

De Kock

## COVER SHEET



INDUSTRIAL COURT VERDICT

HELD AT PRETORIA

CASE NUMBER NH9/2/367



LABOUR APPEAL COURT VERDICT

DIVISION

CASE NUMBER



SUPREME COURT - APPELLATE  
DIVISION

CASE NUMBER



AGRICULTURAL COURT VERDICT

HELD AT

CASE NUMBER

*Circulate*  
IN THE INDUSTRIAL COURT OF SOUTH AFRICA  
HELD AT PRETORIA

CASE NO: NH 9/2/367

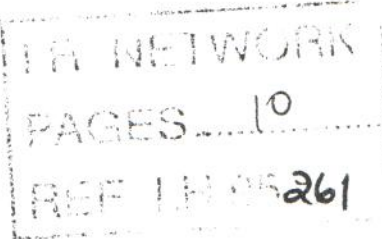
In the matter between

S SHONGWE & 39 OTHERS

and

VAL EGG FARM

Applicants



Respondent

CONSTITUTION OF THE COURT:

MR A DE KOCK

Senior Member

FOR APPLICANT:

MS J M KHUMALO

Of:

SAAWU

FOR RESPONDENT:

MR SHORT

Of:

Adams & Adams Attorneys

DATE AND PLACE OF PROCEEDINGS:

15 March 1995

PRETORIA

TRANSCRIBERS  
SECRETARIAL SERVICES

UTSPRAAK GELEWER OP	
1995-05-05 19.	
TYD	9.00.
	
PRESIDENT/ADJUNCT PRESIDENT NYWERHEIDSHOF	

JUDGMENT/UTSPRAAK	
No.	59 VAN OUF 10.5
CIRCULATE/VERSPREI	
	
PRESIDENT: INDUSTRIAL COURT PRESIDENT: NYWERHEIDSHOF	

JUDGMENT

The applicants were all employees of the respondent and were dismissed on 9 September 1994. The respondent alleges that they were dismissed for participating in a strike. The applicants deny that they participated in a strike. It is common cause that if the applicants did strike such strike would be proscribed in terms of section 65 of the Labour Relations Act No. 28 of 1956 as construed in terms of the provisions of the Agricultural Labour Act No. 147 of 1993. The respondent is an egg farmer and is engaged in farming activities. 10

The applicants elected a worker committee which represented them in all negotiations with their employer, the respondent. Wages were negotiated in March and April 1994 and increased by between 20% and 40%. These substantial increases in wages was justified by reason of the fact that due to economic circumstances there had been no increase in 1993. 20

In August 1994 the committee submitted a further lists of grievances to Mr David Byrne, the respondent's managing director. The grievances included a demand to be paid for over-time worked, free transport to the nearest doctor and/or hospital, the suitability of accommodation provided and an increase in wages of R50.00 per fortnight. Meetings were held with the committee and also separately with the respondent's drivers as the problem regarding overtime related mainly to the drivers. 30

/The respondent

The respondent did address the grievances but could not resolve all the grievances to the satisfaction of the applicants. The respondent in particular made it clear that it was not prepared to grant a further increase in wages for the year concerned.

On 2 September 1994 the committee submitted a further grievance to Mr Byrne which reads as follows, and I quote it literally:

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"With honourable committee explained every details to workers about extended hours, overtimes, wages etc. And we are not interested to every story you talking. Our attitude is insisted on increase. Please on next pay day we ask for the increase due to high costing of living and situation on Earth.

The last thing to say we disagree with so many statements which you wrote on your letter.

Thanks."

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The committee had, in fact, resigned because the respondent did not meet all the grievances they lodged in August. Mr Byrne called all the employees together and explained that the company could not afford another increase. This meeting with the whole work-force was held at 4.45 pm on 7 September 1994. Mr Byrne explained that wage increases were granted annually in April.

The versions as to what occurred on 8 September 1994

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/given



given by the applicants and the respondents differ remarkably. Mr Byrne's evidence which was supported by that of Mr M Fick, a labour consultant, called to the respondent's premises to advise the respondent was that the applicants commenced striking. Work should commence at 06:30. The applicants were at the work place but stood outside the office and did not commence their work. When asked, "why?", they told Mr Byrne that they would not commence unless an increase was granted. Mr Byrne asked them to move outside the security area so that respondent could carry on with its work. The applicants did. The respondent had, on the advise of its' Labour Consultants made contingency plans which included procuring casual labourers (referred to in the evidence as scabs). Arrangements were made for casual labourers. About 14 arrived at 10:00. The applicants attempted to prevent them entering the premises but when Mr Byrne intervened they let the vehicle through. There was no violence. The applicants blocked the road leading into the premises with scrap metal they obtained from an old chicken house and also locked another entrance gate with their own lock. The police were called but did not intervene in the strike. There was a meeting with representatives of the applicants at 11:15. Mr Byrne explained that he was prepared to discuss issues with the representatives but only if the applicants resumed their normal work. The applicants, save for the committee members, resumed worked at 11:55. The casual labourers were withdrawn from the workplace and kept elsewhere. There was a discussion between Mr Byrne and the committee

/from 12:00

from 12:00 to 13:00 in which the consultant did not participate as the committee was not prepared to discuss the matter with him. At 13:00 the committee and all the other applicants went for lunch, that being the usual lunch hour, despite Mr Byrne's protests. They did not resume work at 14:00, refusing to commence with their normal duties. At 14:30 a written ultimatum was issued which inter alia advised the employees that failure to resume their duties would force the company to consider their dismissal. That ultimatum was distributed to the applicants. They did not resume their duties. At 15:45 a further ultimatum was issued requiring the applicants to resume their duties before 06:45 on 9 September 1994 failing which they would be dismissed from employment. On 9 September the applicants attended at the respondent's premises and congregated outside the business premises and refused to assume their duties despite the fact that the respondent urged them to do so. They were then dismissed.

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Mr S Shongwe was the first witness called to testify on behalf of the applicants. He denied that the applicants participated in a strike. He testified that on 7 September Mr Byrne called all the employees together and told them that he was not prepared to resolve any of their grievances. He further said that the company was going to bring transport the following day to transport everything to Johannesburg and that on 8 September the applicants would be dismissed because of their complaints and grievances. The applicants reported for duty on 8

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/September



September but were instructed not to clock in but to remain outside the company's premises because someone is coming from Johannesburg with their money as the respondent had engaged people to replace the applicants. The replacement employees arrived in two vans at 06:50. Mr Shongwe confirmed that until 8 September the respondent did not know that the applicants were members of a union. Mr Shongwe did not in his evidence-in-chief refer to any meetings with Mr Byrne or Mr Fick during the course of the day. He confirmed that the ultimatums 10 were issued that afternoon but said that neither he nor any of the other applicants understood the ultimatums as they were written in English. He also said that the ultimatums were not explained to the applicants. The ultimatums were not taken to the union for advice nor did the applicants contact the union. Mr Shongwe confirmed that Mr Fick told them to report back at 06:45 on 9 September but denied that he told them what would happen if they did not. On 9 September they did report for work at 06:40 and went to the office to clock in but were 20 turned back and told not to clock in. They, therefore, went and stood outside the company premises. They were then given the dismissal notice.

Mr Shongwe did not impress me as a reliable witness. He can read and write. He dealt with customers. He was the chairman of the workers' committee and lead the consultations between that committee and the respondent. It was common cause that no interpreter was used during such meetings and that it was, in fact, Mr Shongwe who 30

/interpreted

"The question does not, however, arise: this is so because it is clear to me that in the present state of the legislation their's was on any other basis a prohibited strike, and neither this or any other arbitration tribunal is free to condone a strike which flies in the face of such a provision, where no fault whatever can be laid at the employer's door."

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Both that case and Transport & Allied Workers Union v Putco Limited (unreported case) NH 9/2/167 delivered on 7 May 1993 dealt with strikes in essential services which are prohibited by the same section as that which prohibits strikes in the agricultural sector. In the latter case the Court said the following:

"This Court has never, as far as I could ascertain, come to the assistance of strikers where they have been prohibited from striking in terms of the Act. Nothing in the evidence before me suggests that I should even contemplate considering such assistance."

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Those principles apply with equal, if not greater force in the agricultural sector because of the immense harm

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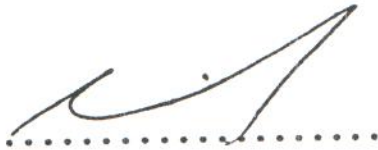
/which can



which can be caused by a strike in that sector. Chickens which are not fed and watered will die in a matter of days. The respondent did not precipitate the strike by any unacceptable conduct on his part. All the grievances raised by the applicants could and should have been settled by arbitrations. There is nothing in the evidence which even suggests that the Court should assist the applicants. The application is accordingly dismissed. There is no order as to costs.

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DATED AND SIGNED IN PRETORIA ON THIS THE 2<sup>nd</sup> DAY OF MAY  
1995



A DE KOCK

Senior Member

Industrial Court of South Africa

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