



Of interest to other judges

THE LABOUR COURT OF SOUTH AFRICA,

HELD AT JOHANNESBURG

Case no: J 275/17

In the matter between:

**BIZ AFRICA 1150 (PTY) LTD t/a TAU
MINING**

Applicant

and

**ASSOCIATION OF MINeworkERS
AND CONSTRUCTION UNION**

First Respondent

**THE PERSONS WHOSE NAMES
ARE LISTED IN ANNEXURE "A" TO
THE NOTICE OF APPLICATION**

Second Respondent

Heard: 16 February 2017

Delivered: 24 February 2017

Summary: (Strike interdict-dispute over whether the strike demand concerns a matter of interest or right- 64(4))

JUDGMENT

LAGRANGE J

Introduction

- [1] This is the second part of a judgement in an application for interim relief. The first part was handed down the day the matter was heard and concerned the effect of an agreement to suspend a strike pending conciliation in terms of s 150 of the Labour Relations Act, 66 of 1995 ('the LRA'). Some parts of the narrative in the first part of the judgement are simply repeated here for the sake of coherence. This part of the judgement concerns the protected nature of the strike. The union issued a strike notice in respect of a dispute concerning the non-payment of a '13th cheque' to its members employed by the applicant at the end of 2016.
- [2] The applicant asks the court to make an interim order declaring the strike action unprotected and to interdict further participation in the strike and the picket by the union's members being held on the premises of the applicant's client where the members work.
- [3] The essence of the dispute about the protected nature of the strike is that, the applicant argues that the strike is nothing more than a strike over a demand to consult with the union before deciding not to pay the bonus and is a dispute over an alleged unilateral change to the strikers contracts of employment, whereas in terms of the provisions of those contracts the award of a bonus is a matter for management discretion and therefore a failure to pay the bonus does not amount to a unilateral change to their conditions. The union contends that even though the dispute was referred to, as a strike over a unilateral change to terms and conditions of employment and made reference to section 64(4) of the LRA, the demand effectively constitutes a demand for payment of a 13th bonus cheque, and accordingly is a dispute of interest.
- [4] On the papers, I am satisfied that the bonus described in the employees contracts of employment is a discretionary one and not a contractual right. I am also satisfied that union and its members are aggrieved both by the fact that there was not proper consultation prior to the decision not to pay

the bonus and the decision not to award the bonus. The effective demand is that the bonus should be paid.

- [5] The applicant did not claim that the contract of employment was part of a collectively negotiated agreement in terms of which employees may not strike over conditions of employment for the duration of the agreement. The mere fact that the respondents in this case wanted the applicant to review the exercise of its discretion not to award the bonus or to pay the bonus, in my view does not preclude them from striking to persuade the employer to do so. In the circumstances, I am satisfied that the strike is not unprotected and that aside from their agreement to temporarily suspend their strike, once the suspension is lifted they are entitled to proceed with their strike.
- [6] The applicant had also asked that the respondents be denied the right to picket at the main entrance of Kumba Iron Ore Sishen mine pending the determination of picketing rules by the CCMA. This matter was referred to the CCMA and was due to be dealt with earlier this week. In view of the fact that the picket took place on the premises of the mine and not at the premises of the applicant, the mine needed to be given an opportunity to address the picketing arrangements in terms of s 69(6)(a). It would be wrong in my view for the court to second guess the outcome of the CCMA proceedings in this regard, so I am prepared to grant the applicant temporary relief in respect of picketing at the mine.

Order

- [7] The applicant's non-compliance with the forms and service contemplated in the Labour Court Rules is condoned and the matter is dealt with as one of urgency in terms of Rule 8.
- [8] The urgent application to declare the strike initiated by the strike notice issued on 3 February 2017 unprotected is dismissed.
- [9] The respondents are called upon to show cause on or about 20 April 2017 on or about 10 H00 why an order should not be made in the following terms -

9.1 Interdicting and restraining the first and further respondents from picketing at the main entrance to the Kumba Iron Ore Sishen Mine pending the determination of picketing rules by the CCMA in support of the strike initiated by the strike notice issued by the first respondent on 3 February 2017.

9.2 Ordering the first to further respondents to pay the costs of the application in the event of opposing a final order.

[10] The relief in paragraphs 9.1 and 9.2 shall operate as interim relief pending the return date of the court order.

[11] The order shall be served on the first respondent by serving and/or telefaxing a copy of the order to the first respondent.

[12] The order shall be served on the second and further respondents by serving and/or telefaxing a copy of the order to the first respondent and by placing copies of the order on notice boards and the entrance to the applicant's premises and/or placing copies of the order at the entrance to the Kumba Iron Ore Sishen Mine's entrances.

Lagrange J

Judge of the Labour Court of South Africa

APPEARANCE

For the Applicant:

**M Van As instructed by
Bowman Gilfillan**

For the Respondents

**S Collet instructed by
Larry Dave Attorneys**

LABOUR COURT