



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: 2025 - 029924

In the matter between:

SASOL SOUTH AFRICA LIMITED

Applicant

and

**ASSOCIATION OF MINEWORKERS AND CONSTRUCTION
UNION (AMCU)**

First Respondent

**THE INDIVIDUALS LISTED IN
ANNEXURE "A".**

Second to Further Respondents

Heard: 13 March 2025

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email and publication on the Labour Court's website. The date and time for hand-down is deemed to be on 18 March 2025

JUDGMENT

TLHOTLHALEMAJE, J*Introduction:*

[1] The matter is before the urgent court following a Notice brought by the first, second to further respondents in terms of Rule 38(8) of the Rules of this Court, anticipating the *rule nisi* issued by this Court on 7 March 2025.

[2] In accordance with the *rule nisi*, the strike action embarked upon by the second to further respondents, who are members of the first respondent AMCU at the applicant (Sasol), was declared to be unprotected and illegal. The employees were interdicted and restrained from continuing, perpetuating and engaging in further unprotected strike action.

Background:

[3] The business of Sasol's at its operations at the Ekandustria site, involves the manufacturing and supplying of detonators to the mining industry. The Site consists of nine different plant areas which produces six different product lines of explosives and explosive accessories. Ekandustria operations runs its plants on 2, 3 and 4 weekly work shift systems.

[4] AMCU is the majority union at Ekandustria with a membership of approximately 345 members. It had entered into a recognition agreement with Sasol on 12 November 2015, in terms of which collective bargaining and issues related to terms and conditions of employment of all of its members employed by Sasol are dealt with.

[5] AMCU members on the morning shift of 4 March 2025 commenced industrial action at the Site. That action according to Sasol, came about against the following brief background;

5.1 On or about 28 June 2022, Sasol took a decision to change its shift system from a 3-shift work system to a 4-shift work system in the Booster plant at the site. The rationale for the change was due to Sasol's

operational requirements, to ensure that the 4-shift work system and 24/7 operations met market demands. It was not in dispute that the 4-shift system had been in use at that time in other areas of the business conducted at the Site.

5.2 AMCU and its members were aggrieved with the introduction and manner of implementation of the 4-shift work system, more particularly regarding the manner in which its members were being remunerated and the rates paid for Sunday work.

5.3 Sasol contends that it had made attempts to clarify its position and any misunderstanding with AMCU and the employees regarding the pay rates for Sunday work, which included a shift allowance of 18%, which had been part of policy over time. Those engagements, including the intervention of the Department of Labour and Employment however proved unsuccessful

5.4 AMCU had on 17 April 2023, referred a dispute to the Commission for Conciliation, Mediation and Arbitration (CCMA), seeking to challenge Sasol's decision to implement the 4-shift work system, which had been implemented with effect from 28 June 2022. In the referral, AMCU had indicated that members were aggrieved about the lunch period of one hour, 1.5 payment of Sunday and extra hours in the shift pattern. A demand was made for Sasol to stop the implementation of the 4-work shift system at the Site '*until all unresolved issues are resolved*'.

5.5 The CCMA had transferred the dispute to the National Bargaining Council for the Chemical Industry (the NBCCI) under whose jurisdiction it fell. Attempts at conciliation despite resolution of other issues ultimately failed, and a certificate of outcome was issued on 24 May 2024, wherein it was recorded that the dispute pertained to section 134 of the Labour Relations Act (LRA)¹, '*Matters of mutual interest*'.

5.6 Sasol contends that overtime since the certificate of outcome was issued, the only issue remaining in dispute was whether the employees who worked the 4-shift system and were obliged to work on 2 Sundays during a month, were entitled to payment in accordance with section 16(1) if the

¹ Act 66 of 1995

Basic Conditions of Employment² (BCEA), i.e., to one and a half time of the employee's wage for each hour worked.

5.7 Sasol's position on the other hand was that employees on a 4-shift work system were paid a shift allowance of 18% paid for each shift worked, which covered or subsumed the entitlement to one and a half time of the employees' wage for each hour worked.

5.8 Against Sasol's stance, it submitted that the dispute was no longer about any unwillingness to work a 4-shift work system, but about an entitlement to one and a half time of the employees' wage for each hour worked on a Sunday, over and above the 18% allowance. It was submitted that this dispute was not one which employees could embark upon a strike action as it was a rights dispute which was arbitrable, or to be referred to this Court under section 65(1)(c) of the LRA. Given its position on the outstanding issue, Sasol contends that its attempts to persuade AMCU to have the matter subjected to either court processes or private arbitration were rejected.

5.9 The Picketing Rules were issued on 23 May 2023, and in the light of the certificate of outcome, Sasol had discontinued the 4-shift work system in May 2024, and reverted to the 3-shift system at the site. Because of operational requirements, Sasol then entered into discussions with AMCU to introduce intermittent shift system adjustment (moving 2-shift system to 3-shift system or 3-shift system to 4-shift system in any of the plants. This was then done with effect from 21 October 2024.

5.10 Sasol contends however that AMCU during November/December 2024, threatened to issue a strike notice in the light of the certificate of outcome. Discussions between the parties continued from 13 December 2024 and as at 21 January 2025, AMCU had issued a 48 hours' notice that the employees would embark on a strike. Because of the defective nature of the notice, AMCU suspended the strike action on 24 January 2025.

5.11 Further engagements between parties during 21 January and 26 February 2025 did not yield any results. On 17 February 2025, AMCU was then advised to elect which shift work system between 2,3 and 4 the

² Act 75 of 1997

employees preferred. When no response was forthcoming, Sasol then on 18 February 2025, notified AMCU of its intention to suspend the operation of the 4-shift work system with effect from 24 February 2025 until further notice. This was despite the fact that an overwhelming 78% of all employees were in favour of the continuance of the 4-shift work system whilst efforts were being made to resolve the matter.

5.12 On 21 February 2025, Sasol sent correspondence to AMCU advising it that it (Sasol) was challenging the validity of the certificate of outcome which AMCU sought to rely on in embarking on strike action; and that there would be no basis for the strike action as the implementation of the 4-shift work system was to be suspended, and further that employees would therefore no longer be required to work on Sundays.

5.13 After the 4-shift work system was suspended, AMCU had then on 28 February 2025, referred a dispute to the NBCCI, challenging the suspension without consultation, and seeking its reinstatement.

5.14 The referral was followed by a second strike notice issued by AMCU, indicating that the strike action would commence from 4 March 2025. The second strike notice was issued based on the initial certificate of outcome issued on 24 May 2024.

5.15 Sasol contends that it had complied with the initial demand to revoke the implementation of the 4-shift system, and that when it did so on 18 February 2025, the initial dispute was resolved. It further contends that when AMCU issued the new referral seeking the re-implementation of the 4-shift system that was discontinued because of its demands, it was merely approbating and reprobating in view of what it sought in terms of the initial referral of the dispute.

Submissions and evaluation:

[6] Upon the *rule nisi* having been granted interdicting the intended strike action, in anticipating the return date and seeking a discharge of the *rule nisi*, AMCU had filed a further supplementary affidavit in response to the replying affidavit, to which Sasol had also filed a response.

[7] Sasol relied on three salient grounds in arguing that the intended strike action was unprotected. These mainly related to whether it had demonstrated a clear right to have the intended strike action declared unprotected. More specifically, the issues were whether the certificate of outcome had become stale; whether the dispute was resolved since the certificate of outcome was issued, and whether the issue related to a dispute of right or was a matter of mutual interest. These issues were agreed upon by both parties on the return date as being central to the determination of the dispute.

[8] Prior to addressing the three central issues for determination, it needs to be reiterated that it is trite that on the return date, the Court is required to determine the substantive merits of the applicant's claim, and whether a final order ought to be granted. Thus, the Court must be satisfied that a proper case has been made out for each facet of the relief sought.³

[9] In determining whether the intended strike action is unprotected, the starting point is section 23(2)(c) of the Constitution⁴, which confers on every employee, the right to strike, subject to any limitations which under section 23(5) must be in compliance with the provisions of section 36(1) of the Constitution. The constitutional provision finds further expression in section 64(1)(a) of the Labour Relations Act⁵ (LRA), which provides that every employee has the right to strike and every employer has recourse to lock-out if the issue in dispute has been referred to a council or to the Commission as required by the LRA.

[10] The prerequisites of a protected strike are those set out in section 64(1)(a)(i) and (ii); and (b) of the LRA. A strike action will be deemed unprotected to the extent that it falls foul of the provisions of section 65 of the LRA. Section 64(1)(a) of the LRA merely refers to the issue in dispute having been referred to a council or to the Commission as required by this Act. Given the Constitutional guarantees, the Court

³ *Polyoak (Pty) Ltd v Chemical Workers Industrial Union & others* (1999) 20 ILJ 329 (LC) at 395B.

⁴ The Constitution of the Republic of South Africa, 1996 (Act 108 of 1996).

⁵ Act 66 of 1995, as amended.

must not unduly limit the right to strike by reading in implied terms, and the limitation provisions must be interpreted in a manner least intrusive of the right⁶.

Is the certificate of outcome stale?

[11] Sasol submitted that the strike certificate issued by the NBCCI on 24 May 2024 was stale and could not be relied upon to embark on protected strike action, especially as it was issued for and under different circumstances. It contended that to rely on a strike notice some 10 months later was incompetent, and that AMCU was aware of this problem, hence it had issued the new referral. It was submitted that since however the second referral was not even subject to conciliation, AMCU could not proceed to strike as that dispute was a subject of conciliation proceedings set down for 14 March 2025 (the date on which the return date was anticipated). Sasol further added that in the light of the date that the certificate of outcome was issued, the then prevailing circumstances had changed drastically, thereby disentitling AMCU to embark upon strike action, more specifically in the light of its new referral.

[12] AMCU's main argument was that there was no basis for the certificate of outcome to be deemed stale in that there remained a live dispute between the parties, which they have been unable to resolve despite numerous meetings and negotiations, and that the employees had consequently elected to resort to their constitutional right to strike.

[13] Against the above submissions, it can safely be said that a certificate of outcome does not become stale due to a failure to act on it promptly by issuing a strike notice⁷, *albeit* an unreasonably long period or delay in exercising that right may in certain instances require that the procedural requirements under section 64(1) of the LRA be repeated⁸. An example of such circumstances would be where the facts leading to the dispute that led to the issuance of the certificate have materially

⁶ See *Transport and Allied Workers Union of South Africa obo Ngedle and Others v Unitrans Fuel and Chemical (Pty) Ltd Limited* [2016] ZACC 28; 2016 (11) BCLR 1440 (CC); [2016] 11 BLLR 1059 (CC); (2016) 37 ILJ 2485 (CC) at paras [222] to [224]

⁷ *Tiger Wheels Babelegi (Pty) Ltd v NUMSA* 1999 1 BLLR 66 (LC).

⁸ *PRASA t/a Metrorail v SATAWU and Others* C190/2016 (2016) (LC)

changed as at the time that the strike notice was issued, or where the delay is so egregious without any justification.

[14] In equal measure, the legal position in this Court is that a certificate of outcome has no meaningful significance beyond indicating that a matter before the CCMA or bargaining council was referred for conciliation and remains unresolved⁹. Thus, a strike will be protected under section 64(1)(a)(i) and (ii) of the LRA even if there is no certificate of non-resolution of the dispute issued. The proviso is that a period of 30 days from the date of the referral of the dispute to conciliation had lapsed and all the other requirements of section 64 of the LRA were complied with. Of course any unreasonable delay from the 30 day period to issue a strike notice would still be a consideration. However, for the purposes of Sasol's argument, any challenge to the certificate of outcome in AMCU's possession would have to point out the unreasonableness of the delay in the issuance of the strike notice, and further in what manner the circumstances had changed during the period between its issuance and the strike notice to make the strike unprotected.

[15] It is my view that Sasol's contentions regarding the unreasonableness of the delay is misplaced. There is no basis for any conclusion to be reached that any delays may have caused the certificate of outcome to be stale. This was so in that it was common cause that after the certificate of outcome was issued in May 2024, several events took place, including the discontinuation of the 4-shift system; several engagements between the parties regarding the principle of intermittent shift system adjustment, further engagements into December 2024, and the issuing of the initial defective strike notice on 25 January 2025.

[16] In the circumstances of the case, it is irrelevant as to which party was responsible for the delays as this is in the nature of collective bargaining, given the parties' divergent view on AMCU's demands. The fact remains that the disagreement between the parties over the method of implementation and pay rates of the 4-shift work system had been a subject of on-going engagements.

⁹ *Air Chefs (Pty) Ltd v SA Transport and Allied Workers Union and Other* (2013) 34 ILJ 119 (LC) at para 15; *SA Post Office Ltd v Moloi NO and Others* (2012) 33 ILJ 715 (LC) at para 37.

[17] Furthermore, the initial certificate of outcome cannot be invalidated by the second referral which it was common cause, had not been conciliated. The only issue as shall be addressed further below is whether circumstances since the certificate was issued had changed; whether the demand that led to the issuance of the certificate of outcome pertains to a dispute of right or of mutual interests for the purposes of a strike; and whether the dispute had become resolved over time since the certificate of outcome was issued.

Dispute of right or matter of mutual interest, and has it been resolved?

[18] Sasol's argument in interdicting the strike action was that the strike was unprotected in terms of section 65(1)(c) as AMCU had the right to refer the dispute to arbitration or to the Labour Court in terms of the LRA or in terms of any other employment law such as the BCEA. This was so in that based on the 4-shift system in terms of which AMCU seeks 1.5 times the ordinary rate for Sunday work and the 18% shift allowance. It consistently maintained that the 1.5 was subsumed in the 18%. It argued that since AMCU sought both the 18% shift allowance and 1.5 times the ordinary rate for Sunday work, the dispute was one of right rather than that of mutual interest, and therefore the strike action would fall foul of section 65(1)(c) of the LRA.

[19] AMCU contends in its supplementary affidavit that the circumstances have not changed as its demands remained the same since the initial referral and the date of the issuance of the certificate. It submitted that since the commencement of the dispute in 2024, it had maintained that it sought 1.5 times the ordinary rate for Sunday work and the 18% shift allowance, and it was on that basis that the dispute was categorised as one of mutual interest. Meetings had been held with Sasol where the calculation pertaining to the 18% allowance was targeted, and these were further followed up with an exchange of documents.

[20] AMCU further maintained that Sasol has always been aware that it demanded the 18% shift allowance and 1.5 times the ordinary rate for work done on Sundays. Accordingly, this was not a new demand, since Sasol has consistently maintained that it paid employees on a 4-shift system an 18% shift allowance, which

covered the entitlement to one and a half times the employees' wage for each hour worked. AMCU contends that it was not correct that it had for the first time in its answering affidavit, tabled the demand for its members to be paid 1.5 times the ordinary rate for Sundays as well as the 18% shift allowance. This was so in that its demands were to be determined from the relevant facts which included the referral form, any relevant correspondence, the negotiations between the parties, and the affidavits before the Court.

[21] This court accepts that all labour disputes are potentially matters of mutual interest¹⁰, and that the nature of a dispute cannot be determined by how it was characterised in the referral or in the certificate of outcome. The determination is based on whether on the facts, the true nature of the dispute is one that is capable of adjudication or one over which a strike can be embarked upon. The true nature of the dispute is determined by asking what the real complaints and demands of the employees are. As correctly pointed out on behalf of AMCU, the answer to these questions is to be found in the pleadings, the referral (*albeit* with caution), and the context of engagements between the parties¹¹.

[22] Arising from above, the facts that are not seriously dispute are that Sasol at its operations at its Ekandustria site, has always operated on the various shift systems due to its operational requirements. In June 2022, Sasol had extended the 4-shift work system to its Booster operations where the employees are employed. The 4-shift work system had been in operation in other areas of the operations for some time prior to being implemented at the Booster operations.

[23] The 4-shift work system had always been remunerated at an 18% allowance, and AMCU members were aggrieved on the grounds that they were in addition to the 18% allowance, entitled to payment of 1.5 times their wages for each hour worked on Sundays. In the referral¹² of the dispute to the CCMA and which was subsequently transferred to the NBCCI, AMCU summarised the nature of the dispute as emanating from the implementation of the 4-shift work system in June 2022

¹⁰ *Vanachem Vanadium Products (Pty) Ltd v NUMSA* (2014) 35 ILJ 3241 (LC) at para 18.

¹¹ See also *Pikitup (SOC) Ltd v SAMWU obo Members* (2014) 35 ILJ 983 (LAC) at para 47

¹² Annexure 'CN1' to the founding affidavit

without consultation, and their concerns regarding payment of the shift (1.5) which was not previously paid. Under the results required, AMCU requested the Council to *stop the 4-shift work system and instruct Sasol not to further implement it until all issues were resolved*. It is against the nature of the dispute as described and as ventilated before the conciliating commissioner at the NBCCI, that a certificate of outcome was issued recording the dispute as pertaining to matter of mutual interest.

[24] AMCU is correct in pointing out that its demand has consistently been the 18% shift allowance and 1.5 times the ordinary rate for work done on Sundays. The referral and various correspondence between the parties points to this issue being central to the dispute. The difficulty however with whether the dispute was one of rights or mutual interest is that AMCU's demands, are intrinsically linked to the implementation of the 4-shift work system, something which appears to have escaped both parties. I did not understand it to be AMCU's case that similar problems or demands were made when other shift work systems were implemented. Effectively, without the 4-shift work system, the 18% allowance or any other demands surrounding it fall away. The point being made is that as long as the 4-shift work system is implemented, and there is a dispute as to how the 18% allowance is calculated to the extent that AMCU demands more than that percentage, the dispute remains one of mutual interest and cannot be justiciable.

[25] The opposite of the above however is what happens when the 4-shift work system is discontinued? In my view, the answer is that the underlying cause of AMCU's complaint falls away, and as I have already indicated, there cannot be any demands when that shift system is suspended or terminated completely, as the 18% allowance intrinsically linked to it equally falls away. Effectively, AMCU's demands cannot be viewed in isolation from the implementation of the 4-shift work system.

[26] Against the above observation, it was common cause that upon the introduction of the 4-shift work system in June 2022, the employees had worked the shifts until April 2023 when a dispute was referred to the CCMA. When that shift system was suspended in May 2024, any demands or dispute surrounding payments in accordance with that shift system fell away. When it was reintroduced in October

2024, the demands persisted, but when it was again suspended on 24 February 2025, the demands fell away.

[27] The questions whether the issue in dispute is one of rights or of mutual interest is obviously superfluous as the 4-shift work system has constantly been accompanied by the 18% allowance, which Sasol contends incorporates the 1.5 times the ordinary rate for work done on Sundays. AMCU however rejects that reasoning and demands an additional pay, which makes the dispute a matter of mutual interest as already indicated.

[28] Whether the dispute has been resolved must be assessed against my conclusions in this judgment that AMCU's demands cannot be divorced from the implementation of that shift system. Effectively therefore, since it was AMCU that sought the suspension of the 4-shift system until '*all issues were resolved*', and since as at the time that a strike notice was issued the 4-shift system was suspended, there were no other issues to be resolved, and it cannot be correct as submitted on behalf of AMCU, that there were still other issues to be resolved. The implementation and suspension of the shift system was the beginning and end of any disputes surrounding it.

[29] Sasol was correct in its submissions that AMCU is effectively approbating and reprobating regarding this shift system. AMCU cannot seek its demise or suspension as apparent from its initial referral, and when that happens then cry foul. It must make an election, particularly since its implementation is beneficial to all the parties. To reiterate, it is only the implementation of that shift system that would trigger any disputes. As I understood AMCU's case and as confirmed by Sasol, both parties are in favour of the 4-shift work system. For Sasol, this shift system serves its operational requirements, whilst all employees would equally benefit from it through shift allowances. The implementation of the 4-shift work system is nonetheless a management prerogative in accordance with its operational requirements. AMCU cannot demand its implementation as a right. If, however, AMCU wants to have it implemented but with certain conditions as it has been its case throughout, that then becomes a matter of mutual interests only and when it is re-implemented.

[30] The above conclusions in my view disposes of the third and final issue raised related to whether the dispute between the parties was resolved or not. In the light of what has been said in this judgment, to the extent that as at the time that the strike notice was issued and AMCU sought to embark on a strike, the 4-shift system had been suspended. AMCU is correct in pointing out that the suspension of the 4-shift work system does not resolve the dispute. The suspension of the 4-shift system merely placed a pause to AMCU's demands, which it is entitled to pursue once the system is re-introduced. However, for the purposes of the strike notice issued on 28 February 2025, and in the light of the suspension of the 4-shift work system as at 24 February 2025, there can be no discernible basis for the demands nor was there an existing dispute to entitle AMCU and its members to embark on strike action. It follows that Sasol had met the requirements of the relief it seeks, and no more needs to be said in this regard in the light of the conclusions reached elsewhere in this judgment.

[31] Neither of the parties sought any costs order in the light of their on-going relationship. Accordingly, no such an order will be made.

[32] Accordingly, the following order is made;

Order:

1. The *Rule Nisi* granted by this Court on 7 May 2025 is confirmed.
2. There is no order as to costs.

Edwin Tlhotlhemaje
Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Adv. D Pretorius, of Fluxmans Inc.

For the 1st and 2nd Respondents: Adv. A.L. Cooke, instructed by LDA Incorporated Attorneys.