



- (1) Reportable Yes/No
(2) Of interest to other Judges: Yes/No
(3) Revised

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: JA 34/25

In the matter between:

ARCELORMITTAL SOUTH AFRICA LIMITED

Appellant

and

NATIONAL UNION OF METALWORKERS OF

SOUTH AFRICA (NUMSA)

First Respondent

SOLIDARITY

Second Respondent

ASSOCIATION OF MINEWORKERS AND

CONSTRUCTION UNION (AMCU)

Third Respondent

THE COMMISSION FOR CONCILIATION,

MEDIATION AND ARBITRATION

Fourth Respondent

JOYCE NKOPANE N.O.

Fifth Respondent

NOMAXOTSHO MEMANI N.O.

Sixth Respondent

KGAKGAMATSO MOTEBE N.O.

Seventh Respondent

Heard: 17 February 2026

Delivered: 16 March 2026

Coram: Nkutha-Nkontwana JA, Davis AJA et Musi AJA

JUDGMENT

DAVIS, AJA

Introduction

- [1] This is an appeal against a judgment of the court *a quo* of 8 October 2024 in which Erasmus AJ dismissed an application for the review and setting aside of the designation ruling made by the Essential Services Committee (ESC) on 16 November 2022 in terms of which the ESC determined that the services of blast furnaces and coke batteries form part of the manufacture, production and distribution of steel and cannot be described as essential services.
- [2] This appeal therefore requires of this Court to provide an interpretation of “*essential services*” as defined in section 213 of the Labour Relations Act¹ (the LRA).

Factual Matrix

- [3] The appellant is a sole steel producer in South Africa. It operates a steel plant in Van der Bijl Park and Newcastle. To produce steel at the plant, a substance called coke, which resembles coal, is produced in a coke plant. Metallurgical grade coke is produced in coke ovens from heating coal.

¹ Act 66 of 1995, as amended.

- [4] The coke ovens also produce gas used in the rest of the plant. These ovens are operated by massive batteries which can be idled but not completely turned off as a machine would be switched off in the usual course. When the coke batteries are idled, there are risk of cracks and gas escaping. Accordingly, the idling must take place in a controlled manner to avoid an explosion that may occur due to gas hazards.
- [5] Coke is manufactured at the appellant's plant. It is then transferred to a blast furnace at the plant. At the blast furnace a hot molten liquid metal is manufactured through a complex process which converts iron into liquid iron which is then carried by using torpedoes to the steel plant where steel is eventually manufactured. Both the blast furnace and coke battery areas are gas – hazardous and heat – hazardous. The temperature that the blast furnace reaches 148 degree celsius and 1200 degree celsius at the coke ovens.
- [6] The uncontested evidence is the blast furnaces carry 25% carbon monoxide and that 2% would be lethal to human beings.
- [7] The appellant contends that there is a risk of an explosion of a blast furnace which is reasonably foreseeable, if there is a lack of adequate time to safely blow down the furnace which must be done in several phases. It contends that the hot idling process by which the coke ovens remain heated is necessary when it shuts down operations. But there must be enough time to undertake this operation, so that there is no bodily risk to the lives of personnel working in the area.
- [8] The context in which this matter has come before this Court is sourced in the argument of the appellant that when it receives a strike notice it has, in terms of the LRA, but 48 hours to safely blow down of slow operations the blast furnaces and hot idle the coke batteries at the coke plant. By contrast², it contends that to fully shut down two blast furnaces safely, six days are required with a full staff compliment.

² See: Section 64 (1)(b) of the LRA which provides that at least 48 hour's notice of the commencement of a lawful strike is required.

- [9] For these reasons the appellant contends that its staff will be placed in undue danger during the blow down of the furnace where a full staff compliment and additional contract staff is required for the six day period to deal with the blow down of two blast furnaces and the coke batteries and during hot idling. This would be impossible in the case of a strike in that the 48 hour period is simply not sufficient to undertake these tasks with safety.
- [10] There is no collective agreement that would extend the 48 hour period to strike to require six days for the first phase and there is no collective agreement prohibiting core workers who are required to remain behind during a phase of the shutting from striking. Because of these considerations, appellant contends that the only way to protect the lives of its employees is to seek a declaration from the ESC declaring these operations, being the slow down and hot idling phases, as essential services while providing for as narrowly tailored an order as possible to ensure that the right to strike is not unduly restricted.
- [11] In a finding of the ESC confirmed by the court *a quo* section 213 of the LRA, essential services in terms of section 213 of the LRA was interpreted to protect the broader societal interest and not isolated individuals at specific workplaces. Accordingly, the court *a quo* upheld the ruling of the ESC that the operation of blast furnaces and coke batteries does not constitute an essential service as provided for in section 213 of the LRA.

The appellants case on appeal

- [12] The appellant contends that the word “*essential*” as contained in section 213 of the LRA is not defined. In its view, what renders a service essential in the context of the phrases employed in the LRA is to be found in its own definition providing for the following requirements being:

“essential service” means –

- (a) a service the interruption of which endangers the life, personal safety or health of the whole or any part of the population ...'

(Own emphasis)

- [13] Appellant contends further that the word "interruption" means the cessation of the rendering of the service in question, to such an extent that the cessation of the rendering of the service endangers the life and personal safety or health of the whole or any part of the population. By reference to the ordinary dictionary meaning of "endanger", the appellant contends the word means to place someone or something at risk or in danger.
- [14] Of critical importance is the further submission that the phrase "any part of the population" must be interpreted broadly and purposively to include employees whose lives are directly endangered by the interruption of high risk industrial services. Appellant further contends that the expert evidence provided to the ESC and thus to the court *a quo* demonstrated that an interruption of high risk industrial services in this context would create a real and immediate risk to the lives of employees operating these units.
- [15] In summary, the appellant's case is that it is reasonably likely that someone forming part of the population, specifically its workers, may die or suffer serious bodily harm if the services are interrupted without proper shutdown procedures. This, in its view, fulfils the threshold required for a designation of an essential service. It follows that if the appellant is correct in its advocated meaning of essential service, this would cover procedures necessary to ensure the safe shutdown of the critical areas of its plant as described above.
- [16] In dealing with the constitutionally entrenched right to strike as provided for in section 23 of the Constitution of South Africa, 1996 (the Constitution), the appellant's submission is that the right to strike although fundamental, is not absolute and must be balanced against the right to life which is non-derogable in terms of the Constitution. The appellant therefore submits that the ESC and by

extension the court *a quo* failed to conduct the necessary balancing exercise. Instead, it adopted a rigid interpretive stance that excludes those most at risk, such as in the present case.

Evaluation

[17] The respondents concede that an act of striking, as enshrined in section 23 of the Constitution, and as provided for in section 64 of the LRA can be limited. However, that limitation has to reasonably and justifiably be limited by another law of general application pursuant to section 36 of the Constitution.

[18] This argument therefore drives the analysis to the wording of section 65 (1)(d)(i) of the LRA which provides that “*no person may take part in a strike ... if that person is engaged in an essential service*”.

[19] The third respondent makes much of the evidence that blast furnaces can be blown down with a salamander tap within 48 hours and therefore the evidence is itself, against the appellants case.

[20] But this case can be decided without detailed recourse to the technical evidence regarding the shutting down of the plant. In *Police and Prison Civil Rights Union v South African Police Services and others*³, the Constitutional Court said:

‘In order to ascertain the meaning of essential service, regard must be had to the purpose of the legislation ... An important purpose of the LRA is to give effect to the right to strike entrenched in s 23 (2)(c) of the Constitution... For this reason a restrictive interpretation of essential service must, if possible, be adopted so as to avoid impermissibly limiting the right to strike. Were legislation to define essential service too broadly this would permissibly limit the right to strike.’

[21] The task of this Court therefore is to give content to the concept of essential service without unjustifiably trenching upon the scope of the right to strike as entrenched in section 23 of the Constitution.

³ 2011 (6) SA 1 (CC) at para 30.

- [22] If the interpretation of essential service must be crafted to ensure no unjustifiable limitation of the right to strike, then in particular the phrase “*any part of the population*” cannot on its own without more encompass a set of workers who are engaged in the service. Part of the population clearly means a segment of the broader South African population who would be affected were the essential service not be delivered. The harm which is the focus of this dispute is essentially occupational which affects workers on site but cannot, without significant expansion, be interpreted to encompass a significant portion of the South African population or even a segment thereof.
- [23] As the first respondents note, the International Labour Organisation (ILO) has cautioned that the principle whereby the right to strike may be limited or even be prohibited in essential services would lose all meaning if national legislation defined these services in too broad a manner.
- [24] Significantly, the ILO sets out the following which it considers to be essential services, the hospital sector, the electricity services, water supply services, the telephone service, the police and the armed forces, the firefighting services, public or private prison services, the provision of food to pupils of school age and the cleaning of schools and air traffic control.⁴ This list indicates the very purpose of “*essential services*” affecting, at the least part of the population, are services which are essentially required by the general population as part thereof.
- [25] Most certainly, this Court is entitled to apply the approach adopted by the ILO, for in terms of section 39 (1) of the Constitution, this Court is required to engage in the interpretation of the Constitution which promotes the values of an open democratic society based on human dignity, equality and freedom, while considering international law and it may consider foreign law.

⁴ International Labour Organisation, *Freedom of Association: Digest Decisions of Principles of the Freedom of Association Committee of the Governing Body of the ILO* (5th ed 206) at paras 583 and 585.

- [26] The jurisprudence of the ILO provides clear guidance for that which, in my view, is manifestly congruent with the wording that has been used and hence the intention of section 213 of the LRA.
- [27] As noted, the list of essential services provided by the ILO gives a clear indication of that which was attended by the concept of essential services which would be to the benefit of a whole or part of the population. By contrast, an occupational hazard does not extend as far as is required to justify appellant's case. The submission of the first respondent that the phrase "*the whole or any part of the population*" as employed in section 213 of the LRA connotes the general public or community or a part thereof. In other words, congruent with the approach of the ILO, essential services are provided to the population at large or to a segment thereof. That is why hospital services, firefighting or police are considered to be essential services.
- [28] It must follow that the risks which flow from the evidence provided by the appellant were correctly classified as occupational hazards as opposed to that which affects the whole or part of the population and hence activities / conduct that falls within the scope of essential services.
- [29] Appellant's case requires of this Court to extend the concept of essential services far further than a purposive interpretation permits. It would strike an improper balance between the right to strike and section 213 of the LRA.
- [30] In the premise the following order is made:

Order

1. The appeal is dismissed, with costs.

D. Davis

Acting Judge of the Labour Appeal Court of South Africa

Nkutha-Nkontwana JA and Musi AJA concur.

APPEARANCES:

For the Applicant : Cliffe Dekker Hoffmeyr Inc

For the Respondent : Adv W Strobl

Instructed by: Serena Chetty Inc Attorneys