



**IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG**

Not Reportable

Case no: J 303/16

In the matter between:

**NATIONAL UNION OF METAL WORKERS**

**OF SOUTH AFRICA**

**First Applicant**

**THE PERSONS WHOSE NAMES ARE LISTED**

**IN ANNEXURE "A" OF THE**

**NOTICE OF MOTION**

**Second Applicant**

and

**BUMATECH CALCIUM ALUMINATES**

**First Respondent**

**Heard: 16 May 2018**

**Delivered: 09 November 2018**

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**JUDGMENT**

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**LALLIE. J**

Introduction

- [1] This is an application to have a lock-out imposed by the respondent on the second to further applicants (applicants) declared unlawful and illegal. The applicants seek a further order directing the respondent to allow them access to its premises in order to resume their duties and to have the respondent's utilization of the services of temporary workers interdicted. The application is opposed by the respondent.
- [2] The respondent manufactures slag conditioners and pozzolanic additives using secondary dross which is high in alumina as a raw material. The products have a number of advantages including reducing the melting point of steel. On 5 August 2015 the respondent served the first applicant (NUMSA) with a notice in terms of section 189 of the Labour Relations Act<sup>1</sup> (the LRA) in which it requested a consultation meeting on 12 August 2015. On 11 August 2015 NUMSA addressed a letter to the respondent requesting that the consultation be put in abeyance. The respondent agreed to postpone the consultation meeting but intimated that it awaited NUMSA's urgent reply.
- [3] On 18 August 2015 the respondent, through its director, circulated to employees a memorandum advising of shift changes with effect from 25 August 2015 which were put in place as a cost saving initiative. On 19 August 2015 NUMSA circulated a notice of its meeting with the Steel Industry CEO's with a view of dealing with the issue of retrenchments in the industry. The meeting was held on 25 August 2015 and NUMSA and the respondent had an opportunity to consult on the pending shift changes. NUMSA made a proposal which would result in employees working less hours without loss of income. The shift changes were scheduled to commence on 31 August 2015.
- [4] NUMSA referred a dispute relating to unilateral change to terms and conditions of employment for Conciliation, Mediation and Arbitration (the CCMA) attempts to

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<sup>1</sup> 66 of 1995, as amended.

resolve it through conciliation were unsuccessful and an outcome certificate was issued. On 3 November 2015 the respondent served NUMSA with a lock-out notice and on 5 November 2015 the NUMSA served the respondent with a strike notice. The applicants thereafter embarked on a protected strike.

- [5] NUMSA submitted that the lock-out is unlawful because on 24 and 25 November 2015, NUMSA addressed a letter to the respondent in which it requested a meeting with a view of resolving the dispute between the parties. NUMSA further expressed its intention to suspend the strike and have the applicants return to work on 27 November 2015. When the applicants reported for work on 27 November 2015 they were denied access because of the lock-out. In a further attempt NUMSA's attorneys addressed a letter to the respondent's attorneys requesting a meeting to resolve the dispute. The respondent through its attorneys set a condition that the applicants should give an undertaking to refrain from violence and intimidatory conduct for the meeting to be held. NUMSA argued that the condition rendered the lock-out unlawful as it illustrates that it is based on disciplinary issues and its continued implementation was in response to a strike which had been called off. The applicants were again denied access to the respondent's premises when they tendered their services on 1 February 2016. NUMSA's letter of 2 June 2016 advising the respondent that the applicants would resume their duties and requesting a copy of the new shift roster did not yield positive results.
- [6] The respondent's basis for opposing this application is that the lock-out is lawful because the dispute between the parties exists and the NUMSA has not abandoned the strike and accepted its demand for shift changes unconditionally. NUMSA sought to rely on *Transportation Motor Spares v NUMSA and Others*<sup>2</sup> in attacking the lock-out notice for not disclosing what NUMSA and its members were required to do to end the dispute. It is true that the lock-out notice does not tell NUMSA what to do to resolve the dispute, however, each case is decided on its merits. Correspondence between the parties makes the nature of the dispute

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<sup>2</sup> 1999 (20) ILJ 690 LC.

clear and what the respondents required NUMSA to do in order to resolve the dispute. NUMSA knew that the respondent wanted it to accept changes in shifts. It even referred a dispute regarding the change to the CCMA. When it was not resolved the respondent issued the lock-out notice. At no stage did NUMSA allege that it did not know what to do in order to resolve the dispute.

[7] All the documents NUMSA sought to rely on in support of its assertion that it accepted the respondent's demands unconditionally did not serve the purpose. The respondent's demand in the memorandum of 18 August 2015 (the memorandum) is to have the applicant's work different shifts and reduced hours in order to accommodate the decline in its business. In the replying affidavit NUMSA admitted that its response to the memorandum had neither merit nor financial benefit and defeated the purpose initiative of the changes in shifts as it suggested working less hours without loss of income.

[8] In the letter NUMSA addressed to the respondent on 24 November 2015 with proposals to settle the strike it sought the following:

- "(1) A commitment from the respondent that it would compensate the striking workers for lost hours due to unilateral implementation of hours of work.
- (2) Basing basic salary on R173.33 hours per month as compressed hours.
- (3) Payment of annual bonuses to all employees.
- (4) Payment of leave pay to be effected on the same day as fortnight pay.
- (5) NUMSA members would resume duties on 30 November 2015.
- (6) Signing of a settlement agreement by the parties before 30 November 2015."

[9] On 25 November 2015 NUMSA informed the respondent in writing that its members would be advised to report for work on 27 November 2015 and the strike would be suspended. It is worth noting that NUMSA did not say that the strike would be abandoned. When a strike is suspended it has been stopped temporarily. The letter is also silent on a meeting the respondent's demand of working the new shifts unconditionally. Even the undertaking made by NUMSA

on 15 December 2015 that its members who were on strike would not intimidate, threaten or interfere with non-striking employees is silent on their willingness to work the new shifts unconditionally. On all instances on which the applicants tendered their services but were turned away by the respondent, they did not express their willingness to work the new shifts unconditionally and to abandon the strike.

[10] The applicants did not prove the unlawfulness of the lock-out. The application can, in the circumstances not succeed.

[11] In the premises, the following order is made:

Order:

1. The application is dismissed.

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Z. Lallie

Judge of the Labour Court of South Africa

Appearances

For the applicant:

Instructed by:

Advocate Jackson

Finger Phukubje Inc Attorneys

For the respondent:

Instructed by:

Advocate L. Pillay

Yusuf Nagdee