LOM Business Solutions/lad

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN CASE NO: J581/06

DATE: 2006/04/21

In the matter between

NUM Applicant

and

AFGEM LTD First Respondent

SIMOLOTSE MINE (PTY) LTD Second Respondent

AFGEM DIAMONDS (PTY) LTD Third Respondent

J U D G M E N T

PILLAY D, J: This is an application, brought as a matter of urgency for an order, amongst other things, directing the second respondent to reinstate the employees with effect from 1 April 2006.

The third respondent invited the applicant, the National Union of Mineworkers (NUM) by letter dated 27 March 2006, to a consultation on the change of conditions of employment. NUM was not available to meet the following day, i.e. 28 March 2006, and proposed that the parties meet on 30 March 2006. A meeting did take place with NUM on 30 March 2006. At that meeting the members of NUM employed by the second respondent, as it now transpires, were urged to take unpaid leave for three months from 1 April. The reason advanced by the respondent, as recorded in its letter dated 30 March 2006 to NUM, was to enable the company to restructure and refinance its operations, and to ensure a

sound and sustainable future for all the stakeholders. That letter (LP3) is written on the letterhead of the third respondent.

On the same day, 30 March 2006, the first respondent referred the dispute to the CCMA. The nature of the dispute is described as "change of conditions of employment and a lockout." It further summarises the facts of the dispute as the following:

> "The company, due to financial constraints, decided to place the mine on care and maintenance, with an essential services crew, the remainder will go on short time. The union disagreed and intends sending the employees to work. The proposed short time is for approximately three months."

The result of the conciliation sought by the first respondent is the following: "That the employees on short time be locked out from the company's premises."

It is clear from the aforegoing facts that what all the respondents failed to achieve through a façade of consultation initiated as late as 28 March 2006 is to avoid paying the workers for a period of three months. If it could not achieve this through a layoff by agreement, then it intended to do so forcibly through a lockout. The lockout is clearly ill-conceived for, amongst other things, the first respondent intended to maintain services with a maintenance and essential services crew.

The Act clearly prohibits the reliance on a maintenance crew if the lockout is offensive, and this was clearly the case in this instance. The respondents were open with the applicant. They ought to have sensed long before 28 March that they would not be in a position to

pay the workers for three months from 1 April 2006, and should, as good managers, have notified NUM in good time before then.

They further misled NUM as to who the real employer was. As the court has pointed out, the referral for conciliation was by the first respondent, whom the second respondent alleged was not the employer. Consequently the validity of that referral was also questionable.

The correspondence was dispatched on the letterhead of the third respondent, who sought to avoid paying the costs of the first application. From all of the aforegoing the respondents have not been frank with the court, or frank or fair to NUM and the employees. In the circumstances the appropriate, and the only order that this court can make must be as sought by NUM as amended. I grant an order in terms of paragraph 1.

Paragraph 2 is amended by the deletion of the words “first and”, and an order as amended in paragraph 2 is granted.

An order in terms of paragraph 3 is granted.

Paragraph 4 is amended by deletion of the words “first and”, and the deletion of ‘s’ in the word “respondents”, and an order in terms of paragraph 4 as amended is ordered.

A order is granted in terms of paragraph 5. In other words the third respondent is ordered to pay the wasted costs of the applicant, up to 12 April under case number J514/2006.

Pillay D, J

26 February 2007