



REPUBLIC OF SOUTH AFRICA

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

CASE NO JS 445/13

Reportable

In the matter between:

NATIONAL UNION OF METALWORKERS OF

SOUTH AFRICA obo

MEMBERS

APPLICANT

2ND TO FURTHER APPLICANTS

and

LEAR SEWING (PTY) LTD

RESPONDENT

Trial: 12 June 2014

Judgment delivered: 4 July 2014

JUDGMENT

VAN NIEKERK J

Introduction

- [1] This is a dispute referred to this Court for determination in terms of Rule 6. The parties have agreed that the only issue that the Court need decide, on the basis of facts agreed in the pre-trial minute, is whether clause 4.4 of a production bonus agreement concluded by them constitutes a breach of s 5(4) of the Labour Relations Act, 66 of 1995 (LRA).

Factual background

- [2] The respondent supplies car seats to motor vehicle manufacturers, including Renault-Nissan and BMW. It does so on a 'just in time' basis, meaning that seats are manufactured to order, with none kept in stock. Consequently, any delay in production on the respondent's part is likely to result in a delay (referred to as a 'line stoppage') on the production lines of the respondent's customers.
- [3] On 7 May 2010, the first applicant (NUMSA) and the respondent concluded the agreement that is the subject of the present dispute, termed a 'production bonus agreement'. In terms of the agreement, production bonuses are payable in December, and calculated on the basis of *'the entire shift performance for the J.I.T department and the sewing department and not company performance.'* Clause 4 of the agreement regulates the conditions on which the production bonus will be paid. It provides that:
- '4.1 The total value of the annual bonus will depend on productivity.
 - 4.2 Dismissal due to misconduct will result in no payment of bonus.
 - 4.3 Retrenchment will result in the pro-rata payment of the bonus.
 - 4.4 A line stoppage at the customer will result in no incentive being paid out.'
- [4] On 30 November 2012, COSATU (a trade union federation to which NUMSA is affiliated) organised a march to protest against e-tolling in Gauteng. It is common

cause that the protest constituted protected protest action for the purposes of s 77 of the LRA.

- [5] On 29 November 2012, Renault-Nissan informed the respondent that its employees would be participating in the protest and that its production line would therefore not operate on 30 November. The respondent informed its employees engaged in its Renault Nissan department that there would be no orders for seats on 30 November. Those employees were placed on short-time, and not required to report for work on 30 November.
- [6] BMW's employees did not participate in the protest, and its production line continued to operate on 30 November. Some employees engaged in the respondent's BMW department reported for duty on 30 November; others did not. The result was a line stoppage at the BMW assembly plant.
- [7] On 3 December 2012, the respondent advised the first respondent that in terms of clause 4.4 of the production bonus agreement, those employees who worked in the BMW departments would be denied the payment of a bonus, because a line stoppage occurred at BMW on 30 November. The refusal to pay the bonus extended to all employees in the BMW department, including those employees who worked on 30 November. The respondent's employees engaged in the Renault-Nissan department were all paid a production bonus, even though they did not work on 30 November, because there was no line stoppage at Renault Nissan on that day.

Issue in dispute

- [8] As I have indicated, the parties have agreed that the only issue in dispute is whether clause 4.4 of the production bonus agreement is in breach of s 5 (4).

Relevant legal principles

- [9] Although this dispute concerns only the application of s 5 (4), that section must necessarily be read in context. The germane provisions of sections 4 and 5 of the LRA read:

'4 Employees' right to freedom of association

...

(3) Every member of a trade union that is a member of a federation of trade unions has the right, subject to the constitution of that federation –

(a) to participate in its lawful activities;...

5. Protection of employees and persons seeking employment.

(1) No person may discriminate against an employee for exercising any right conferred by this Act.

(2) Without limiting the general protection conferred by subsection (1), no person may do, or threaten to do, any of the following-

...

(b) prevent an employee ... from exercising any right conferred by this Act or from participating in any proceedings in terms of this Act, or

(c) prejudice an employee... because of past, present or anticipated-

(iii) participation in the lawful activities of a trade union, federation of trade unions or workplace forum;

...

(vi) exercise of any right conferred by this Act..

(3) ...

(4) A provision in any contract, whether entered into before or after the commencement of this Act, that directly or indirectly contradicts or limits any provision of section 4, or this section, is invalid, unless the contractual provision is permitted by the Act.'

- [10] The first issue for decision is whether the production bonus agreement is a 'contract' for the purposes of s 5 (4). It is not disputed that the agreement constitutes a collective agreement as defined in s 213 of the LRA – it is an agreement, in writing, between a trade union and an employer, regulating a term and condition of employment matter of mutual interest. But the penalty of invalidity visited by s 5 (4) extends only to a 'contract' – if the production bonus agreement is not a contract, then s 5 (4) does not apply.
- [11] The principles of interpretation to be applied were recently affirmed in *Natal Joint Municipal Pension Fund v Edumeni Municipality* 2012 (4) SA 593 (SCA). What the judgment underscores is that the exercise of interpretation does not require a court to discern the intention of the legislature only by reference to plain meaning of words with a deferential nod, if so required, in the direction of the OED. Wallis JA said the following:

'[18]...The present state of the law can be expressed as follows: interpretation is the process of attributing meaning to the words use in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective, not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document....The 'inevitable point of departure is the language of the provision itself' read in context and having regard to the purpose of the provision and the background to the preparation and production of the document...

[25] Which of the interpretational factors I have mentioned will predominate in any given situation varies. Sometimes the language of the provision, when read

in its particular context, seems clear and admits of little if any ambiguity. Courts say in such cases that they adhere to the ordinary grammatical meaning of the words used. However that too is a misnomer. It is a product of a time when language was viewed differently and regarded as likely to have a fixed and definite meaning, a view that the experience of lawyers down the years, as well as the study of linguistics, has shown to be mistaken. Most words can bear several different meanings or shades of meaning and to try to ascertain their meaning in the abstract, divorced from the broad context of their use, is an unhelpful exercise. The expression can mean no more than that, when the provision is read in context, that is the appropriate meaning to give to the language used. At the other extreme, where the context makes it plain that adhering to the meaning suggested by apparently plain language would lead to glaring absurdity, the court will ascribe a meaning to the language that avoids the absurdity. This is said to involve a departure from the plain meaning of the words used. More accurately it is either a restriction or extension of the language used by the adoption of a narrow or broad meaning of the words, the selection of a less immediately apparent meaning or sometimes the correction of an apparent error in the language in order to avoid the identified absurdity.’¹

- [12] The LRA contains various references to the terms ‘collective agreement’, ‘contract of employment’ and ‘contract’. By specifically defining the term ‘collective agreement’ (and thereby attributing a specific meaning to it) the clear intention is that a collective agreement is something other than a contract, or a contract of employment, for the purposes of the Act.² The generally applicable rule is that where the same word is used in the same enactment, it must be reasonably supposed, in the absence of any clear indication to the contrary, to be understood in the same sense throughout the enactment (see *Minister of the Interior v Machadodorp Investments* 1957 (2) SA 395, at 404 D). The terms ‘contract of employment’, ‘contract’ and ‘collective agreement’ are used separately throughout the Act and carry different but consistent meanings. Had

¹ At pages 609-610, footnotes omitted.

² Of course, this does not mean that collective agreements have no effect, potentially at least, on contracts of employment. Section 23 (3) specifically provides that where applicable, a collective agreement varies a contract of employment.

the intention been to include collective agreements within the ambit of s 5 (4), there would have made specific reference to that term. Read in context, in my view, a 'contract' for the purposes of s 5 (4) does not include a collective agreement.

- [13] There are other compelling reasons to support this conclusion, especially in relation to the context in which s 5 (4) appears and the apparent purpose to which it is directed. First, the LRA accords primacy to collective agreements as an integral element of the autonomy that it extends to the collective bargaining process. The Act specifically contemplates that many of the rights it confers are subordinate to the terms of collective agreements. In the present context, for example, while the right to strike is clearly a right that that may for the purposes of s 5 (2) (b) and (c) be exercised in terms of the Act, collective agreements may (and do) impose limitations on the exercise of that right, to the extent of preventing an employee from the exercise of that right. To include collective agreements within the ambit of s 5 (4) and thereby to place a limitation on the scope of agreement (at least to the extent that a collective agreement would not be entitled to limit or exclude any right established by the Act) would be the antithesis of a statutory framework based on self-regulation. Such an interpretation (i.e. to extend the meaning of 'contract' to include a collective agreement) would not only frustrate the rationale of autonomy, it would make collective bargaining unworkable. For this reason too, in my view, the word 'contract' in s 5 (4) does not extend to collective agreements as defined in s 213.
- [14] The application therefore stands to be dismissed. In view of the conclusion to which I have come, it is not necessary for me to consider the respondent's further submissions based on the lack of a comparator (for the purpose of establishing any anti-union discrimination), or the application of the 'no work, no pay' principle.

Costs

[15] The court has a broad discretion in terms of s 162 to make orders for costs according to the requirements of the law and fairness. The court has traditionally not made costs orders in the case of a dispute between bargaining partners where a genuine difference of opinion exists over the terms of a collective agreement between them, and where the collective bargaining relationship may be prejudiced as a consequence of any costs order. In the present instance, I see no reason to depart from this approach, and intend to make no order as to costs.

For the above reasons, I make the following order:

1. The referral is dismissed.

ANDRE VAN NIEKERK

JUDGE OF THE LABOUR COURT

Representation

For the applicant: Adv. JG van der Riet SC, instructed by Ruth Edmonds Attorneys

For the respondent: Mr. L Frahm- Arp, Fasken Martineau.