



IN THE LABOUR COURT OF SOUTH AFRICA, DURBAN

Case No: 2025-188912

Not Reportable

In the matter between:

ALP AFRICA (PTY) LTD

Applicant

and

NUMSA obo MEMBERS

First Respondent

ECONOMIC FREEDOM FIGHTERS

Second Respondent

Heard: 16 October 2025

Delivered: This judgment was handed down electronically by circulation to the parties and / or their legal representatives by email. The date and time for handing-down is deemed 14h00 on 21 October 2025

JUDGMENT

ALLEN-YAMAN J

Introduction

[1] The applicant initiated an application in which it sought the following orders,

- '1. *Declaring the application as urgent in terms of Rule 38 of the Labour Court Rules and that the forms and service provided for in the Rules read with Section 68(2) of the Labour Relations Act, are dispensed with and that the application be disposed of on an urgent basis;*
2. *That a rule nisi be issued calling upon the Respondents to show cause, on a date and time to be allocated by the Registrar, why an order in the following terms should not be made:*
 - 2.1 *Interdicting and restraining the First Respondent and its members, in terms of Section 68(1)(a) of the Labour Relations Act, from directly or indirectly participating in the unprotected strike and furthermore from committing any conduct in contemplation or furtherance of the unprotected strike;*
 - 2.2 *Interdicting the Second Respondent and its members from interfering with the business of the Applicant by entering its premises, making threats to Applicant's management, assets or any of its employees or enticing any of Applicant's employees to participate in the strike action;*
3. *That prayers 2.1 and 2.2 serve as an interim order, with immediate effect, pending the return date to be allocated by the Registrar;*
4. *That the Applicant is permitted to file a supplementary affidavit by not later than 24 October 2025, and if necessary, approach this Court on further urgent relief should same be required;*
5. *That Respondents, if they so wish, must file their answering affidavits by no later than 7 November 2025, and Applicant its replying affidavit by 14 November 2025;*
6. *Ordering the First Respondent to take all reasonable steps as may be necessary to secure compliance with the Interim Order by inter alia:*
 - 6.1 *Circulating and communicating the Interim Order to their members; and*
 - 6.2 *Impressing on their members the need to comply with the Interim Order;*
7. *Directing that service of the Interim Order shall be effected:*
 - 7.1 *On the First and Second Respondents by e-mailing a copy of the Order to the First and Second Respondents;*
 - 7.2 *On the affected employees by appointing a duly authorised employee of the Applicant, by reading out the order and providing copies to any employee upon their request;*

8. *Costs, only to be determined on the return date, against the First Respondent, and costs against the Second Respondent, in the event of opposition by the Second Respondent, on Scale C including the costs of counsel;*
9. *Further and / or alternative relief.'*

[2] The application was opposed by the first respondent, whilst the second respondent delivered a notice to abide. At the hearing of the matter Mr van der Westhuizen, who appeared for the applicant, conceded that it had not made out a case against the second respondent and that the applicant accordingly did not persist in seeking any relief against it. Insofar as the first respondent was concerned, the parties were *ad idem* that in view of the fact that a full set of affidavits had been exchanged, the matter could be decided on a final, rather than an interlocutory basis. The first respondent, in the interim, agreed to suspend the commencement of the strike until such time as this court had determined the issues in question.

Analysis

- [3] The applicant's case that the first respondent's members' intended strike would be unprotected rested upon its assertion that the demand which underpinned the proposed industrial action was unlawful. The first respondent disputed the correctness of such view.
- [4] On 10 October 2025 pursuant to the conclusion of the process of conciliation in relation to a dispute which had been referred by the first respondent to the Dispute Resolution Centre, and Picketing Rules having been issued, the first respondent notified the applicant of the intention of its members employed by the applicant to embark upon strike action. Its notice read,

'Please note that NUMSA obo Members hereby embark upon a potential strike due to failure by the company to apply their disciplinary code to discipline for their senior employee the strike is in connection to section 64(1) of the LRA, 134 other mutual interest issues. The strike will commence on the 16th October 2025.

We give notice of a protected industrial action in terms of Section 64(4) (5) of the Labour Relations Act 66 of 1995 as amended, we require the company to accede to our demands and apply the company disciplinary code or place Naresh Maheshi to other ALP Africa business unit.

Kindly note that we have attached the guideline for DRC picketing rules and certificate of outcome.

Should the employer adhere to our proposals of moving Naresh to other ALP plant in Africa or apply company disciplinary code, the union will engage its members and end the strike.

The union remains available for further engagements.

We hope you find the above in order.'

- [5] The demand arose out of a complaint relating to the choice of language utilised by the applicant's Commercial Financial Controller, Mr Naresh Maheshi, encapsulated in the first respondent's referral form 7.11 as, *'The employer uses vulgar words to employees,'* and their complaint that the applicant had failed to apply its own disciplinary policy and code of conduct in respect of his behaviour.
- [6] In its written response to the first respondent's notice of intention to strike, the applicant asserted that it would not comply with the first respondent's demands for the reason that they did not constitute matters of mutual interest. In the present application the applicant re-iterated that the issue was not one of mutual interest, amongst its other contentions.
- [7] In amplification of its assertion that the first respondent's demand was unlawful the applicant alleged that,

'It is submitted that the demand by the First Respondent, for my removal or disciplining me, is not a matter of mutual interest.

It is trite law that matters of mutual interest relate to the rights regarding the employee/employer relationship. The Labour Relations Act does not grant an employee the right to determine the composition or removal of members of management such remains the prerogative of the Applicant as a private entity.

Therefore, it is submitted that vis-à-vis the classification of the First Respondent's demand, the strike action of the First Respondent is unlawful.'

[8] It alleged further that,

'If it is accepted that the First Respondent's demand is a matter of mutual interest (which is denied), and if the Applicant were to institute disciplinary proceedings against me or remove me from my position and effect a unilateral transfer, such would be a complete disregard of my own rights.

The dispute is not a strikable issue, but even if it was, it no longer can be so, considering that the use of vulgar language towards Mr Monagan through a properly constituted grievance process was resolved by agreement.'

[9] In denying the correctness of the applicant's conclusions concerning the legality of the demand as being one of mutual interest, the first respondent asserted in response,

'The content hereof is admitted. It is submitted that the averments herein is precisely and squarely what places this dispute within the ambit of a dispute of mutual interest.

Employees who feel aggrieved by the presence of a manager who allegedly abuses them in the workplace do not have any legal right entitling them (the employees) to compel the employer to transfer, move or subject to disciplinary processes the manager complained about.

It is submitted that, employees in employment law do have the right to demand, within boundaries of lawfulness and in good faith that the employer, without violating the rights of the manager complained about, transfer, move or subject to disciplinary processes such manager against whom a group of workers are aggrieved.'

- [10] Insofar as the remaining allegations were concerned, the first respondent denied the correctness thereof. In specific response to the applicant's assertion that the issue underpinning the demand had been settled, it asserted,

'Mr Monagang did not accept the outcome of the grievance process hence the demand (that the deponent be transferred, moved or subjected to disciplinary proceedings) and dispute.'

- [11] At the hearing of the matter Mr van der Westhuizen did not persist in the argument that the demand was not one of mutual interest. In the circumstances, the first issue to be decided is whether the demand that Mr Maheshi be subjected to the applicant's disciplinary processes was premised on an issue which had previously been resolved.

- [12] On 25 May 2023 one of the first respondent's members, Mr Silias Monageng, lodged a grievance concerning certain of Mr Maheshi's conduct. His complaint concerned the manner in which Mr Maheshi addressed him in general, and in particular, that he had been sworn at on numerous occasions. As an outcome, Mr Monageng required the following,

'I wish for is for my case to be escalated and resolved. I'm tired of feeling like I don't belong here and being disrespected. I demand the same respect I give Mr Naresh and he must also stop with his threats towards me. I need to work freely without thinking that what is he going to shout at me about when he comes to our department. This whole thing is affecting my mental and emotional health. I no longer want to drag my feet when I gave (sic) to come to work and don't want to end up losing myself. I am humbly requesting for intervention.'

- [13] Despite the applicant's reliance on Mr Monageng's grievance having been resolved, its allegations in its founding affidavit were unsupported by any documentary evidence to that effect. It contented itself with the assertions that Mr Maheshi had issued an apology to Mr Monageng in accordance with both the facilitator's recommendations as well as the agreement reached between them.

[14] The first respondent denied that Mr Monageng's grievance had been resolved to his satisfaction, however no confirmatory affidavits on the part of either Mr Monageng or his representative at his grievance hearing, Mr Patrick Hlongwane, were delivered. Mr John Baloyi, who deposed to the first respondent's answering affidavit alleged no more than that he had been involved in and represented the members of the first respondent in all the processes relevant to the dispute to which the strike notice in question related. That allegation cannot be interpreted to mean that Mr Baloyi was involved in Mr Monageng's dispute, and accordingly there is no real challenge to the allegation that agreement had been reached between Mr Monageng and Mr Maheshi. That resolution was recorded in the recommendation issued by Mr Sanwabile Witbooi, the facilitator of the grievance hearing,

'In consideration of the submissions made by both parties, the Facilitator confirms that both parties agreed to the requests made by the other party in order to reconcile. An apology was made by the Respondent and the Grievant.'

This court must accordingly accept the applicant's version, that Mr Monageng's complaint had been resolved upon the conclusion of his grievance in July 2023.

[15] The question is then whether the issue which underpins the demand is, in fact, the self-same issue which was previously resolved between Mr Monageng and Mr Maheshi.

[16] On the first respondent's version, the collective grievance was not confined to the issue of Mr Maheshi's choice of language vis-à-vis Mr Monageng,

*'On 25 May 2023 and on 13 February 2024 respectively, the employees of the Applicant submitted a written group or collective grievance against the Applicant's manager Mr Naresh Maheshi ("Maheshi") (the deponent to the applicant's founding affidavit) relating to his continuous usage of derogatory, insulting and/or inflammatory language towards the employees in the workplace by calling and referring to the employees as "bhencho" or "bencho".'*¹

¹ It was common cause that the term is a Hindi/Urdu profanity.

[17] The applicant's denial in his replying affidavit that he had ever used the term complained of after having used it in relation to Mr Monageng did not address the separate question regarding whether this had been the first respondent's collective complaint. Such denial also did not accord with the statements captured in the applicant's own minutes of the collective grievance hearing. This document evinced that whilst the individual and collective complaints had as a point of commonality Mr Maheshi's use of vulgar language, they were not the same.

[18] The issue raised as a part of the collective grievance of 2 December 2024, which subsequently became the demand, was that,

'Bencho – Naresh like to mention this word, what does it mean.'

[19] The facilitator's summation of the first respondent's complaint concerning this particular issue was expressed in the minute as follows,

4.6 Respondent liked to mention the word Bancho

4.6.1 The grievant submitted that the respondent liked mentioning the word bencho and that staff would like to know what it meant. The respondent indicated that it was a bad swear word equivalent to the F-word or Sister F-word.

4.6.2 The grievant called Silas Monageng as a witness again and the witness agreed. The witness indicated that the respondent had used the word bencho especially when he was upset. The witness stated that he tried to use it on an Indian person in an altercation and he did not get a positive reaction. The witness stated that he told Abraham, and they googled it and found that it was an unpleasant word.

4.6.3 No evidence was submitted by the grievant.

4.6.4 In closing the grievant submitted that they seek a good working environment as employees are suffering and living with stress. The grievant submitted that they are disappointed with the use of vulgar words against employees as it was inappropriate. The grievant submitted that the Company must have a strategy regarding accessing the policies and must not take time to fix payslips.

4.6.5 The grievant submitted that the desired outcome by employees is that the respondent must be removed from the plant as he refused to report to a

South African senior which showed that he did not want to work with South Africans.'

[20] Mr Maheshi, who represented the respondent at the collective grievance hearing, was reflected as having mentioned in response that this particular issue had previously been raised by Mr Monageng in his own grievance, in relation to which an outcome had been delivered on 26 July 2023. He asserted further that the parties had agreed that the matter had been resolved, and had not been repeated. However, he was reflected as having said thereafter that,

'5.4 The respondent stated that he apologised for the vulgar words used and that he had not directed them at anyone specifically. The respondent stated that he took personal responsibility for using the word bencho and that he will improve.'

[21] The recommendation made by the facilitator in respect of this issue was,

'The Facilitator found that the usage of abusive and / or inappropriate vulgar words is not permitted in the workplace and the respondent must apologise to employees and ensure that he refrains from such conduct.'

[22] In consideration of the minutes of both grievances it is evident that Mr Monageng, in his own grievance, had complained about Mr Maheshi having sworn at him specifically, without having particularised the word(s) he found to have been offensive. On the other hand, the collective complaint subsequently referred by the first respondent concerned Mr Maheshi's use of the specific word 'bencho' in relation to several of the applicant's employees. In circumstances in which Mr Maheshi had initially attempted to persuade the facilitator that this issue had been resolved, he was ultimately directed, once more, to apologise; not to Mr Monageng, but to the applicant's employees.

[23] In the circumstances, this court does not find that the issue underpinning the demand informing the first respondent's members decision to embark on industrial action is one which was previously resolved.

[24] Finally, insofar as the question of the demand itself potentially infringing Mr Maheshi's rights were concerned, this court was referred to the matter of DPD Laser Logistics (Pty) Ltd v Democratic True Revolutionary Union of South Africa (DETRUSA) and Others (2024/133059) [2024] ZALCJHB 478 (27 November 2024) in which this court found that a demand that an employee be suspended was unlawful, and that strike action in support of such demand was prohibited.

[25] To give proper consideration to the conclusions arrived at by this court in DPD Laser Logistics it is necessary first to have reference to the decision of the Labour Appeal Court in TSI Holdings (Pty) Ltd and Others v National Union of Metalworkers of SA and Others (2006) 27 ILJ 1483 (LAC) in which the court was called upon to consider the legality of a demand by NUMSA that a senior manager be dismissed with immediate effect. The Labour Appeal Court accepted that it was notionally permissible for employees to engage in industrial action in support of a demand that an employee be fairly dismissed,² but rejected the argument by NUMSA that the demand in question had implied any obligation on the part of TSI to have acted fairly when dismissing the senior manager in question. The court found that it was not possible, on the evidence before it, to find that the employee in question could have been fairly dismissed, for the reason that no admissible evidence served before the court upon which it could arrive at a conclusion that such dismissal, if effected, would have been fair.

[26] In the result, the Labour Appeal Court found,

'Indeed, we must approach the matter on the basis that there is no evidence before us that, if the appellant had dismissed Mr Van Zyl as demanded by the respondents, it would have been able to prove that he had made the remarks and that there was a fair reason for his dismissal based on his conduct. This leads inevitably to the conclusion that the appellant would have dismissed Mr Van Zyl unfairly if it had complied with the respondent's demand. Such a dismissal would have been a violation of Mr Van Zyl's

² At paragraph 39

right not to be unfairly dismissed that is provided for in section 185(a) of the Act in that there would have been no fair reason for his dismissal.’³

[27] In DPD Laser Logistics this court was called upon to determine whether the demands issued by DEPUWSA were lawful,

‘The first demand was that Mathebula be suspended and investigated for what is broadly said to be misconduct. The second demand was that the applicant cease applying its own disciplinary code selectively. The question is now simply whether either of these two demands (issues in dispute) would resort within the confines of where strike action has been prohibited under the LRA.’

[28] With reference to TSI, it reasoned,

‘It follows that the duty would be on the trade union and employee parties (members) making the demand for the dismissal of a particular employee, to place sufficient evidence before the Court to satisfy the Court that there is a proper substantive reason for dismissing the employee, and that the requirements of procedural fairness will be met. In short, these parties must provide evidence to show that the demanded dismissal, if perpetrated, would be substantively and procedurally fair, as contemplated in the LRA.’

[29] In this court’s subsequent consideration of various authorities, it is evident that it approached the question of the legality of any demand made in relation to the discipline of employees from the premise that TSI was authority for the proposition that a union / employees are, in the face of proceedings such as the present application, required to demonstrate the legality of the demand. This court is unable to agree with such an approach.

[30] An applicant such as the present who applies to court for an interdict is required to establish, among other things, a clear right. In relation to the interdicting of intended strike action, the right invariably relied upon is that it is not obliged to endure an unprotected strike. From this it follows that such an applicant is required to establish that the intended strike will be unprotected, either with

³ At paragraph 44

reference to the limitations established in the LRA, or the unlawfulness of the demand itself.

- [31] Where the demand is merely that the employer take disciplinary action against a particular employee, which is neither inherently unfair nor expressly prohibited by the LRA (in contrast to a demand that an employee be dismissed) the applicant itself would be required to establish that the mere action of taking disciplinary action against the employee would affect one or more of such employee's rights for, unlike the dismissal of an employee, the LRA does not expressly establish the right not to be unfairly disciplined. Moreover, to require a union / employees in motion proceedings in which an applicant seeks to interdict a strike to establish that the taking of disciplinary action would not be unfair would be tantamount to requiring them to establish not only the lawfulness of the demand but also, that the employees have a right to strike and that the applicant is not entitled to an interdict.
- [32] Save for the assertion by Mr Maheshi that the taking of disciplinary action against him would negatively impact his 'rights', and his further denial that he had committed any misconduct, the applicant failed to substantiate his assertions that the mere taking of disciplinary action against him would somehow infringe any of his rights.
- [33] As to the first respondent's demand that Mr Maheshi be transferred elsewhere, absent any evidence having been placed before this court concerning the contractual arrangements between Mr Maheshi and the applicant relating to his place of employment or the parties' agreement concerning the possibility of his being transferred elsewhere, this court is likewise unable to find that such a demand is unlawful.
- [34] In light of the conclusions reached, this court does not find that the first respondent's demand is unlawful and the application accordingly falls to be dismissed.

Costs

[35] The parties were in agreement that, irrespective of the outcome of the application, each party would bear its own costs in the interests of preserving the ongoing bargaining relationship between them.

Order

1. The application is declared to be urgent in terms of Rule 38 of the Labour Court Rules and the forms and service provided for in the Rules read with Section 68(2) of the Labour Relations Act are dispensed with.
2. The application is dismissed.
3. There is no order as to costs.

K Allen-Yaman

Judge of the Labour Court of South Africa

Appearances

Applicant:

Mr van der Westhuizen, instructed by Schoeman Borman Inc

First Respondent:

Mr Shezi, Legal Officer of the first respondent

Second Respondent:

Mr Godrich of Garee Gordich Attorneys