



REPUBLIC OF SOUTH AFRICA

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

CASE NO J 818/14

Not reportable

In the matter between:

CBI ELECTRIC: AFRICAN CABLES- A

DIVISION OF ATC (PROPRIETARY) LIMITED

Applicant

and

NATIONAL UNION OF METAL

WORKERS OF SOUTH AFRICA

First Respondent

THE PERSONS WHOSE NAMES

APPEAR ON ANNEXURE "A1"

TO THE NOTICE OF MOTION

Second to Further Respondents

Application heard: 4 April 2014

Judgment delivered: 4 April 2014

JUDGMENT

VAN NIEKERK J

Introduction

- [1] This is an urgent application to interdict a strike called in support of a demand for the payment of a housing allowance.
- [2] The starting point in any determination of the status of the intended strike is s 65 of the Labour Relations Act. Section 65 places substantive limitations on the exercise of the right to strike and prohibits participation in a strike *inter alia* in circumstances where a person is bound by a collective agreement that prohibits a strike in respect of the issue in dispute.
- [3] The collective agreement in issue in the current proceedings is the main agreement concluded by the Metal and Engineering Industries Bargaining Council. Clause 37 of that agreement regulates the level at which collective bargaining may take place in the industry. The relevant portion of the clause reads as follows:

'37. Levels of Bargaining in the Industry

(1) Subject to sub clause 2-

- a. The Bargaining Council shall be the sole forum for negotiating matters contained in the Main Agreement;
- b. During the currency of the agreement no matter contained in the agreement may be an issue in dispute for the purpose of a strike or lockout or any conduct in contemplation of a strike or lockout;
- c. Any provision in the collective agreement binding on an employer and employees covered by the Council, other than a collective agreement concluded by the Council, that requires an employer and trade union to bargain collectively in respect of any matter contained in the Main Agreement, is of no force and effect.'

- [4] The intended strike that is the subject of these proceedings has been called, as I have indicated, in support of a demand that the applicant pay a housing allowance to its employees. It is not disputed that at a national negotiation meeting held on 26 and 27 March 2014, the first respondent tabled a set of what are described as 'core demands'. It is also not disputed that included in these core demands is a demand that employers pay a housing allowance of not less than R2 500 per month to each worker in the industry.
- [5] In essence, the applicant contends that by tabling the demand for a housing allowance at central or industry level, the first respondent has sought to amend or modify the main agreement and that it has acknowledged the bargaining council as the sole forum for the negotiation of this demand. In particular, the applicant contends that on a proper construction of clause 37(1)(a), the introduction of a demand for payment of a housing allowance at the central level creates at least the potential for the incorporation of such payments into the main agreement. Having thus elected to bargain the issue of housing allowances at central level, as I understood the submission, it is not open to the first respondent to conduct a parallel negotiation at plant level, as it has sought to do at the applicant's plant. Consistent with this submission, the applicant sought to amend the notice of motion effectively to the effect that any strike at the applicant's plant be prohibited for so long as central negotiations for the introduction of a housing allowance into the main agreement continues. This would serve to address the prospect of either the withdrawal of the demand or agreement being reached in the central negotiation.
- [6] In my view, a proper interpretation of s 65 of the LRA would in the present circumstances serve to prohibit to strike only where there is in existence a binding collective agreement to that clearly prohibits a strike on the issue in dispute. Clause 37 (1) (b) of the main agreement serves only to prohibit plant level bargaining on those matters that are contained in the main agreement. In the present instance, it is common cause that the payment of housing allowances is not a matter that is regulated by the main agreement. Although clause 37 (1)

(a) acknowledges the bargaining council as the exclusive forum in which matters contained in the main agreement must be negotiated, it does not expressly or impliedly prohibit parallel bargaining in respect of matters that are not regulated the agreement but which are sought to be included by way of negotiation. While it is true that where a demand is pursued by the union both at central and at plant level there is the potentiality for incorporation of any agreement into the main agreement, any potentiality for conflict is removed by clause 37 (1) (c), which in effect provides that the main agreement trumps.

[7] In short: In the absence of any binding collective agreement that expressly prohibits a strike in respect of a demand made at plant level for the payment of a housing allowance, in my view, the first respondent, provided it complies with all of the other substantive and procedural limitations on the right to strike, is entitled to exercise that right.

[8] In so far as costs are concerned, neither body pursued the issue of costs. This court traditionally does not make orders for costs in circumstances where the parties are engaged in a collective bargaining relationship and where an order for costs has the potential to prejudice that relationship. In the present instance I see no reason to depart from that tradition and I do not intend to make any order for costs.

For the above reasons I make the following order:

1. The application is dismissed.

ANDRE VAN NIEKERK

JUDGE OF THE LABOUR COURT

Representation:

For the Applicant: Adv. MSM Brassey SC, with him Adv. M van As, instructed by DLA
Cliffe Dekker Hofmeyr

For the respondent: Ruth Edmonds, Ruth Edmonds Attorneys

Labour Court