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IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

2005-07-12 CASE NO: J1281/05

REPORTABLE

In the matter between

CHUBB GUARDING SA (PTY) LTD Applicant

and

SOUTH AFRICAN TRANSPORT AND

ALLIED WORKERS UNION Respondent

JUDGMENT

REVELAS, J:

[1] The applicant, a company, has declared a dispute in terms of clause 13.3.1 of a collective agreement dated 21 April 2004, concluded between the parties regarding its demand that the respondent withdraw its proposed secondary strike action. It contended that the respondent and its members are prohibited from engaging in strike action until such time as the periods contained in clause 13.3 of the aforesaid collective agreement have expired. As the time periods have not expired, it argued that the secondary strike action in support of the strike action engaged by its members at Chubb Security (Pty) Ltd, is prohibited in terms of section 65(1)(a) of the Labour Relations Act No. 66 of 1995 ("the LRA").

[2] The union (or “the respondent”) maintained that the dispute was not aimed at resolving the dispute declared by the applicant in terms of clause 13. The secondary strike is aimed at resolving the dispute between the respondent and Chubbs Security SA Ltd, which is the holding company of the applicant and it is common cause that currently the employees at this holding company are engaged in a primary strike in an attempt to resolve their dispute with their employer about *inter alia* transport money.

[3] The secondary strike will only be protected if the primary strike complies with sections 64 and 65 of the Labour Relations Act 66 of 1995, as amended, (or “the Act”) and the secondary strike complies with the notice provisions contained in section 66(2)(b) of the Act and the requirement contained in section 66(2)(c) namely, that the nature and extent of the secondary strike should be reasonable in relation to the possible direct or indirect effect that the secondary strike may have on the primary employer.(Chubb Security SA Ltd)

[4] It is not disputed that 60 members of the union are engaged in the strike currently conducted (the primary strike) at Chubb Security SA (Pty) Ltd and that the members of the union who wish to strike at the applicant are 800 in number.

[5] It was argued by the applicant that these figures are disproportionate and would therefore render the strike unreasonable.

[6] It was further argued that there was no nexus between the primary strike and the secondary strike in that the two employers are different entities, the one dealing with guards (the applicant) and the other with the manufacturing and distribution of security equipment.

[7] I have weighed up all these factors, and I have come to

the conclusion that counsel for the union was quite correct when he said that it is not interim relief which is sought (as argued on behalf of the applicant) but final relief. What the applicant is seeking, is that the union members first go through the dispute resolution processes and periods and that those time periods should lapse first. Such relief is final in nature.

[8] The order that I give is thus a final order and therefore the factors that I have to take into consideration are different to that for interim relief. [9] A right to embark on a secondary strike, (and this is borne out by the provisions of section 66 of the Act), is less readily available to secondary strikers than to primary strikers. For instance, in respect of a secondary strike, seven days notice must be given to the employer, whereas in respect of a primary strike, only 48 hours notice has to be given. The fact that there is a requirement of reasonableness for a secondary strike and not for a primary strike, notwithstanding the fact that there is a constitutional right to strike, also is an indication a secondary strike is not an unfettered right.

[10] The respondent's case was that the provisions of clause 13 of the collective agreement have no relevance to the question whether or not the secondary strike is protected or not. The argument went as far as submitting that even a strike aimed at resolving the dispute declared by the applicant in terms of the agreement would not have to comply with the dispute resolution procedures contained in the collective agreement. In this regard I was referred to the judgment in County Fair Foods (Pty) Ltd v. FAWU and Another [2001] 5 BLLR 494 (LAC) especially paragraphs 15-20. In paragraph 17 of that judgment, Zondo J.P. observed that it was clear from the provisions of section 64(3)(b) of the Act, that the legislature did

consider a situation where a party had complied with a collective agreement, but not with the Act and decided that, in such a case a party need not comply with another pre-strike procedure before a strike could be embarked upon. He pointed out that what the legislature had sought to achieve, was to give parties a choice of following either a pre-strike procedure contained in a collective agreement or following the statutory procedure in section 64(1). Compliance with either procedure suffices to confer on employees the right to strike with concomitant protected status. Zondo J.P. regarded insistence on compliance with a collective agreement despite there having been compliance with the provisions of the Act, as "unjustifiably usurping the legislature's function" (par [20]). The aforesaid proposition raises the question whether or not collective agreements have any role to play in pre-strike dispute resolution, considering the time and effort spent in concluding such agreements.

[11] In my view, where there is an additional requirement of reasonableness in the case of the secondary strike, with its limitations, a collective agreement should be respected by both parties particularly when the secondary strikers are so disaproportionally higher in number than the primary strikers, even if there is a nexus between the two companies in question. Reasonableness could also be inferred from the actual conduct of employees in respecting the relevant and applicable collective agreements.

[12] I have also considered the question of fairness and resultant harm that may be suffered by both parties. On the papers before me the applicant will have to close down its business operations if this strike went ahead. It cannot financially afford it. Obviously, the employer must suffer harm

during a strike, otherwise there would be no purpose to the strike. This proposition is so much more apt in relation to a primary strike than a secondary one. The harm suffered by secondary strikers in first following an agreed procedure is minimal. Here was a procedure that had to be followed, to which the union and the employer have agreed upon, in a collective agreement. It provides for a cooling off period which is a wise route to follow before crippling an employer with whom employees have no direct dsipute. If there is a nexus between the two businesses, the employees may strike. But before the provisions of clause 13 have not yet been complied with in full, workers may not go on strike. This strike action is therefore delayed until there is such compliance.

[13] In the circumstances I make the following order:

1. The respondent is interdicted from calling upon its members to

   participate in any secondary strike action in support of the primary strike engaged in by its members at Chubbs Security (Pty) Ltd unless it and its members have complied with clause 13 of the collective agreement dated 21 April 2004 applicable to the parties herein.
2. I do not make any order as to costs, the reason being that the parties may still be engaged in this conciliation process.
3. Written reasons for this order shall be provided upon written request.

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E. REVELAS

REPORTABLE:	YES
DATE OF HEARING:	8 JULY 2005
DATE OF JUDGMENT:	12 JULY 2005
ON BEHALF OF THE APPLICANT:	Adv AS Redding S.C.
INSTRUCTED BY:	Deneys Reitz
ON BEHALF OF THE RESPONDENT:	Adv JG Van der Riet S.C.
INSTRUCTED BY:	Cheadle Thompson & Haysom