

Sneller Verbatim/mc

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: J4683/01

2001-10-31

In the matter between

NATIONAL UNION OF MINE WORKERS

Applicant

and

IMPALA PLATINUM LIMITED

Respondent

J U D G M E N T

REVELAS J:

1. The applicant approached this court for urgent relief interdicting the respondent from implementing its restructuring strategy of its hostels and accommodation, pending the referral of a dispute about the restructuring and the determination of the dispute by the Commission for Conciliation Mediation and Arbitration (The CCMA). The matter has not yet been referred to the CCMA.
2. The respondent and the applicant had a seminar during September 1998 regarding the restructuring strategy of the hostel and accommodation services of the respondent. A constitution was drawn up for a hostel executive committee and a management committee to discuss the issue.
3. On 7 August 2001 a meeting was held where the respondent announced its intention to restructure the hostels. Another meeting was held on 28 September 2001 where the respondent advised that the restructuring process would be implemented on 1 October 2001. These are the meetings

that the applicant refers to in its founding affidavit.

4.The applicant then declared a dispute with the respondent about what it says was the unilateral implementation of the restructuring of the hostel services. Several meetings were held thereafter about the implementation which the applicants sought to delay.

5.The applicant also contends that :

the respondent should comply with an agreement which was reached between the parties on 17 July 1997 regarding the restructuring process.

6.The agreement provides that:

"The parties enter into negotiations on the issue of restructuring prior to the implementation thereof.

The various branches and/or shaft committees will refer any contemplated restructuring to the Central Negotiating Forum."

7.The respondents failed to refer the issue of restructuring or the implementation thereof to the Central Negotiating Forum.

8.No consensus was reached with any of the committees or management and that any such consent was of no value since those committees did not have the necessary authority to reach agreements.

9.The first time it heard about the implementation date of the policy, namely 26 October 2001, was when it served its application on the respondent on 24 September 2001. And that is the application in question.

10.During 1999, 200 employees of the respondent were paid severance packages and transferred to a company to whom the catering function had been outsourced. A meeting was also held on February 2000 where the respondent says it reported back on the completion of phase 1 of the restructuring and gave notice that it intended to move onto the next phase of the restructuring process.

11.The hostel superintendent gave a presentation at this meeting explaining

what was contemplated. The applicant's representative at the meeting adopted the position that the respondent was not entitled to proceed with the restructuring without the consent of the CMC which stance the respondents did not accept.

12.The respondent in its answering papers contend that on a regular basis from 1998 until the present time, the respondent had engaged in continuous discussions with the hostel executive in respect of the proposed restructuring and the various phases thereof.

13.It had also repeatedly, according to the respondent, discussed the restructuring with the Services Branch of the applicant and the applicant's Services Selection Utility Committee.

14.In the respondent's answering affidavit reference was made to a further meeting held on 22 June 2001 where consensus was reached between the respondent and the Hostel Executive Committee on proceeding with the next phase of the restructuring, including the out-sourcing of the maintenance ownership.

15.All that remained to be finalised at the time was agreement on "scope of works" and that is apparently what the exact nature of the service provider's obligations were to be.

16.The remaining question had to be referred to the applicant's Services Branch for further discussion which took place.

17.A meeting was also held on 7 August 2001 with the Services Branch, the Services Utility Committee and the CMC on implementing the next phase. At this meeting a further presentation of what was contemplated was also given. The applicant held the view at the meeting, according to the minutes, that it regarded the presentation as "information sharing only as management is well aware of the relevant structure to deal with these matters". This was not further qualified.

18.According to the respondent the meeting of 7 August was with the Services

Branch Committee. The respondent contends that it discussed the proposed restructuring both with the relevant committees as well as with the CMC.

19. The respondent also refers to a further meeting held on 4 September 2001 where the applicant was represented. Notice was given that 43 engineering positions would be affected.

20. On 26 September 2001 the respondent discussed the restructuring with the Utility Sectional Committee. A further presentation was given and the applicant was represented and previously on 20 September 2001 the applicant requested that the meeting of 26 September 2001 be convened, specifically to discuss the next phase.

21. The next meeting then took place on 28 September 2001 where it is common cause between the parties that the respondents indicated that the proposed implementation date was 1 October 2001.

22. According to the respondent, from 7 August onward at all the meetings the respondent made clear that the proposed restructuring would not give rise to any compulsory redundancies.

23. On the papers before me there is a dispute of fact as to what was discussed at the meetings and discussions that were held. I am unable to accept that the first time the applicant heard of an implementation date for the restructuring, was on the day the papers had been served on the respondent. The application would not have been brought if this were the case. In any event it appears from the applicant's replying affidavit, paragraph 20.7 that 1 October 2001 was the implementation date. On its own version there were several discussions thereafter.

24. On the facts of the case it appears that several meetings were indeed held and that restructuring of hostels had commenced. If I grant an interdict it would have the effect of suspending that process and restoring the *status quo ante*, which is not the relief the applicant

seeks in its notice of motion.

25. The applicant argued that the relief it seeks is interim relief in the sense that it would be granted pending the outcome of the dispute which intends to refer to the CCMA. This is in fact final relief. In order to obtain the relief sought by the applicant the applicant must show a clear right case, even if open to some doubt. A well-grounded apprehension of irreparable harm, that the balance of convenience favours it, and that there is no other satisfactory alternative remedy.
26. Insofar as a clear right is concerned, there is no clear right to refer a dispute to the CCMA or to compel an employer to negotiate restructuring according to a particular pattern.
27. No positions were declared redundant. In the founding affidavit no irreparable harm was demonstrated to warrant the interference with the implementation process.
28. In my view the balance of convenience does not favour the applicant either. The CCMA could determine this dispute, but this could take a very long time as the dispute has not even yet been referred to the CCMA. The restructuring process of the hostels had begun a relatively long time ago.
29. The CCMA could very well make a determination even in the respondents' favour and the respondents would then be in an unenviable position vis-à-vis its contractors.
30. There is also no merit in the submission that there is no other alternative remedy. Section 64(4) of the Labour Relations Act (The Act) provides one. The applicant could have argued that this was the case if no negotiations or meetings were held and that the restructuring and implementation date thereof was introduced at very short notice. Factually that has not occurred.

31. It appears that the applicant is under the impression that the respondent needs the consent of the CMC before it can embark on a process which had been negotiated for some time. The respondent's consent is not a prerequisite to the process. If the parties are not satisfied with the manner in which the restructuring was implemented, it can refer a dispute to the CCMA which it has not done at this stage. Such a dispute could have been referred as far back as February 2000 when the meetings first began or on 22 June 2001 when the respondent says consensus was reached between itself and the Hostel Executive Committee. It is improbable that the respondent would spend time consulting with the committees if they did not have the necessary authority to reach final agreements and they actively participated in the process.

32. In my view this application was a last attempt at delaying that process. Therefore the application must fail.

33. I considered the question of costs and this might be a matter where costs perhaps should follow the result. But in my view, since the services of the applicant's members had been out-sourced and that in respect of these employees there is still a process ahead it would not be advisable to grant costs against the applicant.

34. Therefore I make the following order:

1. The application is dismissed.

E. Revelas

