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EMPLOYMENT ALERT

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CONSTITUTIONAL COURT RULING ON LOCKOUTS

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CONSTITUTIONAL COURT RULING ON LOCKOUTS

TAWUSA approached the Labour Court seeking an order interdicting Putco from locking out TAWUSA members in its employ.

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The Constitutional Court handed down an important judgment where it held that the Labour Relations Act does not permit an employer to lock-out the members of a trade union that are not a party to a bargaining council where the dispute has arisen and has been referred for conciliation.

In the matter before the court, a strike notice was issued by two unions after industry wage negotiations gridlocked at the bargaining council. In response to this, Putco gave notice of its intention to lock-out all employees in the bargaining unit, which included Transport and Allied Workers Union of South Africa (TAWUSA) members who were not a party to the negotiations at the bargaining council.

TAWUSA approached the Labour Court seeking an order interdicting Putco from locking out TAWUSA members in its employ.

The Labour Court held that TAWUSA was not a party to the dispute giving rise to the lock-out as it was not a member of the bargaining council where the dispute arose. The Labour Court found that the lock-out was not permissible. On appeal, the Labour Court's finding was set aside.

TAWUSA then approached the Constitutional Court and argued that it was not a member of the bargaining council in which the dispute arose and therefore not a party to the dispute that gave rise to the lock-out. TAWUSA argued that there was no dispute between the parties, no demand by Putco and that its members could not be locked out.

The Constitutional Court held that the purpose of a lock-out is to compel employees to accept an employer's demand and that before an employer institutes a lock-out there must be a dispute between the employer and employees or their trade union. As TAWUSA was not a member of the bargaining council, it was not a party to the dispute and in the absence of a dispute a lock-out of its members was not permitted.

Aadil Patel

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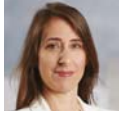
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