

EMPLOYMENT ALERT

LET OUR STRIKE GUIDELINES BE THE STARTING POINT FOR YOUR STRIKE STRATEGY

At Cliffe Dekker Hofmeyr we pride ourselves in providing our clients with practical solution driven information in line with the current challenges faced by our clients.

Due to the increase in strikes and strike violence in South Africa, our employment practice developed useful strike guidelines for our clients' benefit. These guidelines will provide clients with practical information about strikes, lock-outs and picketing and answer some of the more complex questions around these topics. The guidelines are definitely the starting point when considering a strike strategy and when preparing for industrial action. Our strike guidelines can be accessed on our website.

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WHEN A TEMPORARY EMPLOYMENT SERVICE IS DISPUTED, WHO CAN GO ON STRIKE?

Jimmy Nyambi & 14 Others V H C Shaik Investments CC (Shaik) and Nampak Glass (Pty) Ltd (Nampak).

WHEN A TEMPORARY EMPLOYMENT SERVICE IS DISPUTED, WHO CAN GO ON STRIKE?

The applicants, in this case, are employed by H C Shaik Investments CC (Shaik).

Shaik is engaged in tasks to check and remove any defective bottles produced by Nampak once the entire production process is complete, and after the goods have been sorted and packaged by a different service provider.

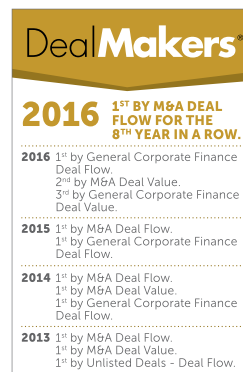
Jimmy Nyambi & 14 Others V H C Shaik Investments CC (Shaik) and Nampak Glass (Pty) Ltd (Nampak):

The applicants, in this case, are employed by H C Shaik Investments CC (Shaik). They applied to the Labour Court on an urgent basis to restore unilateral changes to their employment conditions until the dispute about whether Nampak is also their employer is determined at arbitration. The changes imposed by Shaik pertained to a relocation of the workplace, the imposition of short time, a reduction in staff per shift with a less than proportionate cut in minimum target rates. The arbitration, which is still pending, will determine whether the applicants are employed by Shaik or deemed to be employed by Nampak.

Shaik is engaged in tasks to check and remove any defective bottles produced by Nampak once the entire production process is complete, and after the goods have been sorted and packaged by a different service provider. The applicants allege that Shaik is a labour broker providing temporary employment services

to Nampak and that the latter is their employer. This allegation is denied, Shaik and Nampak submit that the relationship is a commercial one governed by a service level agreement, where Shaik is the managed service provider to Nampak.

The object of the applicants' urgent application to the Labour Court was for them to preserve their ability to engage in protected strike action against their true employer/employers where they claimed that there had been unilateral changes made to their terms and conditions of employment. Shaik is their current employer, but the applicants have alleged that Nampak is also their employer and until such time as the pending arbitration is determined, they could not be sure whether they had a right to impose a primary protected strike against Shaik and Nampak. Obviously, this was provided that such changes amounted to unilateral changes to terms and conditions of employment.



WHEN A TEMPORARY EMPLOYMENT SERVICE IS DISPUTED, WHO CAN GO ON STRIKE?

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The gravamen of this case is that if there is an inextricably close link between the work performed by the employees of a service provider and the operations of its client, a protected secondary strike could be possible.



A primary strike against Nampak, so the applicants argued, would allow Nampak's own employees to strike in support of the applicants' demands that the unilateral changes to their conditions of employment be reversed. It is a well-established legal principle that not only the employees who are directly affected by strike demands made on an employer may take part in a protected strike. The applicants, in essence, wanted to interdict the changes to their conditions of employment in the meantime and only exercise their right to strike when they knew whether Nampak's own employees could participate in the strike. If Nampak was also their employer, its own employees could also participate in the primary strike.


Regardless of whether Nampak is the deemed employer of the applicants, or if Shaik is found to be a labour broker, the Labour Court concluded that Nampak's own workforce could participate in a

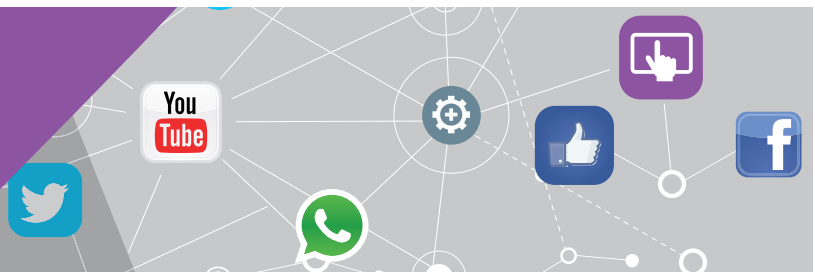
secondary strike in support of a primary strike by the applicants against Shaik, provided, all the relevant procedural steps under sections 64(4) and 64(2) of the Labour Relations Act, No 66 of 1995 had been followed.

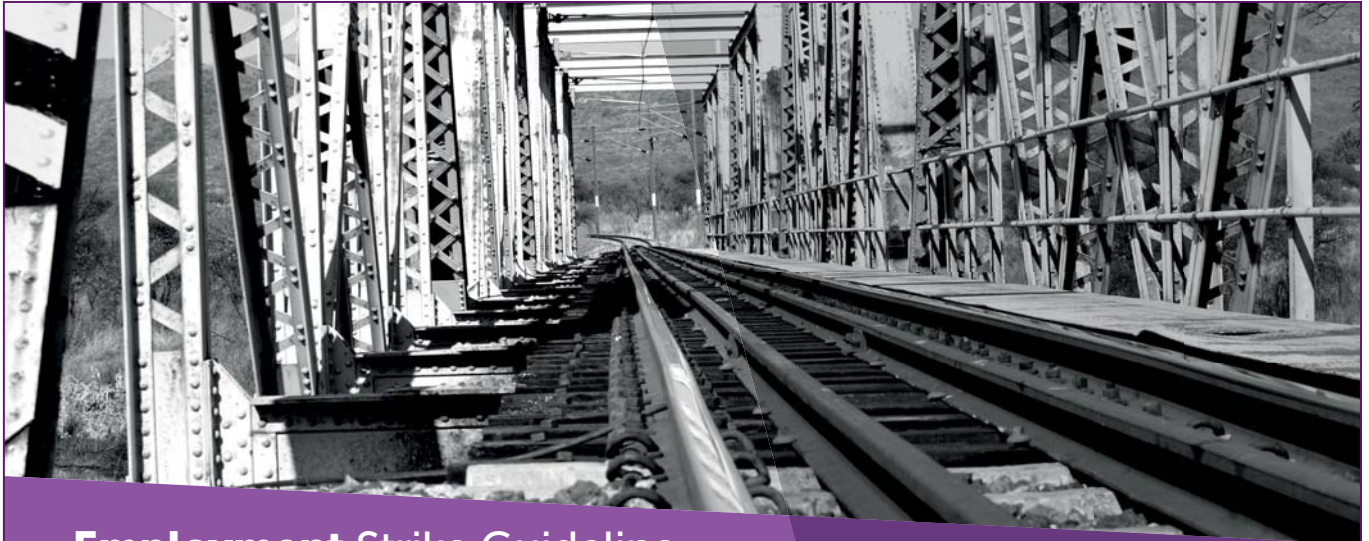
That said, the applicants' urgent application for an interdict to prevent an alteration of their conditions of employment and to preserve the right to strike against the alleged true employer was dismissed on the basis that the applicants had a suitable, alternative remedy, namely possible protected secondary strike action.

The gravamen of this case is that if there is an inextricably close link between the work performed by the employees of a service provider and the operations of its client, a protected secondary strike could be possible.

Fiona Leppan

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GUIDELINE





Employment Strike Guideline

Find out when a lock-out will be protected.

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Gillian Lumb ranked by CHAMBERS GLOBAL 2017 in Band 4: Employment.



Michael Yeates named winner in the **2015 and 2016 ILO Client Choice International Awards** in the category 'Employment and Benefits, South Africa'.



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BBBEE STATUS: LEVEL THREE CONTRIBUTOR

Cliffe Dekker Hofmeyr is very pleased to have achieved a Level 3 BBBEE verification under the new BBBEE Codes of Good Practice. Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

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