

REPORTABLE

IN THE LABOUR COURT OF SOUTH AFRICA
SITTING IN DURBAN

CASE NO D124/2001

DATE 2001/02/02

In the matter between:

SACWTU

Applicant

and

COATS SA (PTY) LIMITED

Respondent

JUDGMENT DELIVERED BY THE HONOURABLE MS JUSTICE PILLAY
ON 02 FEBRUARY 2001

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SNELLER RECORDINGS (PROPRIETARY) LTD - DURBAN

J U D G M E N TPILLAY J

- 1] The applicant seeks an order as a matter of urgency interdicting and restraining the respondent from infringing section 76(1)(b) of the Labour Relations Act No 66 of 1995 (the LRA) by requiring any of its employees who have not been locked out, to perform the work of any employee who has been locked out.
- 2] It is common cause that the lockout is not in response to a strike. It is also not disputed that the employees who are not locked out continue to perform their own work as well as some of the work of those who are locked out. The production output of those who continue to work is between 5 and 7 percent of the normal capacity. It is also common cause that the employees are not being paid for the additional work of those who are locked out.
- 3] The crisp issue for determination is whether the employment of those who are not locked out amounts to taking into employment persons for the purposes of performing the work of the employees who are locked out. Section 76(1)(b) of the LRA provides:
- "An employer may not take into employment any person for the purpose of performing the work of any employee who is locked out unless the lockout is in response to a strike."
- 4] Mr **Pillemer** submitted that the purposive approach to interpreting section 76(1)(b) should be pursued. The emphasis should not be on the meaning of "take into employment" but on the words "performing the work of". The words "take into employment" should be widely interpreted to include a person who assists an employer as this would not be inconsistent with the definition of "employee". To find otherwise, so the argument went, would lead to the anomalous situation where employing an individual from outside the organisation would lead to an infringement of section 76(1)(b) and securing the

assistance of an employee from within the organisation would not.

5] It was further submitted that unless the respondent was restrained there would be an imbalance in the power play during industrial action as the respondent would not suffer from being denied the services of those who are locked out. Such an imbalance could not have been the intention of the Legislature. Hence the purposive approach should be applied to section 76(1)(b). So the argument went.

6] The purposive approach is applied in order to give effect to the purpose or *ratio* of a statute. If the purpose of the statute is evident from the language used, the words used must be given their ordinary meaning. The purposive approach is not a licence to ignore the plain meaning of the language. (*Technicon South Africa v NUTESA*. 2001(1) BLLR 58 LAC at paragraph 41.)

7] There is no ambiguity about the words "take into employment". They were deliberately used to exclude those who are not already in employment. If the Legislature had intended the section to have the meaning that Mr **Pillemer** seeks to attach to the words "take into employment" then it could simply have used the word "employ" instead of "take into employment".

8] The Court's interpretation is fortified by reference to section 76(2) of the LRA which provides:

"For purposes of this section 'take into employment' includes engaging the services of a temporary employment service or an independent contractor."

9] On the facts of this case the production is adversely affected by the lockout, but to a lesser extent than would otherwise have been the case if there were no one doing the work of those locked out at all. The Court is not convinced that the power play is distorted by allowing those who are not locked out from performing the duties of those who are locked out as the production output of those who continue to

work is barely seven percent of the normal capacity.

[10] As regards costs, I agree with Mr **van Niekerk** that the matter is not urgent. However, it is an important issue. In the circumstances the application is dismissed with no order as to costs.

FOR APPLICANT : ADV M PILLEMER, SC

FOR RESPONDENT : ADV G.E.O.VAN NIEKERK, SC