

# EMPLOYMENT

AN ANALYSIS OF THE  
'NO WORK NO PAY'  
PRINCIPLE

## AN ANALYSIS OF THE 'NO WORK NO PAY' PRINCIPLE

### The duties of full time shop stewards in the context of strike action – an analysis of the 'no work no pay' principle.

Full time shop stewards generally perform the functions of the union on a full time basis, but are paid by the employer. The question however arises as to whether full time shop stewards can validly challenge the 'no work no pay' principle during strike action, when they can demonstrate that they still performed union activities for its duration.

This was one of the questions which the Labour Appeal Court (LAC) was faced with in the recent decision of *Ekurhuleni Metropolitan Municipality v South African Municipal Workers Union on behalf of members (Case number: JA12/13)*, the judgement of which was handed down on 23 October 2014.

In brief, the facts of the matter were that the Municipality employed three full time shop stewards, all of whom were members of the South African Municipal Workers Union (SAMWU).

Strike action was embarked upon by the members of SAMWU and as a result, the Municipality applied the 'no work no pay' across the board, including in relation to the three full time shop stewards.

SAMWU immediately applied to the Labour Court to interdict the Municipality from withholding the full time shop stewards pay.

SAMWU contended that for the duration of the strike, the three full time shop stewards had fulfilled their obligations by representing the interests of SAMWU and its members, as provided for in their collective agreement with the Municipality.

The matter was first heard in the Labour Court which found that the three full time shop stewards had not participated in the strike and were therefore entitled to their remuneration for its duration.

The Labour Court reasoned that the three full time shop stewards:

- had not withheld their labour from the Municipality during the strike;
- had reported for work as full time shop stewards each and every day;
- attended to their duties as full time shop stewards by monitoring the strike and attending disciplinary hearings and meetings;
- did not lose their statuses as full time shop stewards during the strike; and
- therefore the 'no work no pay' principle in terms of s67(3) of the Labour Relations Act, No 66 of 1995 (LRA) could not be applied in respect of the three full time shop stewards.

As a result, the Labour Court held that the involvement of the full time shop stewards in the strike had occurred within their capacities as such and that they had managed the strike on behalf of the union, therefore entitling them to their salaries.

The matter then went on appeal to the Labour Appeal Court (LAC) and although the majority decision decided the appeal on the basis of a jurisdictional point, namely one pertaining to the application and interpretation of the main collective agreement, the minority judgment found that the Labour Court and subsequently the LAC could have in any event considered the merits of the case in terms of s77(3) and 77A of the Basic Conditions of Employment Act, No 75 of 1997 (BCEA).

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In argument both before the Labour Court and the LAC, SAMWU contended that the participation by their full time shop stewards in organising and managing the strike had been part and parcel of their roles as such and for which they should be paid.

Having considered the merits of the matter, Waglay JP held in his minority decision that the salaries of the three full time shop stewards could be withheld during the strike.

Full-time shop stewards perform the work of their trade union but in the employers' time and that this is a very important function in contributing towards labour peace, in that the employer has ready access to a trade union representative without interrupting the normal flow of work in the workplace, and the trade union has a representative available on the shop floor to deal with any issues that may arise or need immediately to be addressed.

Furthermore, the appointment of full-time shop stewards is based on the fiction that they perform the tasks they are employed to perform, and that a full time shop steward is entitled to be remunerated for as long as the duties that they are excused from performing, are still capable of being performed.

It therefore cannot be said even fictionally so, that the three full time shop stewards could have carried out their duties as employees, and therefore the Municipality was entitled to apply the 'no work no pay' for as long as the strike continued.

Finally the LAC concluded that it would be manifestly unfair and irrational to treat the three full time shop stewards differently to the other striking employees and that the exercise of their functions as full-time shop stewards was in fact conditional on a normal working environment.

This decision is seen a victory for employers who will welcome the certainty to arguments of this nature, which are made during or shortly after strike action.

*Nicholas Preston*

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