



**THE LABOUR COURT OF SOUTH AFRICA
JOHANNESBURG**

Not reportable

Case no: JR 2282 /2016

In the matter between:

**PLASTICS CONVERTORS ASSOCIATION OF
SOUTH AFRICA (PCASA)**

First Applicant

**NATIONAL EMPLOYERS' ASSOCIATION OF
SOUTH AFRICA (NEASA)**

Second Applicant

and

**METAL AND ENGINEERING INDUSTRIES
BARGAINING COUNCIL (MEIBC)**

First Respondent

**GENERAL SECRETARY OF THE
MIBCO N.O**

Second Respondent

THE MINISTER OF LABOUR

Third Respondent

**NATIONAL UNION OF METAL WORKERS
OF SOUTH AFRICA (NUMSA)**

Thirty fourth Respondent

Heard: 24 January 2017

Delivered: 24 January 2017

Reasons given: 3 February 2017

JUDGMENT

PRINSLOO J

Introduction

[1] This application concerns a collective agreement (the Registration and

Administration Expenses Collective Agreement, referred to as 'the Agreement'), concluded under the auspices of the First Respondent (MEIBC) and a request by the MEIBC directed to the Third Respondent (the Minister) to extend the agreement in terms of section 32 of the LRA. The decision by the MEIBC to request the Minister to extend the agreement is the subject of a pending review application, filed under case number JR 2282/16.

- [2] On 6 January 2017 the Applicants filed an urgent application wherein they sought an order directing that the review application be argued forthwith on 9 January 2017, and that the Minister be interdicted from acceding to the MEIBC's request to extend the Agreement pending judgment in the review application. In the alternative, the Applicants sought a preferential date for the hearing of the review application, and an order interdicting the Minister from extending the agreement pending judgment in that application.
- [3] On 24 January 2017 I made the following order in the urgent application:
1. The review application under case number JR 2282/16 is enrolled for hearing on 10 February 2017;
 2. The Respondents are directed to file opposing affidavits or supplementary affidavits by close of business on 31 January 2017;
 3. The Applicants are to file a replying affidavit, if any, by no later than close of business on 3 February 2017;
 4. All parties are directed to file heads of argument by close of business on 3 February 2017;
 5. The Third Respondent is not to take any decision on the request for extension pending the finalization of the review application.
- [4] On 25 January 2017 the thirty-fourth respondent's (NUMSA) attorneys of record requested reasons for the above order. These are my reasons.

Background

- [5] In the review application, the Applicants seek to review and set aside any and all decisions taken by the MEIBC pertaining to a request to the Minister

to extend the Agreement.

- [6] In these circumstances, the Applicants sought an undertaking from the Department of Labour and the Minister that a decision regarding the extension of the Agreement would not be taken pending the outcome of the review application. When no undertaking was given, the Applicants filed the present application.
- [7] The Applicants contend that the request by the MEIBC to extend the Agreement is unlawful and the MEIBC had no right in terms of section 32(1)(b) of the LRA to make the request.
- [8] The Applicants submit that the Respondents will not be inconvenienced by arguing the matter sooner as pleadings in the review application have closed, and it was largely on this basis that they sought an urgent hearing of the review before intervening circumstances may render the review moot and cause them irreparable harm.
- [9] As I have indicated, the urgent application was enrolled for urgent hearing on 9 January 2017. The application was postponed to 24 January 2017 to afford the Respondents an opportunity to file answering affidavits by 17 January 2017 and the Applicants to file a reply by 20 January 2017. It was also recorded that the Department of Labour should not make its recommendation to the Minister before 25 January 2017.
- [10] In the supplementary heads of argument filed on behalf of the Applicants, they submit that the effect of a successful review will be that the MEIBC's request to the Minister would be invalid. In those circumstances, the Minister would not have powers to take any further steps to extend the Agreement in terms of section 32 of the LRA and the MEIBC would be obliged to prepare and submit another (valid) request to the Minister. If the Minister extends the Agreement, it would simply give rise to a further review application.
- [11] In the heads of argument filed by NUMSA, NUMSA submitted that the urgent application should be dismissed. The first submission was that the application was not urgent. Secondly, NUMSA submits that the relief sought against the Minister would violate the principle of separation of

powers; thirdly, that the requirements for interim relief have not been met and lastly, that the review application is without merit.

- [12] In the heads of argument filed by the Minister, she made it clear that she was not opposing the relief sought relating to the determination of a preferential date on which the pending review application could be argued. In other words, the Minister agreed that the review application under case number JR 2282/16 should be set down for hearing on an expedited basis.
- [13] It follows from the position adopted by the Minister that should be urgent application proceed, the Court would be faced with the real likelihood of a duplication of proceedings, and the consequent unnecessary waste of costs and resources. On the other hand, an order that the hearing of the pending review application be expedited would obviously avoid a duplication of proceedings and would ensure an expeditious resolution of the pending dispute concerning the lawfulness of the request by the MEIBC to the Minister to extend the Agreement.
- [14] Without any consideration of the merits of the pending review application and in view of the relief sought by the Applicants in the urgent application, and having regard further to the submissions made by the Respondents in their heads of argument, I considered that hearing the urgent application in isolation of the review application (which was not ripe for hearing on 24 January 2017) would amount to dealing with the matter on a piecemeal basis and would not dispose of the matter finally. I considered that a preferable approach would be to expedite the hearing of the main matter (i.e. the review application) and dispose of it and in so doing, in effect, granted the Applicants' alternative prayer.
- [15] The Registrar of this Court was able to enroll the review application on an expedited basis, and allocated 10 February 2017 as a hearing date. I am grateful to the Registrar, given that opposed reviews are currently being set down in the third term of 2017.
- [16] I canvassed my views with the parties, and proposed that the review application be enrolled on an expedited basis on 10 February 2017. I further canvassed with Mr Maenetje whether the Minister would be willing

to give an undertaking that she would not make a decision on the extension request before 10 February 2017 when the matter would be argued.

- [17] Mr Maenetje took an instruction and indicated that the Minister was not in a position to give the undertaking sought, but that she would not oppose an order by this Court to the effect that she is not to make a decision pending the finalization of the review application.
- [18] Rule 11(3) and (4) of the Rules of the Labour Court provide that this Court may adopt any procedure it deems appropriate in the circumstances and that this Court may act in a manner that it considers expedient in the circumstances to achieve the objects of the Act. Section 1(d) (iv) of the Act sets out the as part of the primary objectives of the Act the effective resolution of labour disputes.
- [19] The order that I granted is consistent with the statutory imperatives of effective and speedy resolution. In my view, no party has been prejudiced by this approach and if there was prejudice, it is minimal. I say so for the following reasons: firstly, the review application will be fully argued and heard on its merits and all the parties will be afforded the opportunity to fully present their cases on 10 February 2017. Secondly, the hearing of the review has been expedited and the Minister will be afforded the certainty that she no doubt seeks.
- [20] NUMSA did not consent to the allocation of an expedited hearing date. This presents no bar to the order given. Firstly, this Court does not need the consent of parties or practitioners to enroll matters for hearing; indeed, this is the function of the Registrar. In any event, this Court has the inherent power to govern its own proceedings. Secondly, the enrollment of the review application on an expedited basis accommodates the interests of all parties in certainty and finality. Thirdly, as I have indicated, the Minister as the party the Applicants primarily sought relief against in the urgent application, did not object to the order granted by this Court. No relief is sought against NUMSA in the urgent application and NUMSA will be afforded a full opportunity to argue its case on 10 February 2017. I fail to see how NUMSA can object to an order where the primary party against whom relief was sought, agrees to the terms of the order. In view of the

Minister's position and the arrangement for an expedited hearing date that was acceptable to the Minister, I did not consider it necessary for the urgent application to be argued. I already alluded to the fact that I took an approach that would avoid dealing with the matter on a piecemeal basis.

- [21] I have made it clear to the parties that I will deal with the review in an expedited manner and I further undertook to expedite the delivery of a judgment in the matter.
- [22] The matter is enrolled for 10 February 2017 as the first available date, with due consideration of the fact that the parties needed time to file affidavits and heads of argument.
- [23] For these reasons, I made the order reflected above.

Prinsloo J

Judge of the Labour Court

Appearances:

Applicant: Advocate A Redding SC

Instructed by: Anton Bakker Attorneys

Third Respondent: Advocate H Maenetje SC with Advocate Nhlapo

Instructed by: State Attorney

Thirty fourth Respondent: Advocate H Barnes with Advocate M Maenetje

Instructed by: Haffegée Roskam Savage Attorneys