



REPUBLIC OF SOUTH AFRICA

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

CASE NO: J2903/16

In the matter between

JOHANNESBURG METROPOLITAN BUS

SERVICE SOC LIMITED

Applicant

And

DEMAWUSA

First Respondent

SAMWU

Second Respondent

THE INDIVIDUALS LISTED IN ANNEXURE

“X” TO THE NOTICE OF APPLICATION

Third and Further Respondents

Heard: 20 December 2016

Delivered: 6 January 2017

Summary: A trade union’s authority to act on behalf of employees is limited to the powers granted to it in Section 200 of the Labour Relations Act 66 of 1995. Absent proof of trade union membership, the trade union lacks the authority to act.

JUDGMENT

Lallie, J

[1] The applicant launched this urgent application for an order, mainly, in the following terms:

'1. Dispensing with the provisions of the rules relating to the time and manner of service referred to therein and dealing with this matter as one of urgency in terms of Rule 8 of the rules and condoning, insofar as is necessary, any failure to comply with section 68 of the Labour Relations Act 66 of 1995 ("the LRA").

2. Ordering that a Rule Nisi be issued calling upon the Respondents to show cause on a date to be fixed by the Registrar of this Court why an order should not be made in the following terms:

2.1 Declaring the strike threatened by the Respondents in the First Respondent's letter of 17 November 2016 ("the Strike") to be unprotected.

2.2 Interdicting and restraining the First Respondent from calling, promoting, encouraging, supporting or otherwise furthering the Strike.

2.3 Interdicting and restraining the Third and Further Respondents from promoting, encouraging, supporting, participating in or otherwise furthering the Strike.

2.4 Alternatively to prayers 2.1, 2.2 and 2.3 above:

Pending the determination of the First Respondent's referral to the CCMA under case number GAJB12382-16:

2.4.1 interdicting and restraining the First Respondent from calling, promoting, encouraging, supporting or otherwise furthering the strike;

2.4.2 interdicting and restraining the Third and Further Respondents from promoting, encouraging, supporting, participating in or otherwise furthering the strike.'

- [2] The application is opposed by the first respondent. The factual background to this dispute is that on 24 October 2016 TR Mandiwana acting on behalf of the third and further respondents referred a grievance to the applicant. In the grievance form the name of employee is recorded as "TR Mandiwana obo members on the list". Attached to the grievance form is a list of employees some of whom have appended their signatures next to their names. The nature of their grievance is state in the following terms:

'(1) Replace all scrap tickets machine from all buse. (2) Put new machine or cashless Machine in all buses. (3) All tickets irregularities cases be put on hold and appoint a qualified person to investigate them. (4). All outsourced function be stoped on their expiry date. (5). The GM operation be removed as he was appointed out of procedure'.

A week later and before the grievance was dealt with the first respondent referred a mutual interest dispute on behalf of its members against the applicant. The dispute was not resolved at conciliation. The conciliation process succeeded to clarify the first respondent's dispute. The CCMA issued the certificate of the non-resolution of the dispute on 17 November 2016.

- [3] On 18 November 2016 the first respondent served the applicant with a notice to embark on a protected strike from 04h00 on 11 January 2017. The first respondent demanded the applicant to meet three demands namely, replacement of scrap ticket issuing machines with new or cashless machines, stoppage of all outsourcing on expiry date and the removal of the General Manager who was purportedly appointed in violation of the applicant's procedures. The applicant respondent to the strike notice by addressing a letter to the first respondent on 23 November 2016, in which it pointed out that the intended strike would be unprotected. It required the first respondent to withdraw the strike notice by 28 November 2016 failing which the applicant would launch the present application. The first respondent did not withdraw the strike notice and this application was filed.

- [4] One of the grounds the applicant sought to rely on to have the intended strike interdicted is that the first respondent lacks *locus standi* to act on behalf of the third and further respondents as they are members for SAMWU. The applicant filed a confirmatory affidavit of a SAMWU shop steward who confirmed that the third and further respondents had on 9 December 2016, according to SAMWU records, not resigned from SAMWU and were still registered and paid-up members of SAMWU. The applicant submitted that the only member of the first respondent in its employ is Mr Makhura. It further submitted that the third and further respondents should be precluded from embarking upon strike action until their membership of the first respondent had been demonstrated.
- [5] Section 200 of the Labour Relations Act 66 of 1995 as amended ("the LRA") grants a registered trade union power to act in any dispute to which any of its members is a party, in its own interest, on behalf of any of its members and in the interest of any of its members. In an attempt to prove its authority to act on behalf of the third and further respondents, the first respondent sought to rely on the third and further respondents' application forms to become members of the first respondent as well as their resignation forms as members of SAMWU. The applicant submitted that the forms are unreliable. Denying that the third and further respondents are members of the first respondent, the applicant relied on a confirmatory affidavit in which some of the third and further respondents are said to be members of SAMWU in good standing who still pay their SAMWU subscriptions.
- [6] A perusal of the third and further respondents' application forms to become members of the first respondent supports the applicant's submission that they are unreliable. Some third and further respondents signed their forms to become members of the first respondent between July 2015 and June 2016. In a number of application forms the date on which witnesses signed is not reflected. In others the date on which the member signed is not reflected. In addition to the absence of the date on which members applied for membership, the signatures of witnesses are also missing from some application forms. One application form was signed by a member in 2015 but the witness signed it in 2012. A number of application forms are not signed by witnesses. There are also application forms that were signed by witnesses days after they were signed by members.

- [7] A perusal of the third and further respondents' resignation forms from SAMWU reflects that some employees consented to the last contribution to SAMWU to be made months after their resignation dates. There is an employee who resigned from SAMWU on 28 February 2016 but gave the applicant authority to deduct his last SAMWU subscription on 27 February 2017. The third and further respondent's willingness to pay their SAMWU subscriptions long after their resignation from SAMWU supports the need to verify whether the third and further respondents are in fact the first respondent's members in good standing.
- [8] The first respondent supported its submission that the third and further respondents are no longer members of SAMWU by relying on the SAMWU's constitution which provides that by joining another trade union, its member terminates his or her SAMWU membership. Reliance which the first respondent sought to place on the SAMWU constitution is not sufficient to prove that the third and further respondents are its members in good standing. One of the factors which is taken into account in deciding whether an employee is a member of a trade union is deduction of trade union subscription fees from that employee's remuneration. It is common cause that the applicant is not deducting the first respondents' subscription fees from the third and further respondents' remuneration. The first respondent did not prove the manner in which the third and further respondents became its members in terms of its constitution. For these reasons, the first respondent has failed to prove that it has the necessary authority to act on behalf of the third and further respondents to promote, support or encourage the third and further respondents to participate in a protected strike from 11 January 2017. The third and further respondents' trade union membership will be verified when the CCMA is determining the dispute referred to it by the first respondent under case number GAJB 12382-16.
- [9] In the premises the following order is made:
- 9.1 The first respondent is interdicted and restrained from calling, promoting, encouraging, supporting or otherwise furthering the strike intended to commence at 04h00 on 11 January 2017:
- 9.1.1 Pending the determination of the first respondent's referral to the CCMA under case number GAJB12382-16.

9.2 The third and further respondents are interdicted and restrained from promoting, encouraging, supporting and participating in or otherwise furthering the strike intended to commence at 04h00 on 11 January 2017.

Lallie J

Judge of the Labour Court in South Africa

LABOUR COURT

Appearances

For the Applicant: Advocate Hutchinson

Instructed by Moodie & Robertson Attorneys

For the First Respondent: Advocate Masombuka

Instructed by Morwasehla Inc

LABOUR COURT