

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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NOT MY STRIKE, STILL MY PROBLEM

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NOT MY STRIKE, STILL MY PROBLEM

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May a company interfere in a labour dispute to which it is not a party if the dispute results in violent strike action adversely affecting its business operations?

Strike action can often turn violent. Violence, in addition to the withdrawal of labour, is used to force the employer to meet the employees' demands. In the process, the employer's property is frequently damaged. Unfortunately, innocent third parties are sometimes drawn into the dispute and affected by the violence. This scenario, and one of the options available to third parties, was addressed in the judgment of *South African Breweries (Pty) Ltd v Professional Transport & Allied Workers Union of South Africa AKA PTAWU* [2017] ZAGPJHC 178.

The South African Breweries (SAB) is one of South Africa's premier brewers and leading distributors of beer. SAB implemented an owner-driver scheme in terms of which it contracted with drivers previously employed by it to transport its products. The drivers owned and operated their own trucks and distributed SAB's products from its various depots to retail outlets. The drivers employed their own staff, consultants and crew. The crew members were members of the Professional Transport & Allied Workers Union of South Africa (PTAWU). PTAWU demanded that the drivers employ a fourth crew member, in addition to the usual three. The drivers refused and a strike ensued.

The strike turned violent quickly. A truck owner was attacked while making deliveries and a truck was vandalised. During the attack, SAB's product was

thrown off the truck. In addition to the violence and damage to SAB's product, PTAWU sent an email warning SAB that should they continue with their strike action, it would affect SAB's normal business operations. SAB was forced to engage a private security firm to escort the drivers when delivering SAB's products and in this way, protect its product. Needless to say, SAB incurred substantial financial costs in doing so.

SAB applied to the High Court seeking an urgent interdict against PTAWU and its representative. The PTAWU representative argued that SAB had no right to the relief or to act on behalf of the truck owners. He further argued that the truck owners should have approached the court to demand protection of their trucks against damage by their employees.

In considering the matter, the court had regard to the Constitution and found that it provides for a right to strike and protest peacefully. The reason for this being, at least in part, to protect private and public property from damage or destruction by those participating in a strike. The court held that valuable property warrants protection, whether at the workplace or elsewhere and that despite SAB not having a contractual or employment relationship with the members of PTAWU, it was entitled to protect its product from further damage by those involved in the strike.

NOT MY STRIKE, STILL MY PROBLEM

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The judgment confirms a company's right to seek assistance from the courts when its property is being damaged or its business adversely affected by a violent strike in which it plays no role.



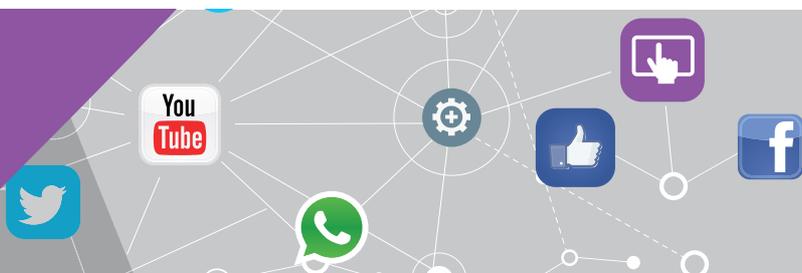
Contrary to the PTAWU representative's argument that only the truck owners could seek relief, the court granted SAB's application to protect its product from further damage by the strikers and in so doing, protect its business operations. The relief included interdicting and restraining PTAWU from encouraging its members to interfere with, threaten or intimidate drivers' employees, contractors or representatives while engaging in strike action and encouraging its members to damage SAB's products.

The judgment confirms a company's right to seek assistance from the courts when its property is being damaged or its business adversely affected by a violent strike in which it plays no role. As with every strike, we recommend that any company impacted by violent strike action keeps a strike diary and takes photographs of any violent conduct. In this instance, SAB's foresight in taking photos and submitting these to court as evidence proved invaluable in establishing the nature and extent of the damage caused to its product.

Gillian Lumb, Anli Bezuidenhout and Brynn Travill



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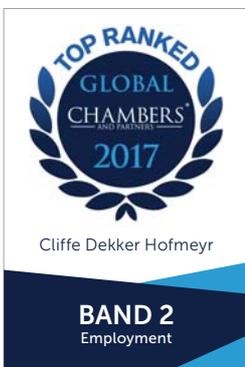




Employment Strike Guideline

Find out what steps an employer can take when a strike is unprotected.

 [Click here to find out more](#)



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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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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.

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