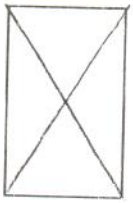
United People's Union of SA.

COVER SHEET



INDUSTRIAL COURT VERDICT

HELD AT **PRETORIA**

CASE NUMBER **11/2/20425**

LABOUR APPEAL COURT VERDICT

DIVISION

CASE NUMBER

SUPREME COURT - APPELLATE DIVISION

CASE NUMBER

AGRICULTURAL COURT VERDICT

HELD AT

CASE NUMBER

CASE: NO. 11/2/20425

IN THE INDUSTRIAL COURT OF SOUTH AFRICA HELD AT PRETORIA

In the matter between :

UNITED PEOPLE'S UNION OF SOUTH AFRICA - First Applicant.
DOUGLAS COLLIERY SECURITIES - Second Applicant.

and

DOUGLAS COLLIERY MINES - Respondent.

Mr. E. Luthuli for the Applicant.
Mr. M.P. Kumalo for the Respondent.

Before D.A. Reynolds - Additional Member

16/3/94, 6/4/95

REYNOLDS AM:

The applicants filed an application in terms of section 46(9) of the Labour Relations Act, 28 of 1956, alleging that the respondent was guilty of an unfair labour practice in failing to grant to various members of a security unit attached to the mines a salary increase that was requested. The applicants sought an order from the court that the 6% increase requested should be granted, and back-dated to the time that the members affected were engaged.

The respondent raised certain points in limine in response to this application, and has also brought, on notice of motion, an application that the court declare that the original applicants had followed incorrect procedures, and the court should therefore strike the matter from the roll. For the sake of clarity the parties will be referred to under their original titles of "applicant" and "respondent".

It should be mentioned that at the time that the hearing commenced, there was no appearance for the applicants, and the matter proceeded as a default hearing. Judgement was awarded against the applicants. Mr. Luthuli arrived approximately half an hour later, however, and explained that he had been unavoidably delayed, and produced a timeous 'fax' message addressed to the court requesting a delay in commencing the hearing. This message was not filed with the papers, and the court had no knowledge of its existence. Mr. Kumalo subsequently waived all his rights, and consented to an application for rescission being heard by the court. This application was successful, and the matter is again before this court.

IA. The first point raised by the respondent in limine was that the second applicant is named "Douglas Colliery Securities". The respondent states that its security department employs 160 persons in three different areas, and it is unable to ascertain who is in fact included in this description. The respondent states, furthermore, that it is "unable to ascertain whether the first applicant has a mandate to act for the alleged second applicant, and requires the first applicant to produce a power of attorney signed by each further applicant confirming such a mandate."

Mr. Luthuli's response to the first part of the issue raised is that the respondent knows full well who is referred to as "the second applicant," and is merely adopting delaying tactics regarding this aspect.

I would hold that there is, prima facie, merit in the respondent's objection. There is obviously some confusion as to the persons concerned, and there should be no difficulty, in any subsequent proceedings, for the normal method of citation to be used: that is to name a particular individual, and to add "and others" listing the balance separately. The general principle, as I understand it, is that such amendments will be made if it appears that the action cannot be conveniently proceeded with unless the alteration is permitted. I see no need, however, at this stage, to dismiss the original application on this ground.

IB. In regard to the second part of the first point in limine, I do not consider that specific powers of attorney need to be signed by each member of the group of "second and further applicants." It appears to be accepted, subject to what is referred to below, that Mr. Luthuli, who is a senior official of the first applicant, represents the second applicants (yet to be named) in such capacity. As such, I would agree with Mr. Luthuli that no individual powers of attorney are necessary if this is so. (See NUM v Marievale Consolidated Mines (1986) 7 ILJ 123).

The Trade Union-i.e. the first applicant - has stated that it represents the members concerned, and as I understand it, although there is a dispute as to the recognition of this Trade Union, the issue of representation is not raised at present, and Mr. Luthuli's right of representation is accepted for the purposes of this particular issue. In fact a considerable number persons attended the court hearing and were introduced collectively as being the applicants concerned, and represented by Mr. Luthuli. This was not contested by

Mr. Kumalo, and I do not believe that strict formality is necessary in this situation.

2. The second point in limine raised, and detailed at paragraph 6 of the "respondent's reply" dated 11 January 1995 was accepted by Mr. Luthuli, and need not be canvassed now.

3. Paragraphs 7 and 8 of this same "reply" contain the submission that neither of the applicants are properly before the court, and that as a result the court does not have jurisdiction to hear the matter. The prayer is made that "the application be dismissed with costs on a Supreme Court scale."

I hold that, subject to the inclusion of the alterations adverted to, this matter is properly before the court, and the point in limine fails.

4A. I turn now to consider the issues raised in the notice of motion proceedings, and the affidavit in support of this application attested to by one Keneth R. Naylor, the Chief Personnel Officer of the second respondent. In essence, the first submission made is that the respondent is a member of the Chamber of Mines of South Africa, and it and its employees are governed by the Codes and agreements regulated by this Chamber. Clause 5.1 of the Chamber Code provides: "If a staff employee is required to work on a Sunday as part of his normal duties, he shall either be given a day off during the following week, or where this is not possible, he shall be paid at the rate of 6% of his basic salary for each eight hours worked on that day."(my emphasis).

4B. I would agree with Mr. Kumalo that this dispute concerns a dispute of interest and not of right, and that this dispute should be resolved through collective bargaining. As a general principle, as I understand the position, this court will not entertain disputes of interest. (See, for example, FBWU v Middle -Vrystaatse Suiwel Koop Bpk (1990) 11 ILJ 776(IC): SA Yster, Staal and Verwante Nywerhede Unie v Yskor Bpk (1991) 12 ILJ 1038 (IC). Furthermore the Act provides for the resolution of disputes of interest through other means than approaches to the court..

I do not consider that Mr. Luthuli advanced any points of substance to persuade the court that either this dispute was one of right, or that the court should intervene in any collective bargaining process.

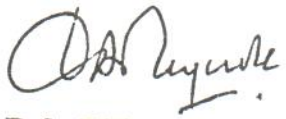
4C. A matter specifically raised by the deponent in the notice of motion proceedings was that the first applicant is not recognised by the respondent, but that the National Union of Mineworkers is. This question of recognition is clearly in issue between the parties, and is not susceptible to resolution in the present application. This aspect has been covered to some extent above.

In the end result I find the respondent's application succeeds on the points enumerated as 4A and 4B above. I am of the view that the faults in question are fatally defective, and an order is granted in the terms prayed for. This order will be that this court:

1. Declares the section 46(9) application, brought by applicants under case no. 11/2/20425, to be irregular in that incorrect procedures have been followed;

2. the matter is, accordingly, struck from the roll.

I do not consider that an order of costs is appropriate in this case, and no such order is made.



D.A. REYNOLDS