



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

REPORTABLE

Case no: 2025 – 076663

In the matter between:

MVELATRANS (PTY) LTD t/a BOJANALA BUS SERVICES

Applicant

and

DEMAWUSA

First Respondent

**MEMBERS OF THE FIRST RESPONDENT
WHOSE NAMES APPEAR ON ANNEXURE A**

Second to Further Respondents

Heard: 13 June 2025

Delivered: 20 June 2025

Summary: Application for interim interdict against strike action. Requirements not fulfilled and application dismissed.

JUDGMENT

DANIELS J

Introduction

[1] This matter came before me on 13 June 2025 as an opposed application, brought by the applicant to interdict strike action by the respondents. The application was brought in terms of section 68(1) of the LRA, notice of the application having been given in terms of section 68(2). The matter was argued on the basis of interim relief being sought by the applicant, though the heads presented by the applicant argued for final relief.

[2] When seeking interim relief applicant must show, as was said in *National Council of Societies for the Prevention of Cruelty to Animals v Openshaw*¹ the following: (a) A prima facie right, which requires proof of facts that establish the right under substantive law; (b) A well-grounded apprehension of irreparable harm if the interim relief is not granted and the ultimate relief is eventually granted; (c) The balance of convenience favours the granting of an interim interdict; (d) The applicant has no other satisfactory remedy. For reasons which will become clear, I need consider only whether the applicant has demonstrated a prima facie (or final) right.

[3] The first respondent argued that the applicant failed to satisfy the requirements of urgency as contemplated by Rule 38. I cannot agree. The requirements of urgency are aptly set out in *Association of Mineworkers & Construction Union & others v Northam Platinum Ltd & another*² and I believe those requirements are satisfied.

[4] The first respondent moved a counter application, brought to declare clause 18.3.1 of the Main Collective Agreement of the South African Road Passenger Bargaining Council to be unconstitutional. I intend writing a separate judgment in relation to that matter.

Material facts

¹ 2008 (5) SA 339 (SCA) at para 20

² (2016) 37 ILJ 2840 (LC) at paras 20 – 26

[5] The facts are largely common cause:

5.1 The applicant operates a bus transportation services in Rustenburg, Northwest Province. It provides transport services to members of the public, and transports approximately 15 000 members of the public daily.

5.2 The applicant operates from two sites, and employs approximately a large number of bus drivers, many of whom are members of the first respondent.

5.3 The applicant falls within the scope of the South African Road Passenger Bargaining Council ("SARPBAC" or "Bargaining Council"). The terms and conditions of employment of the employees of the applicant are governed by the Main Collective Agreement ("MCA") of SARPBAC. The trade union parties to SARPBAC include several trade unions, but do not include the first respondent.

5.4 Annexure B to the Constitution of the SARPBAC ("Annexure B") contains the dispute resolution procedure. Clause 18.3 thereof states:

"18.3 If conciliation fails to resolve a dispute of interest that has been referred to SARPBAC in terms of Clause 4 of this appendix and a certificate has been issued by the Commissioner stating that the dispute has not been resolved then:-

18.3.1. after a cooling-off period of thirty (30) days from the date of such certificate, or any extension of this period agreed to between the parties to the dispute.

18.3.2. every employee, involved in the dispute who has the right to strike in terms of Section 64 of the Act, may embark on such strike action subject to at least forty-eight (48) hours' written notice of the commencement of such strike action being given to the Employer that is party to the dispute or, where more than one Employer is party to the same dispute, to SARPBAC and to the Employers' Organisation to which such Employers are members." (own emphasis)

5.5 On 2 February 2025, the first respondent referred its dispute to conciliation before the Bargaining Council. The dispute contained the following demands:

1. *Improvement of sleeping ground conditions*
2. *Tracking of drive ("demand two")*
3. *Reimbursement of over taxation on bonuses*
4. *Weigh machines and emergency tickets*
5. *Compulsory airtime and data to drivers ("demand five")*
6. *Stoppage on blacklisting of dismissed workers*
7. *Poor bus conditions*
8. *Expired bus driving permits*
9. *Transporting of bus drivers after work ("demand nine")*
10. *Removal of Mr. Blessing Nkosi and Mr. Phithlo ("demand ten")*

5.6 On 7 April, the first respondent issued a notice of strike action informing the applicant of its intention to commence with strike action on 9 April. When the applicant's attorneys advised the first respondent that the strike would be unprotected, the first respondent agreed to suspend its strike until further notice.

5.7 The dispute was conciliated, on 2 May, but remained unresolved after conciliation. A certificate of outcome of conciliation was issued by the Bargaining Council on 12 May.

5.8 At conciliation, the applicant raised two jurisdictional issues relating primarily to two of the demands, namely, the demand in relation to the transport of bus drivers after work (demand nine) and the removal of Messrs. Nkosi and Phithlo (demand ten). The applicant contended inter alia that demand number nine was a substantive issue and could only be negotiated at industry level through the Bargaining Council, and demand ten was an unreasonable or unlawful demand.

5.9 The panelist conducting the conciliation on behalf of the Bargaining Council issued a jurisdictional ruling on 12 May. In his ruling, the panelist found that applicant's contentions in relations to demands nine and ten had merit. He therefore refused to issue a certificate of outcome of conciliation in relation to those two demands.

5.10 On 21 May, the first respondent filed a review application to review and set aside the jurisdictional ruling.

5.11 On 23 May, the first respondent issued a strike notice informing the applicant of the intention of its members to embark on strike action with effect from 28 May. Despite the strike notice, it does not appear that the strike commenced on 28 May.

5.12 The strike notice identifies eight demands over which first respondent's members intend to strike. The notice omits demand number two ("tracking of drive") and number five ("compulsory airtime and data to drivers") as identified in the dispute referral form.

5.13 On 26 May, the applicant addressed a letter to the General Secretary of the first respondent advising him that the strike would be unprotected because the union had not complied with the thirty-day cooling off period contemplated by clause 18.3.

5.14 Later that same day, an application was launched by the first respondent under case number 2025-075805 to declare clause 18.3 to be unconstitutional.

5.15 The applicant contends that the strike is unprotected because:

5.15.1 The thirty-day cooling off period, which commenced on 12 May, has not expired before the commencement of the strike,

5.15.2 Properly interpreted, clause 18.3.1 requires that the strike notice cannot be issued before the thirty-day cooling off period has expired,

5.15.3 The jurisdictional ruling of the Bargaining Council precludes the first respondent's members from engaging in strike action in relation to demands nine and ten.

5.16 In its answering affidavit, the first respondent refers to its founding affidavit in the counter application where it clarified that demand ten (in respect of Messrs. Nkosi and Phithlo) is not unlawful because the demand is only that the applicant take disciplinary steps against them. It also denies that demand nine is a substantive demand and states that it is entitled to such transport under the Basic Conditions of Employment Act because some drivers commence work at 04h00 and leave after 18h00.

Legal principles and analysis

[6] As mentioned in paragraph 5.15 above, there are three issues arising. The first may be disposed of easily. At the hearing the applicant conceded that thirty days had indeed passed since the certificate of outcome of conciliation had been issued.

[7] The next issue is the interpretation of clause 18.3. It is clear clause 18.3.1 creates a further procedural limitation on strike action, one that is not contemplated by section 64(1). In general, such procedural limitations of the strikes are permissible. Collective agreements may limit the right to strike³ by prohibiting the right to strike on a particular issue, providing for a process to deal with a particular issue,⁴ or otherwise regulating the issue in dispute.⁵

[8] The dominant approach to the interpretation of legal documents, including contracts, is expressed through the interpretative triad of language, context and

³ See section 65(1)(a) of the LRA

⁴ *Air Chefs (Pty) Ltd v SA Transport and Allied Workers Union and Others* (2013) 34 ILJ 119 (LC); *Fidelity Guards v PTWU & others* [1997] 11 BLLR 1425 (LC)

⁵ See section 65(3)(a)(i) of the LRA

purpose. This was explained by Wallis JA in *Natal Joint Municipal Pension Fund v Endumeni Municipality*⁶ as follows:

“[18] The present state of the law can be expressed as follows: Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective, not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or businesslike for the words actually used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation; in a contractual context it is to make a contract for the parties other than the one they in fact made. The 'inevitable point of departure is the language of the provision itself', read in context and having regard to the purpose of the provision and the background to the preparation and production of the document.”

(own emphasis)

[9] However, collective agreements are not ordinary contracts and there are additional concerns at play. The Labour Appeal Court recently explained this in *National Union of Metalworkers of SA v Motor Industry Staff Association & others*⁷ as follows:

⁶ 2012 (4) SA 593 (SCA)

⁷ (2025) 46 ILJ 109 (LAC)

“[30] As far back as 1997, this court recognised that a collective agreement concluded in terms of the LRA is not an ordinary contract, and that the context within which the collective agreement operates is vastly different from that of a commercial contract. Collective agreements operate within the framework established by the LRA and the interpretation of a collective agreement ought to be approached with the objects and purpose of the LRA in mind. In *North East Cape Forests v SA Agricultural Plantation & Allied Workers Union & others*, Froneman DJP stated: ‘It is, in my view, quite clear that these primary objects of the Act are better served by the practical approach to the interpretation and application of the collective agreement as set out in the judgment of Myburgh JP, rather than by reference to purely contractual principles. On the particular facts of this case the object of orderly bargaining and effective expression of the fundamental right to strike will be frustrated by the latter approach.’

[31] In *eThekweni Municipality (Health Department) v Independent Municipal & Allied Trade Union on behalf of Foster & others*, this court held that a collective agreement must be interpreted ‘in such a manner as to ensure effective and sound industrial relations’. Further, in *Western Cape Department of Health v Van Wyk & others*, this court held: ‘In interpreting the collective agreement the arbitrator is required to consider the aim, purpose and all the terms of the collective agreement. Furthermore, the arbitrator is enjoined to bear in mind that a collective agreement is not like an ordinary contract. Since the arbitrator derives his/her powers from the Act he/she must at all times take into account the primary objects of the Act. The primary objects of the Act are better served by an approach that is practical to the interpretation and application of such agreements, namely, to promote the effective, fair and speedy resolution of labour disputes. In addition, it is expected of the arbitrator to adopt an interpretation and application that is fair to the parties.’

[32] What these decisions make clear is that when a collective agreement is interpreted, in contrast to a commercial contract, a more normative approach is required. In the case of commercial contracts, a degree of primacy is placed on contractual autonomy, in the form particularly of the intention of the parties. When a collective agreement is interpreted, values based on the social

character of the agreement are relevant. To this end, the common-law canons of interpretation of contracts offer obvious guidance but must necessarily be tempered, where appropriate, with a consideration of the statutory context in which a collective agreement is concluded and specifically, the objects and purposes of the LRA.”

(own emphasis)

[10] It is in this broader social and legislative context that collective agreements must be interpreted. Regard must be had not only to the language, context, and purpose but also to the social character of the collective agreement and the primary objects of the LRA. Of course, one of the primary objects of the LRA is to give effect to the constitutional right to strike.⁸

[11] It is also necessary bear in mind that collective agreements are imbued with statutory force. In *Platinum Mile Investments (Pty) Ltd t/a Transiton Transport v SATAWU & others*⁹ the court said: ‘There can be no dispute that a collective bargaining agreement or an industrial agreement is not a contract but rather a piece of subordinate legislation.’ Accordingly, when interpreting a collective agreement which limits the right to strike, any court or tribunal is enjoined to adopt an interpretation that is constitutionally permissible¹⁰ and, given the injunction in section

⁸ See section 1(a) of the LRA. In *SATAWU and others v Moloto NO and another* (2012) 33 ILJ 2549 (CC) at para 20 the Constitutional Court held: “Thus, the provisions of the Act must be interpreted purposively so as to give effect to the Constitution, the objects of the Act itself and the purpose of the provisions in issue. But, this approach does not necessarily equate to an expansive construction of the provisions of the Act. This is so because the purpose of the Act may well require a restrictive interpretation of the particular provisions so that the exercise of a protected right is not unduly limited. Therefore, due regard must be had to the express language used in the provisions under consideration. Furthermore, care must be taken against unduly limiting a fundamental right which has been conferred (as in this case) without express limitation by reading implied restrictions into it.” (own emphasis)

⁹ (2010) 31 ILJ 2037 (LAC) at para 46

¹⁰ See the approach adopted in *CSS Tactical (Pty) Ltd v Security Officers Civil Rights & Allied Workers Union & Others* (2015) 36 ILJ 2764 (LAC) at para 25

39(2) of the Constitution¹¹ adopt the interpretation that is least restrictive of the right to strike.

[12] The applicant contends for an interpretation of clause 18.3 which would require that the cooling off period must expire before a strike notice may be given. On this interpretation, even a ten day strike notice issued a day before the end of the cooling off period would be invalid. The applicant's interpretation appears to be premised on the phrase "*subject to*".¹² In my view, there is nothing in the phrase "subject to" which requires that the notice be given after the cooling off period. In the present context, the phrase "subject to" means that commencement of the strike is subject to a strike notice being issued first. However, there is nothing in the plain language of the clause which demands an interpretation that the notice must be given after the expiry of the cooling off period. The purpose of the cooling off period is to stall the commencement of the strike during the cooling off period, to allow for negotiations before the intensity and pressure of a strike. The purpose is not to create an unnecessary procedural obstacle to strike action. Clause 18.3.2 refers to every employee '*who has the right to strike in terms of section 64*'. Employees only have the right to strike when they have complied with section 64.¹³ Accordingly, the right to strike only accrues after the strike notice has been given. It is clear that there are two possible interpretations of clause 18.3. In my view, the proper interpretation of clause 18.3 is that the strike notice may be issued prior to the end of the cooling

¹¹ Act No 108 of 1996 as amended. Section 39(2) of the Constitution reads: "When interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights."

¹² The phrase 'subject to' has no *a priori* meaning. In *Pangourne Properties Ltd v Gill Ramsden (Pty) Ltd* 1996 (1) SA 1182 (A) at 1187E Harms JA held: "*The phrase "subject to" has no a priori meaning. A dictionary establishes that. In statutory contexts it is often used to establish what is dominant and what is subordinate (cf. Rennie NO v Gordon and Another NNO 1988 (1) SA 1 (A) at 21D-22D). In contractual settings, especially insurance contracts, it is usually used to create a suspensive condition, but also (always depending on the context) a resolute condition (SA Eagle Versekeringsmaatskappy Bpk v Steyn 1991 (4) SA 841 (A) at 848 B-D). Frumer v Maitland 1954 (3) SA 840 (A) is an example of an instance where, in a contract, it simply introduced a condition of the contract, i.e. a material term (in contradistinction to a suspensive or resolute condition).*"

¹³ When this interpretation was suggested to the applicant's counsel during argument, she appeared to agree with the court.

off period, provided that the strike may only commence after the end of the cooling off period. This interpretation is compliant with the interpretative triad of text, context, and purpose; and it is the least restrictive of constitutional rights.

[13] In its founding papers, in relation to demands nine and ten, applicant states that the Bargaining Council has made a ruling and therefore the demands cannot form the basis of protected strike action. This is the only challenge in relation to those demands. It is not uncommon, though unfortunate, for employers seek to limit the scope of strike action by taking “jurisdictional points” during conciliation. In this regard, in *the City of Johannesburg Metropolitan Municipality & another v SA Municipal Workers Union and others*¹⁴ per Van Niekerk J (as he then was) held:

“[15] The referral to conciliation was made on 7 January 2011. Insofar as the applicant contends that the jurisdictional ruling made by the commissioner renders the strike unprotected, while it may be correct that the commissioner found that the bargaining council had no jurisdiction to entertain the referral, the applicants' submissions overlook the fact that it is not necessary under the LRA for a conciliation hearing actually to take place before a strike can be protected. In terms of s 64(1)(a) of the LRA, it is sufficient if 30 days have elapsed since the referral of the dispute. In other words, the commissioner's ruling affected only the convening of the conciliation process; it says no more than that the bargaining council did not have the jurisdiction to conciliate the dispute. Since a conciliation meeting is not a precondition for a strike to be protected (because it is sufficient that 30 days have elapsed after the date of the referral) the commissioner's ruling is not a relevant factor.”

(own emphasis)

[14] The jurisdictional ruling therefore does not prevent strike action in relation to demands nine and ten. The only effect is that the Bargaining Council has not conciliated those demands, an unfortunate consequence of the applicant's approach. It falls within the jurisdiction of this court to determine which demands are permissible, for the purposes of strike action, and which are not. The Bargaining

¹⁴ (2011) 32 ILJ 1909 (LC)

Council cannot usurp the jurisdiction and powers of this court by issuing jurisdictional rulings of this kind.

[15] The applicant does not contend, in its papers, that demand ten is unlawful. It contends only that the first respondent cannot engage in strike action while the jurisdictional ruling of the Bargaining Council is extant. As I explained earlier, this is incorrect. In any event, it is trite that demands by a union that an employer take disciplinary action, or place an employee on precautionary suspension, are not unlawful *per se* unless the demands require the employer to act unlawfully.¹⁵

Costs

[16] The parties appear to have a healthy and ongoing relationship. Whilst the applicant's approach was ill-conceived, I do not believe it acted *mala fide*. It simply sought to protect its business. Furthermore, there is still an underlying dispute that needs to be finally resolved. Mulcting a party with costs can strain the relationship, and hinder the resolution of the underlying dispute. Finally, I am guided by the judgment in *Zungu v Premier of the Province of KwaZulu-Natal & others*¹⁶ that, in employment matters, costs do not automatically follow the result. Exercising my wide discretion in terms of section 162(1) of the LRA, I believe no costs order is appropriate.

Conclusion

[17] While it may be that the applicant has satisfied the requirements of urgency, balance of convenience, and no alternative remedy, it has failed to illustrate a *prima facie* right (or clear right for that matter) to the relief sought. The strike action contemplated by the first respondent, and its members, is protected. In the result, the following order is made:

¹⁵ See *Metro Bus (Pty) Ltd v SAMWU on behalf of Members* (2009) 30 ILJ 2952 (LC); *City of Johannesburg Metropolitan Municipality v SALGBC & others* (2009) 30 ILJ 2064 (LC); *TSI Holdings (Pty) Ltd & Others v NUMSA & others* (2006) 27 ILJ 1483 (LAC) at para 39

¹⁶ (2018) 39 ILJ 523 (CC) at para 25

Order

1. The application may be heard as one of urgency.
2. The application is dismissed,
3. There is no order as to costs.

R Daniels

Judge of the Labour Court of South Africa

Appearances:

For the Applicant:

Adv Maharaj-Pillay

Instructed by: Thomson Wilks Inc

For the First Respondent:

Mr. Mokoena

Mokoena Japhta Inc