

REPUBLIC OF SOUTH AFRICA



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

Case no: P167/2011

In the matter between:

**THE NATIONAL UNION OF METALWORKERS
OF SOUTH AFRICA (OBO ITS MEMBERS)**

Applicant

(Applicant in the application for leave to appeal)

and

BRIDGESTONE SOUTH AFRICA (PTY) LTD

Respondent

(Respondent in the application for leave to appeal)

Decided : In Chambers

Judgment : 25 July 2013

Summary : Application for leave to appeal dismissed with costs.

JUDGEMENT – APPLICATION FOR LEAVE TO APPEAL

AC BASSON J

- [1] This is an application for leave to appeal against an order of this Court dated 14 April 2011. For purposes of this brief judgment I do not intend repeating the facts that were placed before the Court when the matter was brought to this Court as an urgent application. The main relief sought was for an interdict against an alleged unprotected strike. Relief was also sought that the respondent be ordered to pay the union members' wages lost during the period of the lock-out. The primary relief is no longer relevant. The issue about whether the union members are entitled to lost wages is still relevant.
- [2] The applicant takes issue with various findings of the Court. I do not intend to repeat the submissions made on behalf of the applicant. Suffice to point out that I have considered the arguments and that I am of the view that there is no reasonable prospect that the Labour Appeal Court will come to a finding that is different from the one arrived at by this Court. For purposes of this judgment, I will briefly deal with one or two salient arguments. I, however, wish to make it clear that I am of the view that neither of these grounds for appeal has merit.
- [3] At the outset I should point out that in deciding this matter this Court was obliged to have regard to the facts averred by the respondent in its answering affidavit together with facts averred by the applicant which Bridgestone did not dispute. See in this regard *Plascon-Evans Paints Limited v Van Riebeeck Paints (td) Limited*.¹
- [4] In essence therefore the facts that were material to the matter were that the parties commenced negotiations on wages and conditions and employment during 2010. The negotiations resulted in a strike on 30 August 2010. A lock-out was instituted against the strike. An agreement was reached on wages but not in respect of the so-called red-circled employees. In March 2011 an overtime ban had been called. The respondent was informed that it was in support of the wage demand in respect of the red-circled employees (which had not been resolved). The union did not at any stage dispute the fact that the dispute was about the red-circled employees. On 18 March 2010 the respondent instituted a defensive lock-out (a lock out in response to the strike) in respect of the dispute which was about the red-circled employees.

¹ 1984 (3) SA 623 A).

- [5] I am in agreement with the submission made on behalf of the respondent namely that the dispute was - and in fact had been since the previous strike - about the red-circled employees and that that dispute had not been resolved. There is, in my view, therefore no reasonable likelihood that an Appeal Court will find that the respondent sought to pursue a demand in respect of employees already covered in the collective agreement as this is simply not borne out by the facts. The argument that the dispute was different from the one that was the subject of the 2010 industrial action is therefore totally without any merit. Furthermore, there was no other dispute between the parties at that stage and this was the only outstanding issue. Also, the means used to resolve the dispute – namely the previous strike – had been suspended.
- [6] In the event the application for leave to appeal is dismissed. I can find no reason why costs should not follow the result.

AC BASSON J
Judge of the Labour Court

APPEARANCES:

For the Applicant : Minnaar Niehaus of Minnaar Niehaus Attorneys

For the Respondent : Advocate AIS Redding SC

Instructed by : Tabacks Attorneys

LABOUR COURT