
EMPLOYMENT

ALERT

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In a judgment handed down by the Labour Appeal Court (LAC) on 12 June 2014 (*Food and Allied Workers Union v In2food (Pty) Ltd* (case number J861/2013)) the LAC had occasion to consider the circumstances under which a trade union can be held in contempt of a court order prohibiting an unprotected strike.

In that matter, employees embarked on an unprotected and violent strike. An interdict was obtained against the union and the individual strikers to address the unlawfulness of the violence and to bring about the cessation of the unprotected strike. Amongst others, the court order provided that both the union and the strikers were interdicted from continuing with the illegal and unprotected strike action and from preventing free movement and access to the premises of the employer.

After the interdict had been granted, the violence did not abate and the strike did not stop. The employer brought an urgent contempt application before the Labour Court (LC), which held that both the union and its members were in contempt of the order issued.

The single ground of appeal brought by the union was that there was no evidence of a breach of the court order by the union itself. The true question for decision was whether evidence existed of the union 'continuing' the illegal and unprotected strike action and/or 'blocking access' to the employer's premises and 'inhibiting people from entering and leaving', as distinct from a breach by the individual union members on strike.

The LAC made the following important findings:

- The fact that a trade union can be liable for the acts of its members does not assist in deciding whether the trade union, in its own right, has breached a court order. Where there is evidence to implicate the union vicariously in the unlawful acts of its members, there may well be an action available to the employer for redress, but the liability of the union for contempt of a court order is strictly determined by reference to the what the court ordered the trade union itself to do and the presentation of evidence that it did not do as it was told.
- The formulation of the court order against the union was vague, having not been insightfully framed with logistics of proof of breach and of effective execution in mind. The phraseology could not be interpreted to place an obligation on the union to take positive steps to end the strike (as argued by the employer). An interdict order against a union should prudently state



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plainly what action is mandatory, and not confuse the union's obligations with that of its members. The terminology of 'continuing' the strike was too vague to be useful in a context where quasi-criminal sanctions (ie contempt) were at issue.

The LAC held that in other cases where contempt proceedings were successfully prosecuted against the unions involved, the degree of clarity in the orders was the point of departure for the enquiries. This point is illustrated in the following cases:

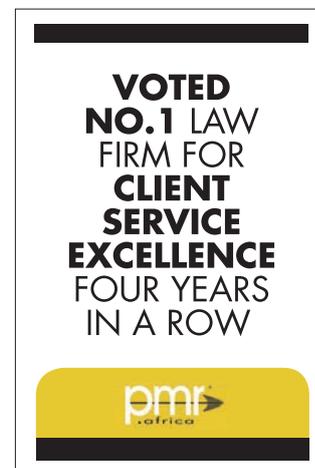
- *Security Services Employer's Organisation and Others v SATAWU (2007) 28 ILJ 1134 (LC)* – the union was directed by a court order to ensure that copies of an order interdicting further strike action were brought to the attention of its members by affixing copies at various places and to maintain such notices until the workers all resumed work. The union did not do so. Thus a breach was proven. The liability of the union was based on its direct breach of obligations imposed upon it in the court order.
- *Supreme Spring, a division of Met Industrial v MEWUSA (J2067/2010)* – the court order specifically instructed the union to take concrete action, ie to refrain from inciting the striking employees from participation in the strike. Instead, the union approached the

employer to try and negotiate a cessation of the strike in return for the employer abandoning the court proceedings. The court held that this behavior was inconsistent with the order directing the union not to encourage or incite the strikers to persist with the strike.

In the case under discussion, the LAC held that no evidence existed to find that the union was continuing the unprotected strike action or that the union blocked or incited/encouraged the blockage of the entrance to the employer's premises. In addition, evidence was provided of a letter written by the employer's management to the union stating "... despite four attempts by your union to convince the workers to return to work they do not listen to you and it is clear that you have no control over them." The LAC found that, on the facts of this matter, the union was not shown to have breached the court order.

Whether a trade union is culpable of breaching a court order is a question of fact. The mere fact that its members are in contempt of the court order is insufficient to establish a breach of the court order by the union itself.

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