

**IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT PORT ELIZABETH
P508/98**

CASE NO.:

In the matter between

**FOOD & GENERAL WORKERS UNION
Applicant**

First

S S KUDIN & 6 OTHERS

Further Applicants

and

**THE MINISTER OF SAFETY & SECURITY
Respondent**

First

**NATIONAL COMMISSIONER FOR S.A.P.S.
Respondent**

Second

**MEC FOR SAFETY AND SECURITY E.C.
Respondent**

Third

**UITENHAGE STATION COMMISSIONER
Respondent**

Fourth

PICARDI HOTELS LTD

Fifth Respondent

REASONS FOR ORDER

GROGAN AJ:

- [1] This application was heard as a matter of urgency on 30 December 1998, and dismissed on the same day. The following is an amplification of the extempore reasons I gave for the decision, amended where necessary upon further reflection.
- [2] The applicants seek a rule nisi inter alia declaring “that the strike between the Applicants and the Fifth Respondents (sic) is a labour dispute between an employer and its employees and that the strikers have a right to picket the employer’s business in support of their protected strike and the police are not supposed to interfere unless a criminal act has been committed”. They also seek an order interdicting the respondents “or any of their employees from unlawfully interfering with the strike in any manner”.
- [3] While the draft orders are not a model of lucidity, it is clear that the orders sought amount in essence to a declarator that the conduct in which the second and further applicants are currently engaged amounts to a strike that complies with the provisions of the Labour Relations Act 66 of 1995

("the Act"), and an interdict restraining the respondents from interfering with their right to picket in accordance with section 69.

- [4] The second and further applicants (seven in number) were employed by the fifth respondent at its Uitenhage store. They were and still are members of the first applicant. On 30 May 1998 the first applicant submitted a number of demands concerning wages and conditions of service to the fifth respondent. The fifth respondent declined to enter into negotiations over these demands. On 28 September 1998 the first applicant referred a dispute with the fifth respondent to the CCMA. On 27 October 1998 the parties met under the auspices of the Commission to attempt conciliation. When this proved unsuccessful the conciliating commissioner issued a certificate indicating that a dispute concerning a "refusal to bargain" remained unresolved. On 18 December 1998 the first applicant gave the fifth respondent notice of its members' intention to commence a strike on 23 December 1998. The conciliating commissioner issued an advisory award on 22 December 1998. After the strike commenced, the fifth respondent issued a number of ultimatums and then dismissed the second and further applicants at about 14h00 on the same day. The applicants referred a dispute concerning their dismissals to the CCMA on 26 December 1998. The present application was filed on 29 December 1998. The applicants did not disclose the fact that they had

been dismissed in either their founding affidavit or the documents annexed thereto, and the Court was only appraised of this fact when the fifth respondent filed its answering affidavit just before the application was heard.

[5] Mr Baker, who appeared for the fifth respondent, contended that this Court lacks jurisdiction to entertain the application. One of the bases for this submission was that the strike had ended when the second and further applicants were dismissed. Since the applicants were no longer engaged in strike action at the time of this application, so Mr Baker reasoned, the conduct against which they sought protection was neither strike action nor picketing within the statutory meaning of those terms.

[6] This Court acquires its power to grant interim relief, interdicts and declaratory orders from section 158(1) of the Act. Its jurisdiction is established by section 157, sub-section 1 of which reads:

“Subject to the Constitution and section 173, and except where this Act provides otherwise, the Labour Court has exclusive jurisdiction in respect of all matters that elsewhere in terms of this Act or in terms of any other law are to be determined by the Labour Court.”

Sub-section 2 grants this Court concurrent jurisdiction with the High Court over acts by the State in its capacity as employer.

[7] The powers conferred upon this Court by section 158(1) can only be exercised in matters over which it has jurisdiction. As far as industrial action is concerned, the Act expressly grants this Court exclusive jurisdiction to grant an interdict or order to restrain persons from participating in strikes or lock-outs that do not comply with the provisions of the Act: see section 68(1)(a). Nowhere does the Act expressly grant this Court jurisdiction to interdict conduct that is alleged to interfere with the employees' right to strike, as qualified by sections 64 and 65. Section 5 of the Act, however, provides that no person may prevent an employee from exercising any rights conferred by the Act. These include the right to strike: see section 64(1). I am therefore satisfied that interference by any person – including agents of the State - in the lawful exercise by employees of the right to strike can in appropriate circumstances be interdicted in terms of section 158(1)(a)(ii), and that this Court has exclusive jurisdiction to entertain applications for such relief.

[8] The central question posed by the fifth respondent's jurisdictional point is this: Are persons who have been dismissed entitled to seek protection from this Court against interference by others of the exercise of their right

to strike? Mr Baker submitted that by virtue of section 64 only employees can strike. This means, he contends, that once striking employees are dismissed, the strike comes to an end because they cease to be employees.

[9] “Strike” is defined in section 213 of the Act as

“... the partial or complete refusal to work, or the retardation or obstruction of work, by persons who are or have been employed by the same employer or by different employers, for the purpose of remedying a grievance or resolving a dispute in respect of any matter of mutual interest between employer and employee...” (Emphasis added.)

[10] At first glance, the words “have been” suggest that employees can be deemed to be on strike even if they are not at the time employed by the employer against which the strike was initially directed. This is the construction placed on the definition by this Court in Afrox Ltd v SACWU & others; SACWU & others v Afrox Ltd [1997] 4 BLLR 382 (LC) at 387C.

That observation is, however, obiter. There is no other authority of which I am aware that deals with the status of a strike after the employer has exercised its power to dismiss the strikers.

[11] When employees are dismissed, whether in the context of a strike or

otherwise, they cease to be employees within the meaning of the statutory definition of that term. This much is clear from the tense in which that definition is expressed. I quote:

“‘employee’ means –

any person, excluding an independent contractor, who works for another person or for the State and who receives, or is entitled to receive, any remuneration; and

any other person who in any manner assists in carrying on or conducting the business of an employer,

and ‘employed’ and ‘employment’ have meanings corresponding to that of ‘employee’.”

[12] Section 64(1) confers the right to strike only on employees, as defined. It is clear that only employees as defined, or registered trade unions acting on their behalf, can set in motion the various procedures prescribed in subsection 1, which must be followed if the strikers are to enjoy protection under the Act. Only employees as defined can refuse to work. Although persons other than employees can obstruct or retard work, the inclusion of

this phrase in the definition cannot have been intended to signify that non-employees can initiate strike action. That the word “person” is used in sections 65, 67 and 68 does not, in my opinion, alter the plain meaning of section 64. In my view, therefore, a strike can be initiated only by persons who are employees at the time of its commencement.

[13] But does it follow that if employees who commence a strike are dismissed thereafter, their conduct is no longer covered by that definition, and that the parties can consequently no longer approach this Court for relief in respect of disputes arising from such action? Mr Nduzulwana, who appeared for the applicants, contended that this cannot be the case because it would give the employer an unfettered power to deprive strikers of protection by dismissing them, even if the strike was protected. It would also, he said, give employers the power to decide for themselves whether a strike was protected. If employers can bring a strike to an end by dismissing the strikers, they could also deprive of the strikers of their right to picket. And, I would add, the employer could, by resorting to the expedient of dismissal, derive a strategic advantage by doing so, and then subsequently offering to reinstate the strikers.

[14] If, as Mr Baker contends, strike action ceases in all circumstances from the moment strikers are dismissed, the effect on this Court’s jurisdiction over

strike action would be seriously compromised. Firstly, its jurisdiction to grant an interdict against misconduct in furtherance of the demand or grievance underlying the dispute, which up to then vested in this Court by virtue of section 68 (see Sappi Fine Papers (Pty) Limited (Adamas Mill) v PPWAWU & others [1997] 10 BLLR 1373 (E); Mondi Paper (a division of Mondi Ltd) v PPWAWU (1997) 18 ILJ 84 (D)), would shift to the High Court immediately the employer dismissed the strikers. Since concurrent jurisdiction has not been provided for in these circumstances, this Court could no longer intervene. Second, an interdict granted by this Court before the dismissal could immediately cease to be of effect when the strikers were dismissed. Such a situation would, in my view, be in conflict with the intention behind the creation of this Court as a specialist tribunal charged with the responsibility of applying an Act, one of the central purposes of which is the promotion of orderly collective bargaining and the effective resolution of labour disputes: see the remarks of Neppgen J in Sappi Fine Papers supra at 1385A-C. It must be assumed, therefore, that the legislature intended to avoid these results by the insertion of the words “or have been employed by the same employer” in the definition of strike (quoted above).

- [15] It may be artificial to accept that dismissed workers can be on strike in the ordinary meaning of that term. A strike is aimed at compelling an

employer to do or refrain from doing something in its capacity as such – or in the words of the statutory definition, at “remedying a grievance or resolving a dispute in respect of any matter of mutual interest between employer and employee”. It may be arguable that once employees who had been on strike are dismissed, any further action they might take cannot have this aim because the mutuality of interest between them and their former employer comes to an end. It is significant, however, that the legislature has refrained from using the definite article before the words “employer” and “employee”. The intention behind this omission must be that, in order to constitute a strike within the meaning of the definition, the grievance or dispute must relate to matters of mutual concern to employers and employees generally, and need not be limited to matters of mutual interest to the strikers and their own employer. Were this not the case, the definition of “strike” would not cover secondary strikes. In the present context, this means that former employees can in principle have a grievance that can be said to relate to a “matter of mutual interest between employer and employee” in the general sense.

- [16] The above reasoning is fortified by the principle that there are circumstances in which an employment relationship can extend beyond the formal termination of the contract of employment. This principle was confirmed in *National Union of Automobile & Allied Workers Union (now*

known as National Union of Metalworkers of SA) v Borg-Warner SA (Pty) Ltd (1994) 15 ILJ 509 (A), in which it was said:

“Under the common law, parties conclude a contract under which one of them is to provide services in return for payment. Their agreement determines when the relationship so constituted starts; what reciprocal rights and duties are acquired and incurred by each; and, if it is to be of indefinite duration, how it is to be terminated.

The unmistakable intent of labour legislation generally, is to intrude, or permit the intrusion of third parties, on this relationship in innumerable ways.... [The LRA] – the primary purpose of which is to ensure industrial peace by the promotion of collective bargaining – does that, and more. It goes beyond intruding, or permitting intrusion by others, as regards the terms which govern the employment relationship while it lasts. It envisages intrusion as regards the very duration of the relationship, regardless of common-law notions of consensus between the individual employer and employee on that score.”

[17] Although Borg-Warner was decided under the 1956 Labour Relations Act, there are indications that the legislature intended to give the ratio of that judgment legislative force in the current Act. The most obvious example of where it has done so is item 2(1)(d) of Schedule 7. Sections 187(b) and

(d) provide other examples. In my opinion, the formulation of the strike definition is a further example.

[18] There are several reasons why the legislature should seek to ensure that the employment relationship between an employer and its workers who are on strike should in appropriate circumstances endure beyond the formal termination of the contract by the employer. I have already mentioned some of the jurisdictional anomalies that could arise were this not to be the case. Further considerations are the very purpose of strike action, and the manner in which the exercise of the constitutional right to strike, and the countervailing common-law right to lock-out, have been regulated in the Act. The purpose of strike action is to enable workers to bring pressure to bear on their employers by the withdrawal of their labour in order to induce them to comply with some work-related demand. To facilitate the achievement of this purpose, the Act has limited the employer's common-law right to terminate on the basis of what would otherwise be a breach of contract, the legislature has created the concept of a protected strike. Once protection is acquired by compliance with the Act, the employer is precluded from dismissing the strikers for the Act of striking *per se*: see section 67(4). Such a dismissal is rendered "automatically unfair": see section 187(1)(a). It is further provided that participation in a protected strike does not constitute a delict or a breach of contract: see section 67(2). To equalise the power balance, the

employer's common-law right to withhold payment of remuneration for the duration of the strike is confirmed: see section 67(3). So also, by implication, is its right to take on replacement labour: see section 76. The employer is also given the right to lock the strikers out, provided that it may not dismiss them pursuant to such lock-out: see section 64(1), read with section 187(c).

[19] The effect of the above provisions is to suspend the operation of the contract for the duration of the protected strike to enable the parties to resolve their dispute by power play. Part of that power play might be the exercise by the employer of its common-law right to dismiss. The exercise of that right may be in compliance with the Act if the employees are guilty of misconduct during the course of the strike, or if dismissal is necessary for the operational requirements of the employer: see section 67(5). But if it is not justified by one of the above provisions, the dismissal will contravene section 67(4), which states in unequivocal terms that an employer "may not dismiss an employee for participating in a protected strike or for any conduct in contemplation or in furtherance of a protected strike". In my opinion, a dismissal in contravention of section 67(4) is a nullity. Since it has no force and effect, it cannot terminate the employment relationship between the employees and the employer concerned. In other words, a dismissal in contravention of section 67(4) is

not one of the ways in which a strike can come to an end. To this extent, I am in agreement with Mr Nduzulwana's answer to the jurisdictional point raised on behalf of the fifth respondent.

[20] However, it will have been noted that all the provisions cited above apply to protected strikes. In the case of unprotected strikes, the dismissal of the strikers has a different effect. It is expressly provided in section 68(5) that “[p]articipation in a strike that does not comply with the provisions of this Chapter, or conduct in contemplation or in furtherance of that strike, may constitute a fair reason for dismissal”. Schedule 8 to the Act further provides that “participation in a strike that does not comply with the provisions of Chapter IV is misconduct”: see item 6(1). Misconduct is one of the permissible grounds for dismissing an employee: see section 188(1) (a).

[21] It is clear, therefore, that the legislature treats protected strikes on a basis wholly different from the way in which it treats unprotected strikes. So, too, does it treat dismissals in the two contexts in a completely different way. The dismissal of an “unprotected” striker is not void ab initio, as is the dismissal of a participant in a protected strike. On the contrary, like any other form of dismissal, the dismissal of an “unprotected” striker brings the contract to an end from the moment of the dismissal: see Edgars Stores

Ltd v SACCAWU [1998] 5 BLLR 447 (LAC). It must also bring an end to the employment relationship – unless and until that relationship is subsequently revived by an order of this Court in terms of section 191(5)(b)(iii). It must follow too that the dismissal of the participant in a strike that is not in compliance with the Act also deprives this Court of jurisdiction to intrude into any disputes between the dismissed employees and their former employer under section 158(1).

[22] In my opinion, therefore, the contention advanced by Mr Baker – namely, that if strikers are dismissed a strike in all circumstances immediately comes to an end, and with it the jurisdiction of this Court - is cast too widely. My view is that a strike continues after the dismissal of the strikers, provided that:

they have complied with the provisions of the Act;

they have been dismissed for the act of striking per se in contravention of section 67(4);

the conduct in which they are engaged after their dismissal amounts to a continuation of the original strike.

However, if the strike is not protected, the dismissal of the strikers terminates the strike and also the jurisdiction of this Court in respect of the

participants' subsequent actions.

[23] It follows therefore, that Mr Baker's jurisdictional point can succeed only if the applicants are engaged in an "unprotected" strike. I turn now to that issue.

[24] As will have been seen from the above resume of the material facts, the applicants referred a dispute to the CCMA, which issued a certificate that the dispute had not been resolved. Thereafter, the applicants served notice of their intention to commence strike action on the fifth respondent. All this is in compliance with section 64(1). According to Mr Nduzulwana, this rendered the strike protected. Mr Baker contended, however, that the strike was unlawful at its inception because the applicants had not complied with section 64(2) of the Act. The relevant parts of that section read:

"If the issue in dispute concerns a refusal to bargain, an advisory award must have been made in terms of section 135(3)(c) before notice is given in terms of subsection 1(b) or (c). A refusal to bargain includes –

a refusal –

to recognise a trade union as a collective bargaining agent;

....”

[25] It is clear that the legislature intends to impose an additional procedural requirement in the case of intended strikes involving a “refusal to bargain”, as defined. This is that an advisory award be issued. Only once this has been done can the notice prescribed by section 64(1)(b) be served. This additional requirement applies only to disputes involving refusals to bargain.

[26] Mr Nduzulwana contended that the issue in dispute underlying the applicants’ strike cannot be classified as a “refusal to bargain”. He drew my attention in this regard to the formulation of the strike notice, which provides as the reason for the proposed strike “your Company’s refusal to give them [i.e. the second and further applicants] wage increases for 1998”. This indicated, so Mr Nduzulwana argued, that the real issue underlying the dispute was not the failure by the fifth respondent to recognise the first applicant as a bargaining agent, but the fifth respondent’s refusal to grant a wage increase, even if unilaterally.

[27] This submission overlooks the fact that would-be strikers must identify and declare the issue in dispute prior to setting in motion the procedure

prescribed by section 64(1)(a). Once that issue has been identified and dealt with in conciliation, the would-be strikers can only strike over that issue. They cannot change the goal posts when they issue the notice in terms of section 64(1)(b). How the applicants understood and designated the issue in dispute when they referred the matter to conciliation is therefore of crucial importance.

[28] While it is so that the dispute between the parties in this matter was initiated by a standard demand for a wage increase and improvement in certain conditions of service, this is not enough in itself to categorise the ensuing dispute as one concerning a mere matter of mutual interest, as Mr Nduzulwana would have it. It is recorded in the unchallenged answering affidavit of Mr D Schnetler, the fifth respondent's regional manager, that the first applicant had been informed on a number of occasions, and again after receiving the demands, that the fifth respondent was not prepared to negotiate with the first applicant because it was "entirely unrepresentative" in the Eastern Cape operations. In the form LRA 7.11 upon which the dispute was filed with the CCMA, the first applicant described the dispute as being about (I quote verbatim) "refusal of the Company to negotiate wage increment and conditions of employment". The desired outcome was that the fifth respondent "grant us organisational rights and allow us to negotiate wage increment and adjustments of conditions of employment of

our members". Furthermore, under the heading "special features" the first applicant proposed "a meeting with the company for wage negotiations". The first applicant also confirmed that "the Company's response was that we don't have a majority in the Eastern Cape Region, and added: "Our argument is that we have the Majority which the L.R.A. refers to at the workplace." Furthermore, in the founding affidavit to this application it is stated:

"The company advised the union verbally that it is refusing to negotiate wage increases and adjustments of conditions of employment with the union because the union does not have a majority of its employees, employed in the Eastern Cape Region, but conceded that in its Uitenhage shop the union has [a] majority of its employees."

[29] The meaning of the phrase "refusal to recognise a trade union as a collective bargaining agent" has not yet received judicial attention. Mr Nduzulwana contended that the phrase should be restrictively construed so as to embrace only disputes arising out of the refusal by an employer to enter into a formal recognition agreement with a trade union. Although I am conscious that, in so far as they curtail the constitutional right to strike, restrictions imposed by the Act on strike action should be narrowly interpreted (see, for example, Adams & others v Coin Security Group (Pty)

Ltd Labour Court case no. C163/97 dated 3 September 1998, unreported), in my view the phrase “refusal to recognise a trade union as a collective bargaining agent” embraces situations, such as those in casu, in which the employer refuses to negotiate with a trade union over wages and conditions of service.

[30] The test propounded in those cases in which the concept “issue in dispute” has been applied is to seek the real underlying dispute between the parties: see Ceramic Industries Ltd t/a Betta Sanitaryware v NCABAWU [1997] 6 BLLR 697 (LAC); Fidelity Guards Holdings (Pty) Ltd v PTWU [1997] 9 BLLR 1125 (LAC); Adams & others v Coin Security Group (Pty) Ltd supra. The most effective way of doing so is to ask whether the dispute would have been resolved had the employer complied with the demand or grievance in which the issue is articulated: see Adams & others v Coin Security Group supra.

[31] It is clear that had the fifth respondent agreed during conciliation that it would commence bargaining with the first applicant, the dispute would have been resolved. The conciliating commissioner was therefore correct when he designated the dispute as being about a “refusal to bargain”. That being the case, the applicants were obliged in terms of section 64(2) to await an advisory award before issuing the notice required by section

64(1)(b). That the commissioner in this case delayed issuing the advisory award until prompted to do so by the fifth respondent did not relieve the applicants of their obligation to comply with the peremptory provisions of section 64(2). Nor does the fact that the advisory award happened to be issued after the applicants served their notice on the fifth respondent, but before they commenced the strike, serve to condone their non-compliance with section 64(2). The purpose of section 64(2) is clearly to compel the parties to seriously consider the advisory award before deciding whether to strike. This purpose would be frustrated if employees could give notice of their intention to strike before receiving an advisory award. I merely note that in this case the commissioner advised that the applicants did not have a right to bargain with the fifth respondent.

[32] Mr Nduzulwana contended that the applicants were not bound by section 64(2) because the commissioner had elected to deal with the matter by mediation at the conciliation meeting. He argued that once the commissioner had chosen one of the three processes for attempting to resolve the dispute that are set out in section 135(3), he was bound by that election and could not later adopt another process at the instigation of one party. There is no merit to this contention. Section 135(3) merely indicates some of the processes a conciliating commissioner can use to attempt to resolve disputes. That provision relates to conciliation

proceedings generally. Section 64(2) relates specifically to disputes concerning refusals to bargain. It requires a commissioner to issue an advisory award. And it requires the employee parties (c.f. the word “must”) to await such award before serving a pre-strike notice on the employer. Generalia specialibus non derogant. If the commissioner was tardy about issuing the advisory award, the applicants should have placed pressure upon him to do so.

[33] It follows that the strike in which the applicants engaged on 23 December 1998 was unlawful for want of compliance with the provisions of section 64(2) of the Act. Their dismissal on that day brought an end to the employment relationship between them and the fifth respondent. The conduct in which the applicants were engaged thereafter was accordingly not a strike over which this Court has jurisdiction.

[34] Even if I am wrong in finding that the strike has ended and that this Court lacks jurisdiction to entertain this application, there are other reasons for denying the applicants the relief that they seek. The first, and obvious, is that the strike was unlawful. It follows that the conduct in furtherance of such strike for which the applicants now seek protection is also unlawful: see section 69(1)(a).

[35] Furthermore, as mentioned above, a protected strike can be deemed to continue beyond the dismissal of the strikers only if their conduct after their dismissal can be deemed to be a continuation of the original strike. This must apply also to an unprotected strike. The condition is necessary because otherwise the use of the term “have been employed” in the strike definition would mean that, once strikers have been dismissed, the strike must be deemed to continue in perpetuity. As is noted in the Afrox case supra a strike can end in various ways. Landman J observes in this regard at 386D-F:

“One way for a strike to terminate is where the workers abandon the strike. This normally takes the place [sc. form] of an unconditional return to work. Another possible way, for there are probably other ways (Cf. “Some aspects of the termination of a dismissal lock-out” 1994 *Contemporary Labour Law* 79-83) is by the disappearance of the substratum. If the *casus belli* is removed, for example, by the employer conceding to the demands of the strikers or by removing the grievance or by resolving the dispute then the foundations of the strike fall away. The strike is no longer functional. It has no purpose and it terminates. When the strike terminates so does its protection. It is not in the interests of labour peace for a strike action to be continued in such circumstances even in the case

of a protected strike. See section 1 of the LRA.”

[36] These observations apply also to strikes that are deemed to continue after the dismissal of the strikers, whether protected or not. It may well be that a strike may end after the dismissal of the strikers. The strikers may, for example, simply accept their fate and look for other employment or go home. Or they may abandon their original grievance and demand reinstatement. In the latter case, the original strike would be deemed to have ceased.

[37] In the present case the applicants commenced their strike on 23 December 1998. Their strike, according to the submissions of their representative, was in support of a demand for improved wages and conditions of service. The fifth respondent replied by dismissing the strikers, thereby putting to an end the possibility of their wages and conditions of service being improved (unless, of course, they are reinstated by order of this Court pursuant to the section 191(5)(b) application). Unless the second and further applicants are continuing to assemble at the fifth respondent’s premises to induce it to improve wages and conditions of service for employees still in its service – and there is no allegation to this effect on the papers - there is no point to their action. As far as the demand is linked to their own wages and conditions

of service, it cannot possibly be met unless their contracts are renewed. It may well be that that will ultimately happen by order of this Court. That is an issue which this Court need not decide. However, while the employment relationship remains severed there can be no point to continued strike action in support of the applicants' professed demand. Such a strike would no longer be functional to collective bargaining. And, in my view, it would not be in the interests of labour peace for this Court to endorse and protect the continuation of picketing by granting the orders sought in this application, even if it had jurisdiction to do so.

[38] Mr Nduzulwana contends that even if the applicants cannot rely on section 69 to assert their right to gather outside the fifth respondent's premises, they can invoke their general constitutional rights of assembly and to demonstrate peacefully. This may be so. But this Court is not the forum to protect citizens in the exercise of their general constitutional rights, except where and to the extent that such constitutional rights are protected by the Act. In this respect also, this Court lacks jurisdiction to grant the relief sought in so far as it seeks to interdict the respondents from interfering with their conduct.

[39] Finally, I am of the opinion that this application fails to meet one of the essential criteria for the granting of urgent relief. It is trite that in order to

do so, the applicants must persuade the Court that they have no adequate alternative remedy: see inter alia Spur Steak Ranches Ltd v Spur Steak Ranch, Claremont 1996 (3) SA 706 (C) at 714B-C. The Act provides specific remedies for employees and employers when they fall into dispute, in terms of which this Court can be approached for relief. Section 69(8) provides specific relief against parties who are allegedly undermining the effective use of the right to picket. The applicants could and should have approached the CCMA for conciliation in terms of sub-section 10. They could then have approached this Court, on an urgent basis if necessary, under section 69(11).

[40] For the above reasons the application was dismissed.

[41] Since the parties have an ongoing relationship and in view of the novel points raised by the application I did not deem a cost order to be appropriate.

GROGAN AJ
ACTING JUDGE OF THE LABOUR COURT

DATE OF HEARING: 30 December 1998

DATE OF ORDER: 30 December 1998

DATE OF REASONS: 2 January 1999

NTS: Mr E NDUZULWANA of Food & General Workers Union

SPONDENT: Mr C BAKER of Chris Baker & Associates