DLA CLIFFE DEKKER HOFMEYR

EMPLOYMENT ALERT

16 September 2013

CASE LAW UPDATE: *UNITRANS SUPPLY CHAIN SOLUTIONS (PTY) LTD V SATAWU & OTHERS (J1174/2013)*

Unitrans Supply Chain Solutions (Pty) Ltd (Unitrans) provided logistical support to one of its clients. In terms of a renegotiation of the commercial agreement between the two entities, Unitrans was required to update an existing practice of briefing and debriefing drivers after they returned to the depot.

The South African Transport and Allied Workers Union (SATAWU) alleged that this amendment amounted to a unilateral change to the terms and conditions of employment of their members and referred a dispute to the bargaining council.

After conciliation a certificate of outcome was issued. SATAWU then issued a strike notice in terms of s64(4) of the Labour Relations Act, No 66 of 1995 (LRA). Unitrans then launched an urgent application at the Labour Court to interdict the strike.

The judgment deals with the matter in two parts:

1. Whether the change related to a work practice or a term and condition of employment; and

2. Whether the right to strike had lapsed by virtue of the interim nature of the right - as contemplated in s64(4).

On the first aspect, the court again confirmed that a change to a work practice "… is as a matter of general principle not a change to conditions of employment". The court reiterated, though, that there is need for an employer to show that there are economic and operational requirements for such change.

Snyman AJ held that adding additional duties relating to the briefing and debriefing system did not constitute a material change to working conditions as it did not change the nature of the job or a material condition of employment. Unitrans was accordingly held to be entitled to the unilateral change that was made for "sound business and operational reasons".

On the second issue Snyman AJ held that once the conciliation period prescribed in s64(1) expired, the issue of "entitlement to the status quo relief expires along with it". As SATAWU had referred its dispute in terms of s64(4) of the LRA, Snyman AJ held that their right to strike had lapsed when the certificate of outcome was issued.

In general, trade unions rely on the provisions of s64(4) by referring a dispute to the Commission for Conciliation, Mediation and Arbitration (CCMA) and only once the conciliation fails does the union issue a strike notice. This however is a misconceived interpretation.

Section 64(4) is unique in that it contains its own remedy by allowing for a union and/or employees to demand that the employer does not implement a proposed change (or that the employer revert to the status quo prior to the alleged unilateral change), pending the outcome of conciliation proceedings. Should the employer not comply with this demand to maintain the status quo within 48 hours, the employees may immediately embark on a strike without the normal 48 hours' notice of their intention to strike. Once the conciliation fails or the 30 day time period lapses, the entitlement to strike without giving 48 hours' notice in respect of this issue falls away.

Accordingly, employees may only strike in terms of s64(4) of the LRA where they referred a dispute on an alleged unilateral change to terms and conditions of employment, requested that the employer maintains the status quo, and the employer failed to do so within 48 hours. They must then go on strike prior to the certificate of outcome being issued, failing which they have to give 48 hours' notice of their intention to strike.

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