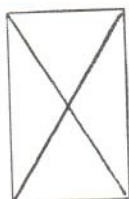


UPUSA

COVER SHEET



INDUSTRIAL COURT VERDICT

HELD AT

PRETORIA

CASE NUMBER

NH11/2/18608



LABOUR APPEAL COURT VERDICT

DIVISION

CASE NUMBER



SUPREME COURT - APPELLATE
DIVISION

CASE NUMBER



AGRICULTURAL COURT VERDICT

HELD AT

CASE NUMBER

IN THE INDUSTRIAL COURT OF SOUTH AFRICA
HELD AT PRETORIA

IR NETWORK
PAGES 56
REF LH 95532

In the matter between:

UPUSA and others

Applicants

and

UITSAPRAAK GELEWER OP
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TYD 2.00
PRESIDENT/ADJUNKPRESIDENT
NYWERHEIDSHOF

EAST RAND PROPRIETARY MINES LIMITED

Respondent

JUDGMENT

ON BEHALF OF THE APPLICANTS:

JUDGMENT/uitspraak
No. 129 VAN/OF 15 95
CIRCULATE/VERSPREI
PRESIDENT INDUSTRIAL COURT
PRESIDENT NYWERHEIDSHOF

Adv S Kuny,
instructed by:
Attorney Kgampe

ON BEHALF OF THE RESPONDENT:

Adv G C Pretorius,
instructed by:
Attorneys Brink Cohen Le Roux & Rood

BEFORE:

JUDGMENT/uitspraak
No. 129 VAN/OF 15 95
CIRCULATE/VERSPREI
PRESIDENT INDUSTRIAL COURT
PRESIDENT NYWERHEIDSHOF

L F Shear,
Additional Member

17.19

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

In the matter between:

UPUSA and others

Applicants

and

EAST RAND PROPRIETARY MINES LIMITED

Respondent

JUDGMENT

This is an application in terms of section 46(9) of the Labour Relations Act.

This matter commenced as an urgent application, but, by consent of the parties, was converted into a section 46(9) hearing.

All the applicants are Zulu speaking and all were employed by the respondent at its mine in Boksburg. Most of the respondents were accommodated in the Cinderella Hostel, which is located on the respondent's premises.

The facts of this matter are fairly complex but, with respect, I do not believe there is any need to dwell thereon and I shall attempt to summarise the facts as succinctly as possible in order to deal with the dispute which arose between the applicants and the respondent. Most of the facts and issues are documented and recorded in the minutes of numerous meetings which took place between various interested parties between the period April and July 1994. I do not believe that it is necessary, nor advantageous to this judgment, to deal with each and every meeting which took place. However, I wish to make it clear that my failure to deal with a specific meeting or a specific event which might have taken place in the period in question, is not in any way to be construed as an indication that I regard such a meeting or discussion or event as being less important or relevant than other issues to which I may refer. For reasons which will become apparent, I shall dwell more intently with the various meetings which took place from the latter part of June 1994 towards the middle of July of the same year.

Summary of facts

As stated above, the majority of applicants were accommodated at respondent's Cinderella Hostel. On Saturday, 2 April 1994, during the Easter long weekend, a number of Zulu speaking employees left the Cinderella Hostel in the early hours of the morning. They regrouped at a nearby squatter camp.

The group who left the hostel did not comprise the full complement of Zulu employees, as the majority of employees were on vacation during the Easter weekend.

The next day, ie Sunday of the Easter weekend, the Zulus attempted to re-enter the hostel. They were prevented from doing so by a group of hostel residents who had formed a group at the gate.

After the events of the Easter weekend, respondent had several meetings with both the Zulu delegations and the National Union of Mineworkers (NUM), which was the recognised union and which represented the majority of employees, including hostel dwellers employed on the mine.

Initially, the Zulus demanded to be accommodated in a separate hostel and to proceed with their work. The request for a separate hostel was refused by respondent.

At the outset, the Zulu employees obtained the assistance of representatives of the Kwa Zulu government to represent them in their negotiations with respondent's management team. NUM took exception to the inclusion of what they considered to be political representatives in the negotiating team and distanced itself from the discussions on the pretext that, in involving political

representatives, the dispute had become politicised and it, being a trade union organisation, was only concerned with labour related matters.

On Monday of the Easter weekend, respondent, in the face of what it considered to be a serious dispute between the Zulus and the other hostel residents, offered the Zulus the following two options in an effort to resolve the issue:

1. that the Zulus be sent home for three months with a guarantee that they would be re-employed upon their return; or
2. that the Zulu employees accept a retrenchment package and sever their ties with the respondent.

It is quite obvious from a reconstruction of the documents, and indeed the evidence tendered by the respondent, that both respondent and NUM regarded the dispute, or the tension which apparently existed between the Zulus and the other hostel residents, as being politically motivated. It has to be borne in mind that the events of the Easter weekend took place during a period of political uncertainty and tension in the country. The Easter weekend came shortly after the shooting of several Zulus in what has been referred to as the "*Shell House massacre*" and also at a time when the IFP had not yet agreed to take part in the national election. The events on the respondent's mine must also be viewed

against the backdrop of the violence which was taking place in the East Rand townships, which also appeared to represent a dispute between hostel dwellers and township residents. I think it is fair to say that the hostel residents in the latter case were mainly migrant Zulus and the township residents were mainly non-Zulu-speaking persons.

A period of leave during service is referred to in the mining industry as "*Home stay*". The rationale behind offering the Zulus the Home stay option was that the Zulus would be removed from the mining environment during the run-up to the election and the return would take place after the election had been completed. The period was referred to in the relevant documents pertaining to the time in question and by the witnesses called on behalf of respondent as a "*cooling off*" period. It was hoped that tensions between the hostile parties would have cooled off after the election and that peaceful re-integration of the Zulus into the hostels would be both possible and permissible.

After several meetings between management's representatives and the Zulu representatives, the Zulus "*agreed*" to return home for a period of two months on condition that:

1. each received an amount of R1,000;

2. no other miners would be employed during the period of the Home stay;
and
3. each Zulu be issued with a stabilisation certificate which guaranteed him immediate re-employment upon his return to the mine.

Respondent referred to an agreement and Mr Pretorius, on behalf of respondent, argued strenuously that the parties had indeed agreed to accept the Home stay option. However, it is quite clear from a perusal of the documents that the Zulus did not willingly or happily accept the Home stay option, but rather accepted it as a necessary and practical option in the circumstances in which they found themselves. It has to be borne in mind that the Zulus were never allowed back into the hostel after the Easter weekend and were housed in temporary and unsuitable accommodation during the period of negotiation.

The agreement came into effect on 15 April and the Zulus were transported by buses supplied by the respondent off the mine premises. It was initially agreed that the Zulus would return to the mine on 20 June 1994.

It should be mentioned that, prior to their departure, the Zulu representatives had suggested that the matter be referred to mediation in an attempt to resolve the stalemate between the Zulus and other hostel residents. Respondent agreed to this request and offered to pay for the mediation services.

NUM, on its part, and in line with its view that the matter was a political issue, which did not affect it as a union, declined, or merely failed to confirm its willingness to commit itself to the mediation process.

After the Zulus departed on the Home stay, the election took place in an atmosphere of relative peace and harmony, with the participation of the Inkatha Freedom Party.

After the successful election, respondent believed that the "cooling off", which was merely a hope in April, would become a reality. This feeling of optimism is not completely unreasonable, especially in the light of certain assurances received from NUM during the middle of June.

However, during the Home stay period, very little, if anything, was done by the parties in order to prepare for the return of the Zulus on 20 June.

On 10 June, and at the request of the Zulu delegation, management met with the Zulu representatives. It was agreed at that meeting that the Zulus would not all return on 20 June, but that their return should be staggered and should commence on 15 June. The Zulu representatives demanded that the Zulu employees be accommodated in a separate hostel, a request which was again refused by respondent. Management responded to this demand in the following manner:

"The separation of the Zulus from the rest of the employees is first of all not practical in the sense that we have entered into a new era in the country and the time to move towards reconciliation is of vital importance and the question of polarising will only harm the process."

On 15 June, the first group of Zulus returned to the mine. This was a small group. The next day, 16 June, the second group arrived. The bulk of the Zulus were still in Kwa Zulu Natal.

On 16 June the returnee Zulus were again accommodated in the Cinderella Hostel. On the night of the 16th, an attack occurred in the hostel which resulted in two Zulus being killed and several being injured, some severely. The Zulus managed to flee from the hostel and once again found themselves out of the hostel structure.

During the day of 16 June, ie before the attacks, management met with the NUM representatives in order to discuss the return of the Zulus. Up until that stage, NUM was still under the misapprehension that the Zulus would be returning only on 20 June, apparently being unaware of the discussions and the agreement reached between management and the Zulu representatives on 10 June.

At the meeting of 16 June, management confirmed its discussion with the Zulu representatives on 10 June and were advised by NUM that it had "no

problem with the return of Zulu employees", an indication to management that the Home stay exercise had indeed been successful and that the decision had been vindicated. However, NUM did raise its concern that the non-Zulu hostel dwellers were angry that the Zulu employees had received an amount of R1,000 for a period of two months which they regarded as holiday pay, while they, the hostel residents, were obliged to work for no extra remuneration.

The next day, 17 June, a meeting took place between management and NUM. In the main, two issues were raised by NUM, viz the two month Home stay payment and the failure of management to advise and consult with NUM with regard to the return of the Zulus on 15 June. Management was seriously rebuked for taking what NUM regarded as a unilateral decision in this regard.

Management, for its part, undertook to investigate the violence of the night of 16 June and ensure that the perpetrators were brought to book and severely disciplined. These sentiments were, to some extent, echoed in a further meeting between the same parties on 18 June, save to state that management declared a deadlock concerning the dispute over the Home stay payment.

At a meeting between management and the Zulu representatives on 20 June, it was agreed in principle to refer the matter to mediation in an effort to resolve the differences which apparently (obviously) existed between the Zulus and the other hostel dwellers. At that meeting, the Zulu representatives specifically

advised management that the Zulu employees were not willing to give statements to respondent's security services, but rather to members of the police, as they regarded mine security as *"part of the problem"*.

At a further meeting on 22 June between management and NUM, it was agreed to refer the dispute to the Boksburg-Benoni Peace Secretariat, with a request that it act as a mediator.

A meeting took place between management, Messrs Zorab and Weir and Reverend Moerane of the Peace Committee, where the terms of the mediation process were discussed and agreed upon. The Peace Committee was requested to examine the background to the conflict between the Zulus and the Xhosas and to recommend a suggested procedure for the re-integration of the Zulus back into the hostels.

The parties agreed that the Peace Committee would investigate the causes of the violence, endeavour to ascertain a means for the identification of perpetrators of the violence and the arrest of such perpetrators, as well as the re-integration of the Zulus into the mine hostels.

It was specifically agreed that management would not be active, or indeed would not take part in the mediation process. It was also agreed that no

arrests of suspects would take place unless and until the mediators had first been informed.

The Peace Committee, under the chairmanship of the Reverend Moerane, then set up what has been referred to as "*The Committee of Ten*", consisting of five delegates each from the Zulu and NUM groups.

On 28 June, management called a meeting with the Peace Committee. It was quite apparent that management was not happy with the rate of progress (or apparent lack of progress) of the mediation process.

Management expressed the following concern:

- * payment of non-productive workers, ie the Zulus who had been paid since 15 April and who were not yet working;
- * no separate hostel workplace;
- * investigation procedures;
- * time frame;
- * structured time-based process.

On 8 July, management had a meeting with NUM. At that meeting, the following was recorded on behalf of the NUM representatives:

"On Wednesday they had a mass meeting and the employees said the Zulus must come to the hostel, sit down and talk. ... All people in the hostel say they want the Zulus back. The outcome of the joint meeting will determine how they are re-integrated. The problem was between the workers and the Zulus. The Committee of Five is not working."

It was also proposed at that meeting that a joint mass meeting should take place between the Zulus and the hostel residents. An undertaking was given by the NUM representative that no violence would occur. It was suggested that the Zulu representatives and *Peace Committee* members should also be present at the meeting.

On 11 July, a further meeting took place between management, the *Peace Committee*, NUM and the Zulu representatives at the training centre of the respondent's mine. At that meeting, a report prepared by the Zulu representative, Mr V Mvelase, was presented for discussion. The report consisted of an investigation into the violence at the respondent's mine, together with various statements obtained from victims of the violence as well as certain proposals for the resolution of the dispute between the respective parties. The proposals consisted of the following (and I quote directly therefrom):

- "1. *Arrest of the violence culprits.*
2. *Formation of reconciliatory and peace committee.*
3. *Condemnation of inflammatory words and slogan which all believed were source of trouble.*
4. *Investigation of third force elements.*
5. *Appoint of Zulu nationals' induna.*
6. *Separate temporal accommodation of Zulu nationals while negotiations are still continuing.*
7. *Management be invited to address the role of the security forces at the time of the violence.*
8. *Joint mass meeting to introduce reconciliatory committee."*

At the meeting, which apparently commenced at 11h15, the Zulus stated that the main item on their agenda was the question of a separate hostel. It was stated by the Zulu representative that the problem appeared to be between Zulus and Xhosas and that the Zulus had no difficulty in residing with Shangaans, Sothos

and employees of other ethnic backgrounds. However, they were not happy to reside with Xhosas, while negotiations were still taking place. It was stated, however, that there appeared to be no difficulty in working underground together.

The NUM representative responded by stating that at the mass meeting which had taken place the previous week, the hostel dwellers had stated that the Zulus should come to the hostel and meet the employees in order to attempt to solve the problems to enable re-integration back into the hostels.

Management responded by stating:

"Hoped that out of this process [ie, the mediation process] the parties would have joint common grounds to facilitate the process of re-integration. Appears not to be so."

The proposals contained in the Mvelase report were then discussed. NUM recorded that the workers at the mass meeting had rejected item 6, ie the temporary hostel concept.

Management indeed expressed its misgivings about the Zulu proposal for a separate hostel, as well as the NUM proposal for a joint mass meeting, and requested a caucus to consider its position in the light of the Zulu and NUM proposals.