

EMPLOYMENT ALERT

IN THIS ISSUE

CAN UNIONS STILL WASH THEIR HANDS OF THE UNLAWFUL CONDUCT OF THEIR MEMBERS DURING A STRIKE?

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This case reinforces the court's attitude towards union liability. Unions can no longer simply wash their hands of the unlawful conduct of their members.



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In this case, the Association of Mineworkers and Construction Union (AMCU) engaged in a protected strike and concluded a picketing rules agreement in terms of s69 of the Labour Relations Act, No 66 of 1995 (LRA) with Verulam Sawmills (Employer) prior to the strike. The agreement provided for an appointment of a strike control convenor by AMCU.

During the course of the strike, the striking employees (Employees) engaged in conduct which violated the picketing rules agreement. This led to the Employer shutting down its operations. The Employer wrote several letters to the strike control convenor highlighting the violation of the picketing rules. The strike control convenor's response was that the Employees were addressed by an AMCU official to comply with the picketing rules. In response, the Employer wrote a letter narrating all the events of breach of the picketing rules agreement.

The Employer approached the Labour Court for an urgent interdict and a punitive cost order. An initial order was granted compelling AMCU to comply with the picketing rules and the parties agreed that costs be reserved.

In *Tsogo Sun Casinos (Pty) Ltd t/a Montecasino v Future of SA Workers Union & Others* (2012) 33 ILJ 998 (LC), the Labour Court expressed its displeasure against unions that refuse to take all reasonable steps to prevent unlawful conduct by its members. Further, in *Xstrata SA (Pty) Ltd v AMCU & Others* (J1239/13) [2014] the Labour Court held that the perception that a union has no obligation to control its members during violent and unlawful

activities cannot be sustained. The court found that there are four legal grounds upon which a union is obliged to police its members during a strike:

- (i) section 17 of the Constitution;
- (ii) the guardianship relationship between the union and its members;
- (iii) the collective bargaining relationship between unions and employers; and
- (iv) the process of engagement between the parties.

Returning to the present case in discussion, the court, pursuant to the continued breach of the picketing rules by the union, held that AMCU's accountability and potential liability for breach was founded upon the picketing agreement between the parties. Furthermore, the court held that AMCU did not take all reasonable steps to prevent the unlawful conduct. The court looked at the strike control convenor's failure to investigate the breach and the duty to maintain a positive engagement with the Employer. It is this failure that warranted the granting of a punitive cost order.

This case reinforces the court's attitude towards union liability. Unions can no longer simply wash their hands of the unlawful conduct of their members. Unions have to show that they took all reasonable steps to address and prevent unlawful conduct by its members. Their failure to do so may, as seen in this and other cases, result in harsh orders for costs against the union.

Fiona Leppan and Bheki Nhlapho



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