



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: J 2594-17

In the matter between:

SOUTH AFRICAN POLICING UNION

Applicant

and

SOUTH AFRICAN POLICE SERVICE

First Respondent

NATIONAL COMMISSIONER,

SOUTH AFRICAN POLICE SERVICE

Second Respondent

Heard: 18 October 2017

Delivered: 19 October 2017

JUDGMENT

WHITCHER, J:

[1] This matter concerns the continuous strike by the SAPS call centre employees who work at the “10111 emergency call centre”.

- [2] SAPU has approached this court on an urgent basis for orders declaring that the strike is protected and to interdict the SAPS from instituting disciplinary action against the strikers.
- [3] In my view SAPS presented a compelling case that the strike is unprotected on the basis that the issue in dispute has been settled by a collective agreement concluded between the SAPS and the majority union, POPCRU.
- [4] Section 23(1)(d) of the LRA empowers employers and majority unions to make binding on non-parties a collective agreement they have concluded.
- [5] It is also questionable whether the continuation of the strike is functional to collective bargaining considering that it is common cause between the parties that the SAPS does not have the power to determine and upgrade conditions of service and salary levels of PSA employees. That power falls within the mandate of the Department of Public Service and Administration (DPSA) and negotiated in the Public Service and Co-Ordination Bargaining Council.
- [6] This court, however, is not in a position to make a ruling that the strike is unprotected because, prior to launching this application in the Labour Court, SAPU referred a dispute to the SSSBC concerning the interpretation and application of the collective agreement. This dispute is still pending before the SSSBC and is of material relevance to whether the strike is protected or not.
- [7] I turn now to SAPU's prayer for this court to interdict the SAPS from instituting disciplinary proceedings against the strikers.
- [8] What SAPU is effectively asking this court to do is to intervene in internal disciplinary proceedings as a forum of first instance and decide internal disciplinary matters. This, the court is not inclined to do.
- [9] In the case of *Lesiba v Department of Justice*¹ Van Niekerk J held that for courts to intervene in internal workplace disciplinary proceedings would undermine the statutory purpose underlying dispute resolution under the LRA. Challenges to disciplinary action are to be dealt with in the ordinary course of

¹ (J2262/17) [2017] ZALCJHB 365 (4 October 2017)

the exercise of workplace discipline. If the rulings made in these internal disciplinary processes become the subject of dispute, these are matters that ought to be dealt with during the course of an arbitration under the auspices of the CCMA or bargaining council having jurisdiction. This court exercises a supervisory jurisdiction by way of its power to review rulings and awards made by arbitrators. That system is entirely undermined when parties seek this court's intervention, as a forum of first instance, effectively to micro-manage workplace disciplinary hearings.²

Order

[10] In the premises, the following order is made:

1. The application is dismissed with costs.

B. Whitcher

Judge of the Labour Court of South Africa

² See paragraphs 5 to 8.

APPEARANCES:

For the Applicant: A Gerber

Instructed by:

For the Respondents: J Bhima,

Instructed by: The State Attorney, Johannesburg

LABOUR COURT