

**IN THE LABOUR COURT OF SOUTH AFRICA
(Held at Johannesburg)**

Case No: J 1497 / 01

In the matter between:

NATIONAL UNION OF METALWORKERS

First Applicant

Second Further Applicants

and

Respondent

JUDGMENT

SEMENYA AJ:

INTRODUCTION

1.The applicants brought an application, on an urgent basis, for the following relief:

1.1.Authorising the applicants to bring this application as a matter of urgency and to dispense with the normal period and forms of service prescribed in the Rules of the above Honourable Court, and allowing the matter to be disposed of as one of urgency in terms of Rule 8 of the Rules of the above Honourable Court.

1.2.A rule nisi calling upon the Respondent on a date to be determined by this Court, to show cause why a final order should not be granted in the following terms:

1.2.1. Declaring that the retrenchment of the second further Applicants that the Respondent is in the process of

implementing constitute an attempt to compel the Applicants to accept a unilateral change to the terms and conditions of their employment.

1.2.2. Declaring that such retrenchment would constitute an automatically unfair dismissal.

1.2.3. Interdicting the Respondent from retrenching the second further Applicants on 10 May 2001.

1.2.4. Directing the Respondent to reinstate the consultation process for the purpose of attempting to reaching (sic) consensus with the first Applicant on the issue related to the implementation of retrenchment inter alia selection criteria;

1.3. That the relief set out in paragraphs 1.2.1 to 1.2.4 shall operate as an interim order with immediate effect pending the finalisation of this matter;

1.4. . . .

2. Although the relief sought by the applicants is couched in somewhat unusual terms, it seems to me that what the application is intended to achieve is an interim relief interdicting the Respondent from retrenching the first Applicant's members on 10 May 2001 pending a final determination of issues raised in the prayers 1.2.1, 1.2.2, 1.2.3. and 1.2.4.

3. The matter for decision at this instance is whether the Applicants have made out a case for an interlocutory interdict for a relief, pending the final adjudication of the dispute relating to the retrenchment of the first Applicant's members.

MATERIAL FACTS

4. On 25 April 2001 the Respondent issued letters of termination of service to the members of the Applicant. The notice of termination of service cites redundancy as a reason for the termination of the services of the Applicant's members.

- 5.The notices of termination (annexure JM 17) state that the services of the Applicant's members are terminated with immediate effect. The letter of termination states further that the first Applicant's members are released from their duties with immediate effect and then deals with the consequences of the termination.
- 6.The papers cite a history that culminated with the letter of termination. Most of the matters are in dispute and are not able to submit to resolution on the papers. On the one hand, the Applicants contend that the purported retrenchment of the first Applicant's employees or the contemplated retrenchment of the first Applicant's employees constitutes an attempt to compel the Applicants to accept a unilateral change to the terms and conditions of their employment, that such conduct amounts to automatic unfair dismissal and that the consultations for such a process have not occurred in accordance with the law. On the other hand, the Respondent contends that they have acted as the law requires them to act but most importantly, that the interdict sought to be obtained is not competent in law because the services of the first Applicant's member have been terminated, the decision taken and they cannot be restrained from taking it - it is a fait accompli.

APPROACH

- 7.If the contention by the Respondent that the decision to terminate the services of the first Applicant's members is correct that the decision has already been taken and that the decision was final, it may be a matter dispositive of the issues raised in the application.
- 8.I am persuaded that the nature of the dispute on the paper about whether or not the retrenchment was conducted in accordance with the law renders this assessment impossible and I will for the purposes of deciding this matter assume (without finding) that the Respondent have not acted in compliance with the provisions of section 189 of the Labour Relations Act No 66 of 1995.

ANALYSIS

- 9.The Applicants, in order to succeed, must show that:

- 9.1.the right which is a subject matter of the main action and which they seek to protect by means of the interim relief

is clear, or, if not clear, is prima facie established, though open to some doubt;

9.2.if the right is only prima facie established, there is a well-grounded apprehension of irreparable harm to them if the interim relief is not granted;

9.3.the balance of convenience favours the granting of the interim relief; and

9.4.the applicants have no other satisfactory remedy.

See *Setlogelo v Setlogelo* 1914 AD 221.

10.I will proceed to accept that the Applicants have shown a prima facie right. The next consideration is whether the Applicants have shown a well-grounded apprehension of harm. On the papers, the Applicants contend that the contemplated retrenchment is to occur on 10 May 2001.

11.In paragraph 72 of the affidavit deposed to by John Maqubela on behalf of the Applicants, the Applicants state that the period of employment only terminates on 10 May 2001. The date 10 May 2001, does not appear on "JM 17" but instead the letter refers to 10 April 2001. I will assume for purposes of this judgment that 10 April 2001 was in actual fact intended to read 10 May 2001. I do so because the letter is dated 25 April 2001 and the letter refers to ". . .although you will be paid your notice pay, naturally until 10 April 2001."

12.The Applicants contend that as stated by John Grogan- **Employment Law**, March 1997 (3) p 55 and **Workplace Law**, 4th edition, p 112, the first Applicant's members' employment terminated on 10 May 2001. The Applicants contend further that section 190 should not be interpreted to mean that the dismissal of the first Applicant's members was on the date on which the contract was terminated or the date on which the employees left the service of the employer, whichever is the earlier.

13.I am unable to agree with these conclusions. The language of the letter of termination admits of no doubt whatsoever. The letter is dated 25 April 2001, states that the services are not required as of today, that the employees are released from their duties with immediate effect and what is sought to be communicated is stated

quite clearly. In a further letter dated 30 April 2001, the first Applicant was addressed in a letter stating in categorical terms that the dismissal was effective 25 April 2001 and not 10 May 2001 as contended by the first Applicant (annexure RKF 17).

14. The Applicants, were amongst others, to show that the harm is likely to follow if the remedy is not granted. On the present facts, I am persuaded that the harm against which the Applicants are acting in this matter has happened, if a case is made out that the retrenchment is bad in law. *Pickles v Pickles* 1947 (3) SA 175 (W), *Free State Gold Areas Ltd v Merriespruit (Orange Free State) GM Co Ltd* 1961 (2) SA 505 (W), *Putco Ltd v TV & Radio Guarantee Co (Pty) Ltd & Other related case* 1985 (4) SA 809 (A).

15. The other requirement or hurdle that the Applicants face is to show that there is no other adequate remedy available to them. If the case made by the Applicants is correct, I see no reason why they would not be able to find reinstatement capable of placing the first Applicants in the same position as though the decision of 25 April 2001 was not taken.

16. To proceed on a premise that the decision of 25 April 2001 was not taken would be to overlook the apparent. That the decision taken on that day is correct is a different question inviting an approach dissimilar to the one invoked by the Applicants in this case.

17. The respondent also argued that the application stands to be dismissed for want of urgency. In the light of the decision I have come to in this matter, it is not necessary to decide the question of urgency. I have dealt with the merits of the application in any event.

18. In the circumstances, the application is dismissed and I make no order as to costs.

Signed and dated at BRAAMFONTEIN this 11th day of May 2001.

Semenya AJ

Acting Judge of the Labour Court of South Africa

3 May 2001

Mr A Soldates of *Fluxman Rabinowitz-Raphaely Weiner*.

Ms Norma Craven (National Union of Metal Workers of South Africa).