



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG
JUDGEMENT

Not Reportable
Case no: J2796/16

In the matter between:

NATIONAL UNION OF MINEWORKERS

Applicant

and

SIBANYE GOLD (PTY) LTD

First Respondent

**ASSOCIATION OF MINEWORKERS
AND CONSTRUCTION UNION**

Second Respondent

Heard: 7 December 2016

Delivered: 19 January 2017

JUDGMENT

RABKIN-NAICKER J

- [1] The NUM seeks a final interdict prohibiting the first respondent (Rand Uranium) from granting the second respondent (AMCU) organisational rights at its Cooke 1, 2, and 3 operations. It also prays for an order declaring the recognition granted by Rand Uranium to AMCU to be contrary to a verification ruling issued by the CCMA.
- [2] In and around 2011, Rand Uranium and NUM concluded a recognition and procedural agreement which included *inter alia* a “threshold of representativeness agreement” (the Threshold Agreement).
- [3] In terms of the Threshold Agreement, once a union is able to prove that it has recruited 25% plus 1 of eligible employees in the workplace as its members, Rand Uranium will grant a union organisational rights in the form of deductions of union membership dues and access to the premises for the purpose of holding meetings.
- [4] During August 2016, AMCU submitted a notice in terms of section 21 of the Labour Relations Act¹ to Rand Uranium in which it requested certain organisational rights. In the wake of this letter an agreement was concluded between Rand Uranium Proprietary Limited, the NUM and AMCU. The agreement was headed “Verification of AMCU members employed at Cooke 1, 2 and 3 (Rand Uranium)”. It sets out a detailed method for the verification exercise to take place. The material part of the agreement for the purposes of this application are the following:

“VERIFICATION REPORT

- 4.10 The CCMA Commissioner shall issue his AWARD/RULING within 14 days of the conclusion of the verification process.

¹ 66 of 1995. (LRA)

4.11 The CCMA AWARD/RULING shall be final and binding on the parties to this Agreement. Parties however reserve the right to exercise its rights as provided for in terms of the LRA.

4.12 Management will upon receipt of the CCMA AWARD/ RULING implement its recommendation notwithstanding any pending reviews.”

- [5] The CCMA verification report was issued on 19 October 2016 stating that AMCU membership stood at 21.9% and did not meet the threshold of 25% plus one. On 2 November 2016 Rand Uranium granted permission to AMCU to hold a meeting on 8 November in writing stating as follows:

“Please note the Mass Meeting request for 8 November 2016 have been approved for the purposes of giving employees feedback relating to only the verification process. The meeting does not imply that AMCU has been granted rights at Rand Uranium.”

- [6] The founding papers reveal that on 8 November 2016, before the meeting took place, NUM met with the employer. NUM was informed that the company had received additional forms from AMCU (approximately 120) which had now increased its membership above 25% and that AMCU would thus be recognised.

- [7] Rand Uranium avers in answer that when it received the further membership forms it approached the CCMA and enquired if the outcome of the verification exercise could be reconsidered in light of the increased membership of the Second Respondent. The CCMA advised that once a verification exercise is undertaken and a ruling is issued, the matter is considered as having been completed, and the parties had to make a new application if they wanted another verification exercise to be undertaken.

[8] Rand Uranium then conducted its own verification exercise which it submits it was fully entitled to do. The objective of this was to find out whether the documentation given to it by AMCU correctly reflected that the 126 persons were in fact its employees and members of AMCU. It also sought to determine whether these persons had been part of the earlier verification exercise.

[9] NUM's founding affidavit makes out the following case in paragraphs 17 and 18 as follows:

"17. We objected with this stance adopted by the employer outright and stated that the employer cannot give recognition to AMCU as the verification process was completed by the CCMA and furthermore that AMCU could either take the verification report on review or could launch a new application in terms of section 21 of the LRA.

Further, we indicated to the employer that it cannot also recognise on the face of a final and binding CCMA report/award..."

[10] The first verification exercise was undertaken in terms of a collective agreement between the parties. Having considered the papers in this matter, and the submissions of the parties, it is the Court's view that the meaning of clause 4 referred to in paragraph 4 of this judgment, is the true issue in dispute in these proceedings.

[11] The clause falls to be interpreted in terms of section 24 of the LRA. The CCMA has the requisite jurisdiction to perform this task. In the premises, I make the following order:

Order

1. The application is dismissed for want of jurisdiction.
2. There is no order as to costs.

H. Rabkin-Naicker

Judge of the Labour Court of South Africa

LABOUR COURT

APPEARANCES:

Applicant: GJ Rautenbach SC

Instructed by: CTH Inc.

First Respondent: PM Pillay

Instructed by: ENSafrica

LABOUR COURT