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REPUBLIC OF SOUTH AFRICA

IN THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

JUDGMENT

Not Reportable

C588/2022

In the matter between:

WASTE CARRIERS (PTY) LTD

Applicant

and

MOTOR TRANSPORT WORKERS UNION

First Respondent

RESPONDENTS LISTED IN ANNEXURE 'A'

HERETO

Second Respondent

Date heard: Rule nisi issued 11 November 2022; extended by agreement on 20 January 2023 to the 17 February 2023 with costs reserved; Rule Discharged on 17 February 2023 with Judgment reserved as to costs.

Delivered: 17 April 2023

JUDGMENT

RABKIN-NAICKER J

[1] On the 17 February 2023, as a strike and lock-out involving the above parties had ended, I discharged the following Rule Nisi, granted on the 11 November 2022:

- “1. This application is dealt with on an urgent basis.
2. A rule nisi is issued herewith in terms of which the Respondents are called upon to show cause on a 20 January 2023 why an order in the following terms should not be made a final order of the above Honourable Court:
 - a. That the First, Second and Further Respondents be interdicted and restrained from committing any act of victimising, intimidating, assaulting, or harassing any of the employees, clients and/or service providers of the Applicant;
 - b. That the First, Second and Further Respondents be interdicted and restrained from damaging property and vehicles belonging to Applicant;
 - c. That the First, Second and Further Respondents be ordered to comply with the picketing rules; and
 - d. That the First, Second and Further Respondents be ordered to pay the costs of this application jointly and severally.
3. That the prayers 2.a to 2.c operate as interim interdicts with immediate effect pending the return day herein.
4. That the Applicant is hereby authorised to serve a copy of this order on The First, Second and Further Respondents as follows:
 - 4.1 On the First Respondent: by telefax at [...]and by email at [...]
 - 4.2 On the Second and Further Respondents by handing a copy of the order to the shop stewards and strike marshals for distribution, as well as posting this court order at the demarcated picketing area.
5. The Respondents are entitled to anticipate the return date of this interim interdict on not less than 48 hours' notice to the Applicant and the Registrar.

6. That the costs of this application are reserved for determination on the return date.”

[2] The only issue that the Court reserved for consideration was that of costs. It was argued by Mr De Kock for the employer, that this case is one of the instances when the Court should show its disapproval of the respondents and award costs on an attorney own client scale. The applicant has, it submits, suffered considerable damages and is still in the process of calculating the extent of the damages in order to initiate further possible court action.

[3] This Court was urged to apply the same approach as that in **Johannesburg Roads Agency (SOC) Ltd v SA Municipal Workers Union & others**¹ Van Niekerk J had this to say:

“[9] I fail to appreciate how it can be said that the granting of the rule nisi or its confirmation will have the effect of ‘subduing’ collective bargaining in the applicant’s workplace. The respondents clearly have an impoverished conception of the institution of collective bargaining, one that extends to a right to resort to unlawful action in the form of damage to property in pursuit of a demand made of an employer. As the recently published Code of Good Practice: Collective Bargaining, Industrial Action and Picketing (the code) notes, good faith bargaining requires that the parties should engage each other in a constructive manner and not act unreasonably. Negotiations should be conducted in a rational and peaceful manner in which disruptive and abusive behaviour is avoided....”

[4] On the papers before me, and applying the principles set out in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd*², I accept that unlawful acts of violence by those on strike took place during the protected strike

¹ (2020) 41 ILJ 222 (LC)

² 984 (3) SA 623 (A)

without the first respondent taking steps to halt the actions. The respondent union has simply issued bald denials to specific allegations of these acts in their answering papers. The said acts included the throwing of a petrol bomb, the setting of fire to a truck, intimidation and threats and the throwing of a 5 litre bottle of water at the Maintenance Manager of the respondent.

- [5] It is common cause that Picketing Rules were issued by the NBCRFLI on the 27 October 2022. The respondent union advised the employer of its intention to strike with effect from Monday, 7 November 2022 at 6h.30am. On the same day the employer issued a Notice of Lock-Out which read as follows:

“04 November 2022

Attention: MTWU

e-mail:

INDUSTRIAL ACTION: NOTICE OF LOCK-OUT

We are in receipt of your communication dated 04 November 2022 received at Waste Carriers via email on 4 November 2022 at 14:26, wherein you have given us notice of your intended strike action that is to commence on 7 November 2022 at 6.30.

You are herewith given notice of Waste Carriers' intention to exercise its rights in terms of the Labour Relations Act that the striking workers will be locked out from the 7 November 2022 at 6.30.

Strike/lock out is in terms of employees that can prove that they have submitted trade union membership/deduction forms prior to the strike certificate being issued by the Commission for Conciliation, Mediation and Arbitration or a Bargaining Council which has jurisdiction.

All negotiation matters are hereby withdrawn and the lock out will remain in place until such time that an agreement between the parties is concluded and signed regarding acceptance of this establishment's terms and conditions for return to work which may not be on the same terms and conditions that existed on commencement of the strike/lock out.

Yours faithfully

OTHENE MENTOOR

Group HR Manager “

- [6] In its founding papers dated 11th November 2022, the employer noted that it was in the process of making a referral to the bargaining council for the purpose of amendment of the agreed picketing rules. The papers also contain letters to the Bargaining Council in this regard. The first reads as follows:

“15 November 2022.

The NBCRFI

ATT: MR XOLANI QWALA EMAIL: [...]

And to Ms Othene Mentoer

Mtwu

RE: REQUEST URGENT MEETING BTW MTWU WASTE CARRIERS (PTY) LTD AND COMMISSIONER VAN DIEMAN. CASE NUMBER RFBC 68133

Dear Mr Gwala.

The above matter has reference.

Our earlier telephonic conversation on this matter refers, on behalf of Waste Carriers (PTY) Ltd (our member) our instructions from our Legal Team Headed by Advocate Koen De Kock, request a urgent meeting to discuss the adjustment of the Picketing rules issued by Commissioner Andrew Van Dieman, the Commissioner who initially issued the picketing rules in respect of this matter.

Please see annexure A Interim labour Court interdict (rule nisi) issued by the Court on 11 November 2022. Please note that despite the rule nisi being issued there has been a continuation of damage to property and intimidation on the Company Human Resources Manager Ms Othene Mentoer by way of fire arm, as recent as Firady 11 November 2022.

Our instructions is to urgently request a convening of the parties with Commissioner Van Dieman to discuss adjustment of the picketing rules.

Please refer to me on [...]or contact by cellular phone on[...], please note (respectfully) that this matter is very urgent.

Kind regards

Charles Lundall.

Esosa.”

- [7] A second letter was addressed to the Council on behalf of the employer a day after the sitting which indicated the following:

“ATTENTION: Commissioner Van Dieman

RE: RFBC 68133 – AMENDMENT TO PICKETING RULES

In respect of the sitting of this matter before you on the 22nd November 2022 at 09:30, the respondent, Waste Carriers (Pty) Ltd will not be affording any proposed settlement to the Union MTWU.

The respondent wishes that you issue the requested amendment to the Picketing Rules as argued before you in aforementioned process.

Yours faithfully

[sent electronically]

Charles Lundall

ESOSA

cc Ms Mentoor “

- [8] It is evident from all of the above that that this episode of collective bargaining was strongly fought by both parties. I note that the draft agreements referred to in the papers which ultimately resulted in a collective agreement being signed, included that the employer should ensure working conditions conform to bargaining council and statutory requirements. The economic stress of low paid workers may well have been in the mix in this dispute. However, this

cannot diminish the importance of striving for an improved culture of collective bargaining and the need to admonish any unlawful and violent behavior in that process. In addition, the need to respect court orders under pins the rule of law. Examples are given in the replying papers of some incidents of unlawful conduct continuing after the *rule nisi* was issued.

- [9] The applicant has stressed that there was an escalation in costs incurred by it due to the tardiness and late filing of opposing papers by the union. On the 20 January 2023, the late briefing of legal representatives by the union, led to a postponement with costs to stand over. I also note that the employer has averred that it is considering seeking damages, which remedy it has at its disposal. On behalf of the union, it was submitted in oral argument that that the employer did not want to settle the dispute and that it should have done so under the auspices of the CCMA.
- [10] It is trite that the ongoing relationship between the parties is an important principle for this Court. The dispute has ended in the signing of a collective agreement. I am of the view that a punitive scale of costs is inappropriate in the context of this strike and lockout. However, taking all of the above into account, and to express the displeasure of the Court at the failure of the First Respondent to ensure that its members abide the terms of the Picketing Rules as required by law, I make the following order:

Order

1. The First Respondent is to pay the wasted costs of the 20 January 2023, including the drafting of the heads of argument by Counsel for the applicant dated the 18 January 2023.

H.Rabkin-Naicker

Judge of the Labour Court

Appearances

Applicant: C De Kock instructed by Carelse Khan Attorneys

Respondents: P.A. Suping Attorneys

LABOUR COURT