



Of interest to other judges

**THE LABOUR COURT OF SOUTH AFRICA,
HELD AT JOHANNESBURG**

Case No: J 3455/17

In the matter between:

SUN INTERNATIONAL LIMITED

First Applicant

**AFRISUN GAUTENG (PTY) LTD t/a
CARNIVAL CITY**

Second Applicant

and

SACCAWU

First Respondent

**THE INDIVIDUAL RESPONDENTS
LISTED IN ANNEXURE 'A' TO THE
NOTICE OF MOTION**

**Second to Further
Respondents**

Heard: 01 March 2018

Delivered: 02 March 2018

Summary: (unprotected strike interdict-unilateral change-return day-urgency
not for determination on return day -mootness)

JUDGMENT

LAGRANGE J

Background

- [1] In this matter an interim order was handed down on 31 December 2017 *inter alia* declaring a strike over a grievance relating to the introduction of a biometric time and attendance system to be unprotected.

Evaluation

- [2] On the return day, it is apparent that, it was common cause that the introduction of the new clocking system constituted a work practice and not a variation of part of employees' terms and conditions of employment. Consequently, the introduction of the system did not entitle the individual respondents to embark on what might be called an 'interdictory strike' under section 64 (4) of the Labour relations act, 66 of 1995 ('the LRA').
- [3] For the sake of completeness, though the merits on the protected nature of the strike are no longer in issue and even though it may be *obiter*, I am satisfied that the strike would still not have been protected in any event, because the real reason for the strike concerned alleged short payments arising from the introduction of the new biometric system. Although the union denied that the dispute concerned short payments, the union never disputed the veracity of the exchanges between the Group Human Resources officer and the Deputy President of the union which confirmed that rectification of alleged short payments arising from the Kronos system was the reason for the strike. This complaint is also echoed in the answering affidavit.
- [4] On the return day, the confirmation of the rule was opposed essentially only on the basis that the application had not been urgent and that the issue was now moot.
- [5] On the issue of mootness, the respondents did not set out any basis in their answering affidavit or supplementary affidavit explaining the basis of this contention. However, it was submitted from the bar that all the individual respondents except for the shop stewards had accepted the biometric system. The court was informed that shop stewards were simply

awaiting the final outcome of the application. I have a difficulty with SACCWU's contention that the subject matter of the application is moot when the workplace leadership of the individual respondents appears on the union's own submissions implicitly not to have conceded that the applicant was entitled to introduce the new system because it did not vary contracts of employment. If the matter was genuinely moot they would have no interest in withholding their use of the biometric clocking system pending the outcome of this case. Consequently, this argument falls to be rejected.

- [6] The second argument advanced was that the decision in ***Polyoak (Pty) Ltd v Chemical Workers Industrial Union & others***¹, which concerned the return day of an interim strike interdict requires the court on the return day to revisit whether or not the application was urgent when making a final order. Having perused the judgement, I do not find any suggestion there that a court on a return day is again seized with the question of urgency. What the judgment does say is that the case for urgency must be set out in the supporting affidavit.² It is implicit in the fact that the court issued an interim interdict that the judge must have decided the application was urgent, otherwise the application would not have been considered at all but would have struck it off the roll for lack of urgency. Moreover, the finding that the application is urgent is not part of the rule which the court is asked to discharge or confirm. What the court is required to determine on the return day is the substantive merits of the applicant's claim to be granted a final order. Accordingly this point is something of a red herring and must be dismissed.
- [7] Even if this court were to consider whether the short notice of the application was warranted, I would accept that the application was urgent, that the applicant gave sufficient notice to the respondents that it intended to launch the application and the respondents had an opportunity to oppose it and given the timing of the strike notice and the time of the year

¹ (1999) 20 ILJ 392 (LC)

² At 395E-G

when the strike was planned, notice of less than 48 hours was justified. Accordingly, the requirements of section 68 (2) were met.

- [8] On the issue of costs it was submitted the parties have an ongoing relationship. That may be so, but the respondents sought to create maximum disruption by initiate a strike at the height of the festive season on short notice and the applicant was compelled to incur the unnecessary costs of launching the application. It also persisted in opposing final relief even though it conceded the strike was unprotected and its workplace leadership had not acceded to complying with the new clocking system. In the circumstances, it is fair in my view that costs should follow the result.

Order

- [1] The rule issued on 31 December 2017 is confirmed.
- [2] The respondents must pay the applicant's costs, the one paying the others to be absolved.

Lagrange J

Judge of the Labour Court of South Africa

APPEARANCES

APPLICANT:

B Van Zyl of Van Zyl Rudd
Inc.

RESPONDENT:

H Molotsi instructed by MS
Molebaloa Attorneys

LABOUR COURT