaces the interim order handed down on 17 August 2011:

- a. The Individual Respondents whose names appear on Annexure "A" to the Notice of Motion are interdicted and restrained from:
 - i. attending or encroaching within a radius of 30 metres from the entrance to the applicant's premises in Selby, Midrand and Pretoria.
 - ii. obstructing the entrance and exit of vehicles and persons to and from the applicants' premises by blocking access to the abovementioned premises with vehicles or by standing in the path of vehicles;
 - iii. making any threats to persons approaching or leaving the applicant's premises, and
 - iv. brandishing weapons, sticks or knobkerries or other objects in a threatening manner at persons approaching or leaving the applicant's premises, or passing along the street in which the applicant's premises are situated.

b. The Individual Respondents mentioned above are not prevented from:

- i. Attempting to peaceably persuade third parties entering or exiting the applicant's premises not to have dealings with the applicant's business, or to otherwise lawfully support the strike.
- ii. Chanting, singing or otherwise demonstrating their support for the strike and encouraging third parties to do so, subject to the provisions of paragraph a above.

c. The provisions of this order relating to the distance the individual respondents must be from the entrance to the applicant's premises in paragraph a above, are subject to variation in terms of any agreement reached or rules determined in terms of section 69 of the LRA.

d. The parties shall pay their own costs.



R LAGRANGE, J

JUDGE OF THE LABOUR COURT

Date of hearing: 24 August 2011

Date of judgment: 25 August 2011

LABOUR COURT