



- (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: JS491/23

In the matter between:

**THE ASSOCIATION OF MINeworkERS AND
CONSTRUCTION UNION**

First Applicant

**THE PERSONS WHOSE NAMES APPEARS ON
ANNEXURE 'B'**

Second Applicant

And

NORTHERN COAL

Respondent

Heard: In chambers

Delivered: 28 May 2026

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

RAMJI, AJ

- [1] The respondent has applied for leave to appeal my judgment on 30 April 2026, save for the finding that the individual applicants participated in an unprotected strike. An appeal would be to determine whether:
- 1.1. the individual applicants' participation in an unprotected strike justified their dismissal;
 - 1.2. full retrospective reinstatement (i.e. the best remedy available) is warranted in cases where workers committed at least some degree of misconduct; and
 - 1.3. the respondent was entitled to compensation in terms of section 68(1)(b) in the circumstances.
- [2] I received the respondent's written submissions on 21 May 2026. I received the applicants' written submissions on the evening on 27 May 2026.
- [3] There are several appeal grounds. Some are interrelated, but I deal with them individually as far as is possible.
- [4] The first ground is that I erred in finding that the workers were unfairly dismissed even though they engaged in an unprotected strike. There is sufficient authority, in both legislation and case law, that states explicitly that an unprotected strike is not an automatic basis for dismissal.
- [5] The second ground is that I erred in finding the individual workers' version that they were waiting for their payslip issue to be resolved when I ought to have preferred the respondent's version that the workers collectively withheld their labour. I did find that, in waiting, the workers collectively withheld their labour.
- [6] The third ground is that I erred in not drawing an adverse inference from or at least give adequate weight to the applicants' failure to call the foreman, who was a key witness. The respondent did not lay a basis for me to do so. Also, the respondent accepted that there was something of a mixed onus in this dismissal dispute. Although the applicants began the trial, it was accepted on record that the applicants bore the onus in respect of their automatically unfair dismissal claim, but not in respect of their ordinary unfair dismissal claim.

They called all the witnesses relevant to discharging their onus. The foreman was relevant to the respondent discharging its onus. There was therefore no basis in fact or law to take the respondent's proposed approach.

- [7] The fourth ground of appeal is based on the fact that the workers should have known when to go back to work, and did not need to wait to hear this directly from management. This is no more than a different framing of the first ground of appeal. Additionally, case law in support of management's failure to engage being a mitigating factor for workers engaged in an unprotected strike was cited in the judgment. Second, it has no material impact on the outcome. The same can be said for the twelfth ground of appeal.
- [8] The fifth ground of appeal is that I applied factors in Item 6 of Schedule 8 to the Labour Relations Act (LRA). Item 6 is directly applicable to unprotected strike dismissals. I therefore do not understand this ground of appeal. It appears that the complaint is how the factors in item 6 were weighted. But in a weighing up exercise, there is no hard-and-fast rule. Therefore I can see no reason why another Court would come to a different conclusion. Another Court may, but that is not the test. The respondent continues in its application for leave to appeal to rely on cases that are distinguishable from this case on the facts and to ignore comparable cases. The seventh ground of appeal is indistinguishable from the fifth.
- [9] The sixth ground of appeal is that I should not have considered the workers' brief action in the light of their financial situations. This ignores the purpose of the LRA as set out in section 1 of the LRA. It was a relevant consideration. It is also established by cited case law that the 'motives' to workers actions are relevant to the application of discipline.
- [10] The eighth ground of appeal is that I should not have ordered reinstatement from the date of dismissal after finding that the workers participated in a four-and-a-half hour peaceful unprotected strike. There is no explanation of why this remedy is erroneous or inappropriate. It is an available remedy. Again, another Court may disagree, but this is not the test. To the extent that I it is suggested that I failed to take into account the respondent's position going

forward, it was considered and is reflected in the fact that I declined to order costs against the respondent, even in respect of its counterclaim.

[11] The ninth to eleventh grounds of appeal concern the respondent's counterclaim in terms of section 68(1)(b) of the LRA. I found that the respondent had not established AMCU's liability when it was not present or shown to have been involved in the strike. This is a requirement from case law. The respondent attacks an ancillary point, and not the fundamental finding: it does not dispute the finding that AMCU did not know about and was not involved in the strike. Having found that the respondent failed to establish liability in terms of all relevant consideration in law and equity, there was no basis to deal with the respondent's evidence on quantum. Finally, I did consider whether the individual applicants could be held liable under the section.

[12] The application for leave to appeal and its supporting submissions fail to demonstrate any errors in my application of the law or in my findings of fact. The application certainly does not show that another Court would come to a different conclusion.

[13] Section 17(1)(a)(ii) of the Superior Courts Act, 2013, was cited but no submissions on its applicability were made. In any event, a finding of this nature is not unique and does not tread into unchartered legal territory.

[14] Accordingly, the following order is made:

Order

1. The application for leave to appeal is dismissed.

B. Ramji

Acting Judge of the Labour Court of South Africa

LABOUR COURT