

IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT DURBAN

CASE NO: D1330/13

Not Reportable

In the matter between:

**NATIONAL UNION OF METALWORKERS OF
SOUTH AFRICA (“NUMSA”) obo MLONDI
NDWALANE & OTHERS**

Applicant

and

TRELLICOR (PTY) LTD t/a TRELLICOR

Respondent

Heard: 30 August 2019

Delivered: 17 April 2020.

Summary: claim of unfair dismissal – unprotected strike following interdict – extent of interdict - warning by the union that suspending employees could spark a strike cannot make suspension unlawful – claim of day shift dismissed – found guilty of contempt of court – claim of night shift upheld – with limited back pay.

JUDGMENT

CELE J

Introduction

[1] This is a claim of unfair dismissal of a number of employees of the respondent, who at the time were members of the applicant. Through their trade union, the employees all seek retrospective reinstatement of their

employment contracts, such that they incur no loss of earnings and/or benefits from the date of their dismissal by the respondent on 01 August 2013. In the alternative the employees seek just and equitable compensation. The respondent opposes the claim in its capacity as the erstwhile employer of the employees.

Factual Background

- [2] The respondent is a company duly registered in terms of the Company Laws of the Republic of South Africa, carrying on business in the manufacture of burglar guards, at 20 Aberdere Drive, Phoenix, KwaZulu-Natal. The applicant is a trade union recognised by the respondent and thus operative to represent its members who are employees of the respondent. In 2013, a job-grading and re-grading dispute arose between the employees and the respondent. The union was involved in an attempt to resolve the dispute. The dispute was based in a highly technical agreement and had been ongoing for a considerable period.
- [3] On Friday, 14 June 2013 between 06h30 to 08h05, the union organiser, Mr Sifiso Ngema (“Ngema”), met with shop stewards to discuss employees’ grades. Subsequent to that meeting, there were threats and rumours of the individual employees embarking on unprotected industrial action. The Respondent’s attorneys dispatched correspondence to the Applicant to encourage their members to desist from proceeding with any unprotected industrial action. On Tuesday, 25 June 2013, between 06h30 to 08h00 the Applicant’s shop stewards met the work force to provide feedback of the meeting held the previous day. Thereafter individual members of the Applicant embarked on unprotected industrial action, which commenced from 08h00 and continued for the rest of the working day. The Respondent then instructed their attorneys to forward correspondence to the union offices as well as the union’s attorney, Brett Purdon Attorneys (“Purdon”), in which it was

highlighted that the Respondent intended to approach this Court to interdict the unprotected industrial action.

- [4] The shop stewards approached Ms Loraine Moonsamy (“Moonsamy”), the Human Resources Manager of the Respondent. Thereafter Ms Moonsamy, together with Mr Wright went to the shop floor to address the work force about the grading issue. Mr Wright advised the workforce that the work stoppage was unprotected, and he encouraged the work force to return to their workstations and continue working in accordance with their individual contracts of employment. The Respondent then issued a verbal ultimatum to individual members of the Applicant to return to work. The Respondent and the applicant agreed to make an urgent request to the Metal Industry Bargaining Council (“MEIBC”) to attend the Respondent’s premises to conduct a grading exercise. In the meantime, the Applicant’s members chose to ignore the verbal ultimatum issued and continued to participate in the unprotected industrial action and gathered in the canteen. The Respondent then issued a second written ultimatum to the shop floor for the work force to return to work in accordance with their individual contracts of employment and after the Applicants refused to return to work, the Respondent issued a third written ultimatum.
- [5] On Tuesday, 25 June 2013 at approximately 09h26 the Respondent’s attorneys delivered correspondence to the Applicant and its members, advising them of their non-compliance with the Respondent’s ultimatums and the Respondent’s intention to apply to this Court for an urgent interdict on Friday, 28 June 2013. The striking employees who were gathered in the canteen then left the canteen and proceeded through the factory. They began disrupting working employees by pulling staff off their workstations as they walked through the factory, outside the dispatch area and back to the canteen.

- [6] The Respondent's attorneys obtained a date from this Court for the hearing of the urgent interdict application, which was set down for Friday, 28 June 2013. At this stage all the Respondent's "B" (night) shift employees were issued with final written warnings and all of the Respondent's "C" (day) shift employees who were already on final written warnings were informed that they would be notified of disciplinary enquiries in due course.
- [7] On 26 June 2013 the MEIBC agent, Mr Sean Drabble ("Drabble"), attended the Respondent's premises to conduct the grading assessment, which was done in the presence of shop stewards and the Respondent's line management. The urgent interdict application did not proceed to Court as scheduled because the members of the Applicant returned to work. On Monday, 1 July 2013, Mr Drabble visited the Respondent's premises, according to the Respondent, unannounced to conduct a normal inspection and to ensure that he covered all the positions as stated in the MEIBC report. The shop stewards saw him. His presence with the Respondent and before he furnished parties with his report, caused the workers great anxiety and mistrust in the process that had been followed. According to the respondent, rumours re-surfaced on the shop floor that the work force were not interested in the forthcoming grading report despite not yet having heard the outcome of the report. It was rumoured that the work force simply wanted their grades changed.
- [8] Once the Respondent became aware of these rumours, it issued correspondence to shop stewards informing them of these rumours and reminded them that previously these rumours led to unprotected industrial action. On Thursday, 4 July 2013, the grading report was presented to both the shop stewards and line management. Feedback to the work force was scheduled for Friday, 5 July 2013. The shop stewards expressed their reluctance in providing the grading feedback, delivered by Mr Drabble, to the workforce. The Respondent's management team then communicated to the work force that if they felt aggrieved about anything regarding the grading

issue, they could refer this grievance through the normal company grievance channels.

- [9] The Respondent made a plea to NUMSA organisers to intervene to try to stabilise the situation and defuse any pending industrial action. On Friday, 5 July 2013, the Respondent drafted a memorandum to the shop floor giving them feedback on the grading report. The Respondent also made the actual grading report available to the workforce should they request sight of it. At this time only one of the five shop stewards was present namely, Ms Theodora Sheila Ndlovu (“Ndlovu”), and when requested to assist in providing feedback, she declined to be involved.
- [10] Subsequent to the grading report feedback session, rumours began to emerge on the shop floor; that the individual Applicants intended embarking on industrial action on Tuesday, 9 July 2013. Despite their recommendation to drop certain grades, the MEIBC confirmed that job grades were largely correct, and some were over-graded. The Respondent did not drop any grades.
- [11] On Tuesday, 9 July 2013 at 08:00, the Individual Applicants failed to return to their workstations. The shop stewards together with Mr Maduna NUMSA’s Organiser, requested to meet with Ms Moonsamy to give feedback to the Respondent in respect of the Individual Applicants conduct. At this meeting, the union representatives requested that both Mr Wright and Ms Moonsamy address the employees, as they were not prepared to return to work. Mr Maduna could not convince the Individual Applicants to return to their workstations. The Respondent informed Mr Maduna and the shop stewards that further meetings would be conducted with them and the employees would only be addressed when they returned to their workstations. Despite assurances that there would be further meetings conducted, the employees still refused to return to their workstations.

- [12] At approximately 11:00, on the same day, another NUMSA organiser, Mr Njabulo Mncube (“Mncube”), from the union’s legal department arrived at the Respondent’s premises to try to convince the work force to return to their workstations. However, the work force continued with unprotected industrial action. Both union organisers left the Respondent’s premises at approximately 13h55 without providing Mr Wright with any feedback. The employees continued to embark on unprotected industrial action, and after 14h50 they left the canteen and then left the Respondent’s premises. The shop stewards also left the Respondent’s premises without furnishing Mr Wright with any feedback.
- [13] The Respondent’s attorneys requested that NUMSA intervene to ensure that their members returned to work in accordance with their individual contracts of employment. The Respondent’s attorneys communicated with NUMSA and its members that according to an ultimatum, members of NUMSA were to return to work on Wednesday, 10 July 2013 as per their normal shift times, failing which the Respondent would proceed to interdict the Applicant’s members unprotected industrial action on Friday, 12 July 2013. In the absence of any correspondence from NUMSA’s attorney, Mr Purdon on Tuesday, 9 July 2013, the Respondent’s attorney communicated the Notice of Motion and draft Order to NUMSA and to its attorneys advising them of the relief that would be sought from this Court at the hearing of the urgent application set down for Friday, 12 July 2013.
- [14] On 9 July 2013, the night shift was not cancelled however only nine employees attended their shift. The rest of the employees refused to work, as they feared being intimidated and threatened by other employees. During the evening of that Tuesday, the Respondent believed it had no further option but to source the assistance of private security guard escorts to and from the Respondent’s factory, saying it was due to levels of violence and intimidation having escalated. Many of the employees that had agreed to work had advised the Respondent that they had been intimidated not to continue working at the Respondent’s factory failing which their families’ lives would be

in danger. According to Mr Marco Araujo ("Araujo"), the Financial Director of the Respondent, on that Tuesday evening, 9 July 2013, at approximately 18:45, a few vehicles parked outside the premises of the Respondent in close proximity to the driveway. Mr Wright then received a telephone call from Mr Araujo informing him of that. Mr Wright then contacted Mr Peggie Padayachee ("Padayachee"), the Planning Manager of the Respondent, to arrange for Spring Lights Security Company to monitor the situation.

[15] Mr Wright also received a telephone call from Mr Thomas Thwala ("Thwala"), a Shift Leader of the Respondent, in which Mr Thwala informed him that there were three staff vehicles parked outside the Respondent's gate. Occupants of those vehicles were threatening those employees that agreed to work at the Respondent's premises that evening. The number of vehicles increased to six. On the same night, at approximately 21h30, Mr Wright requested the security guards employed by the Respondent to escort him to his vehicle. He received a report from the security guards about the cocking of guns, suggesting that the striking employees were getting ready to open fire on any staff member that was exiting the Respondent's premises.

[16] On Wednesday, 10 July 2013, the shop stewards contacted Mr Paulos Maduna, to assist with the feedback meeting. Mr Maduna sent a formal complaint to the Bargaining Council, pointing out the complete inappropriateness of Mr Drabble's conduct and that it had derailed the attempts to resolve the grading dispute. On Thursday, 11 July 2013, Mr Terry Dennison ("Dennison"), the Respondent's Managing Director received a call from the Regional Secretary of NUMSA, Mr Ngubane, that an employee on the Respondent's premises had assaulted Mr Maduna. At approximately 16h30 of the same day, Mr Maduna contacted Ms Moonsamy to inform her that a meeting had been arranged to clarify the grading report. The Respondent did not attend that meeting.

- [17] The unprotected industrial action continued on Friday, 12 July 2013, and on the same morning Ms Felicia Roskruge (“Roskruge”), one of the Operations Shift Leaders reported an incident of intimidation to the Respondent’s management team.
- [18] On Friday, 12 July 2013, the Respondent obtained an urgent final Order from the Labour Court under case number D 676-13. The court order was served on NUMSA and the employees on Friday, 12 July 2013. The Respondent wrote to NUMSA to inform it that their members had been notified of the Court Order and sought a collective undertaking that NUMSA’s members would return to work on Monday, 15 July in accordance with their contracts of employment. At approximately 17h00 on Friday, 12 July 2013, NUMSA informed the Respondent that its members would cease their unprotected industrial action and they would return to work. Management took the communication as a collective undertaking by the union on behalf of their members. The employees returned to work on Monday, 15 July 2013. At around 12h30 on that Monday, the Respondent attempted to suspend about 11 of the employees suspected of having been involved in misconduct the previous week.
- [19] A meeting was convened on that Monday between 13h00 and 17h00. Mr Henry Myende (“Myende”) and the shop stewards represented the employees. Ms Moonsamy and Messrs Wright, Sipehelele Dube and John Rich (“Rich”) the Communications Officer for the Respondent represented the Respondent. NUMSA representatives requested that the Respondent should not suspend its members on allegations of misconduct during the unprotected industrial action. NUMSA suggested that the Respondent was first to be certain of the facts, it was to investigate the matter, formulate charges and those members could then be charged and then suspended accordingly as suspensions at that stage would ignite further industrial action. In that manner, everybody would know exactly what those employees were alleged to have done.

- [20] The Respondent committed to forwarding their decision on the matter in writing to NUMSA in letter dated 16 July 2013 setting out that allegations of misconduct during the unprotected industrial action would be addressed in accordance with Company's disciplinary procedure. The Respondent sent a letter dated 16 July 2013 to all shop floor employees stating that, as an act of goodwill it would issue all employees that embarked on the unprotected industrial action with a further written warning and allegations of misconduct by certain individual employees during the unprotected industrial action would follow the normal company disciplinary procedure.
- [21] On 17 July 2013, the Individual Applicants embarked on further unprotected industrial action from 11h00 to 13h25 and on 18 July 2013, the Individual Applicants did not commence work and continued with the unprotected industrial action at the Respondent's premises. Mr Rich requested the employees to return to work and at approximately 11h45 the South African Police Services, Phoenix were called in to escort the Respondent's employees off the Respondent's premises as they refused to resume work.
- [22] On Friday, 19 July 2013, the Respondent made an *ex parte* application to this Court on the basis that the Individual Applicants should be found guilty of contempt of the Court Order granted on 12 July 2013. The contempt of court order was granted in terms of the draft order prayed for with the return date of 15 August 2013.
- [23] A number of the employees were suspended pending a disciplinary enquiry on allegations of misconduct during the strike and others for failing to comply with a Court Order and failing to follow a lawful instruction to return to work in accordance with their individual contracts of employment. The disciplinary enquiry in respect of these employees was scheduled for the morning of 24 July 2013. They were dismissed and a dismissal dispute arose between the parties which was the subject matter of the Arbitration hearing before the CCMA scheduled for 14 October 2013.

[24] On 19 July 2013 the Respondent issued a notice for a collective disciplinary enquiry for one hundred and twenty-three (123) individual Applicants and they were charged with the following acts of misconduct:

1. Contempt of Labour Court Order;
2. Refusal to obey a reasonable instruction to work and to vacate the Company's premises and having refused to work:
3. Gross insubordination.

[25] The Disciplinary enquiry was purportedly convened in terms of the Respondent's Disciplinary Code. An independent Chairperson chaired the enquiry. On Thursday, 1 August 2013, Respondent dismissed 123 employees because of misconduct, in that they were in contempt of the Court Order granted on 12 July 2013, for refusing to obey a lawful instruction to work and to vacate the Respondent's premises as they had refused to work and for gross insubordination. The decision to summarily dismiss the 123 employees was taken on appeal and on 22 August 2013, their appeal was dismissed. The Applicants only appealed the sanction and not the findings. A dismissal dispute, which arose, was referred to the MEIBC for conciliation, which was set down on 8 October 2013 before Commissioner Humphrey Ndaba. A representative for the Respondent raised a point *in limine* prior to the matter being conciliated, arguing that condonation ought to have been sought as the referral was made on 17 September 2013. As the appeal ruling was handed down on 22 August 2013, Commissioner Ndaba dismissed the point raised. That dismissal dispute serves before this Court.

Further threats post 12 July 2013

- [26] The evidence of the respondent revealed that Ms Moonsamy was subjected to a number of threats over a period prior to 24 July 2013 from anonymous individuals threatening her and her family. She even could not give evidence in this Court. The Respondent had arranged with Spring Lights Security, to provide a guard to be stationed outside her home in Phoenix to ensure her and her family's safety. On 24 July 2013, at 05h31 Ms Moonsamy received a telephone call from Mr Shane Ramkishun, the senior manager of Spring Lights Security who advised her of people that had been at her house, as a result, she needed to be removed from her place. There was concern for the safety of her two minor children, aged 3 and 14 years, her husband and herself. Ms Moonsamy agreed to leave her house immediately after receiving the phone call from Mr Ramkishun.
- [27] One Mr Mbuso Gumede, an employee of the Respondent at the time was arrested and charged with armed robbery and assault of a Spring Lights Security Guard, who was stationed outside Moonsamy's home. Mr Gumede was at all relevant times an employee of the Respondent but was dismissed. Ms Moonsamy was scheduled to attend the collective disciplinary hearing on 24 July 2013 as the H R representative of the Respondent. Because of these threats coupled with the fact that the private security guard that was stationed outside her home was attacked in the early hours of Wednesday morning, 24 July 2013, she refused to attend the hearing. She did not want to put the lives of her family and herself in danger.
- [28] Mr Padayachee, the Planning Manager of the Respondent, and his wife received threatening telephone calls allegedly from individual Applicants who engaged in the unprotected strike. The telephone calls were made to his wife on their landline number and mobile numbers between 24 and 25 July 2013 from anonymous numbers. Threats such as: - "warn your husband to stay away from the wit-ous", "how long is the Company going to protect you and your family" were made. Deeply concerned, Mr Padayachee requested a guard to be stationed outside his home and fetched his son from school, in fear of his son's safety. Thereafter, his wife received another telephone call in which the

caller said: - “your husband thinks he is clever because he brought your children home and also placed a guard on site. Remember we are watching you”. These calls persisted. Mr Padayachee and his wife received approximately 27 threatening calls.

Analysis

[29] The employees in this matter were found guilty of and dismissed for committing three acts of misconduct, contempt of the Court order granted on 12 July 2013, for refusing to obey a lawful instruction and for gross insubordination. The urgent relief granted by this Court on 12 July 2013 was essentially in the following terms:

- 3.1 “declaring that the conduct of the third (3rd) to two hundred and eighty eighth (288th) Respondents in participating in and continuing with the refusal to work at the Applicant’s premises, constitutes an unprotected strike as defined in Section 67 read with section 64 and section 213 of the Act;
- 3.2 interdicting and restraining the 3rd to 288th Respondents from continuing with and participating in an unprotected strike as defined in Section 67 read with section 64 and section 213 of the Act, unless and until the provisions of Section 64 of the Act have been complied with;
- 3.3 that the 3rd to the 288th Respondents be restrained from approaching or being within 500 metres from the access gate of the Applicant’s premises, except for any lawful reason;
- 3.4 directing the 3rd to the 288th Respondents to work normally and in accordance with their individual contracts of employment;
- 3.5 interdicting and restraining the 3rd to 288th Respondents from:

- 3.5.1 interfering with the business operations of the Applicant by intimidating, blocking or assaulting, harassing or in any way interfering with any of the Applicant's employees, suppliers or customers;
- 3.5.2 interfering with or in any way hampering the provision of the Applicant's services and facilities;
- 3.5.3 intimidating, harassing or in any way interfering Applicant's customers or suppliers;
- 3.5.4 obstructing access to or exit from the Applicant's premises;
- 3.5.5 being at the Applicant's premises except for any lawful reason;
- 3.6 directing the 3rd to 288th Respondents return to work and to comply with their individual contracts of employment.
- 3.7

Count one: contempt of court

[30] The submissions of the Applicant are that the continued assertion by the Respondent that the Court Order of 12 July 2013 had any bearing on the events of 18 July 2013 is simply wrong. An order granted in respect of a particular strike cannot possibly operate for eternity and this was clearly never the intention of the order granted. It is common cause that the issue the order of 12 July related to was the grading dispute and the unhappiness in respect of the perceived irregularities in resolving that dispute. (Mr Drabble's unexplained presence at the premises of the Respondent prior to producing his report). It is not disputed that the workers were satisfied with the explanation from the Bargaining Council at the meeting on 12 July 2013 (the

day the order was granted) and that they complied with the order and returned to work. There is no evidence whatsoever from the Respondent or anyone else that the unhappiness of the workers giving rise to industrial action the following week had anything to do with the grading dispute. As pointed out above, Mr Wright himself conceded that the further industrial action was because of the suspensions. It was submitted that an employer clearly could not obtain a strike interdict in respect of a strike on one issue and then suggest that if workers down tools in respect of a different grievance at any time in the future, they were in contempt of the order.

- [31] I am not persuaded by the submissions of the Applicant. The wording of the interdict could easily have been directed at prohibiting acts, as therein described, emanating from the dispute at hand. It did not do so. It was framed in general terms. The prohibitions are all prospective. Therefore, to the extent that any of the 3rd to 288th Respondents therein described, take part in any unprotected strike, soon after the order was issued, the order is applicable.
- [32] This approach is in line with the fact that the Respondent had suffered a series of unprotected strikes within a short period of one another. There was no compliance with any ultimatum issued. Final warnings had been issued with no consequences. There were instances of serious threats to any who did not toe the line. One employee of 20 years' experience lost his life in circumstances apparently associated with the unprotected strike. While the unprotected strike was initiated in respect of the grading issue, thereafter one thing thereto connected, led to another. For instance, work stoppage of 17 July 2013, at 11h00 to 13h25 and on 18 July 2013, was probably due to the suspension of 11 employees for what they allegedly did while on an unprotected strike over the grading dispute.
- [33] On 12 July 2013 this Court issued an order, inter alia, prohibiting participation in an unprotected strike. The order was properly served to the Applicant and its members. In any event, it was issued in the presence of the Applicant's

representatives. 5 days after the order was issued and served, employees embarked on an unprotected strike. The warning by the union that suspending employees could spark a strike cannot make suspension unlawful. The Respondent already had evidence it needed. As an employer, it had the right to decide when to discipline its employees. A delay could be used against the Respondent that it tolerated wrongdoing. I accordingly find that those of the employees, who took part in the unprotected strike of 17 to 18 July 2013, by withholding their labour while making a demand, are guilty of contempt of court.

Night shift

[34] The employees who congregated at the canteen on 17 and 18 July 2013 constituted of two groups, the night shift and the day shift. The unprotected strike took place during the day shift. The night shift worked in the evening of 17 July 2013 and had to go and rest during the day on 18 July 2013. In the unprotected strike of 18 July 2013, they never withdrew their labour in demand for anything. Their charge sheet ought to have been more specific of what they were alleged to have done, for example, acting in common purpose with the day shift, or words to that effect. I agree with the Applicant here when commenting on counts 2 and 3, that the Respondent's repeated protestations, both in evidence and in argument, that the night shift probably would have been too tired to work that evening if the night shift had not been cancelled, is completely insupportable. Not only is it gross speculation but they were never charged with anything even approximating such an offence, if it exists in law at all.

[35] I accordingly find that the night shift employees were never proved guilty of count one.

Day shift

[36] These employees withdrew their labour on 17 July 2013 at 11h00 to 13h25 and on 18 July 2013 demanding the Respondent to uplift suspensions imposed on their colleagues. They made no attempt to first comply with the provisions of the LRA, so that their strike could be protected. The Applicant employees cry foul that the Respondent had brought armed forces into the workplace. It remains unclear to me why the Respondent denies that the security company they brought to the workplace were armed. The probabilities of the evidence point towards these security guards being armed. In the same vein, probabilities favour the acceptance of the version that some of the employees waylaid the gate of the Respondent with guns, threatening any of their colleagues who wanted to come to work instead of taking part in the strike. The working environment had become unsavoury, as some of the management members were sent threatening messages. The Respondent was entitled to restore order in its workplace, where the intervention of members of the South African Police Services proved to be of limited benefit.

[37] Accordingly, all of the employees of the respondent, represented in this matter by the Applicant who were enrolled for the dayshift on 17 and 18 July 2013 and who took part in the unprotected work stoppage on those days are found guilty of contempt of Court.

Counts 2 and 3.

[38] Everything I said on count one is applicable here as well. Accordingly:

- the employees on night shift are found not guilty and discharged.

- All of the employees of the respondent, represented in this matter by the Applicant who were enrolled for the dayshift on 17 and 18 July 2013 and who took part in the unprotected work stoppage on those days are found guilty of counts 2 and 3. These counts are treated as one, due to similarity to each other.

ReliefDay Shift

[39] On 12 July 2013, the intervention of this Court, through its order, was intended to bring normality to the work place, which parties alone had failed to do. The terms of the order were still fresh in the minds of the employees. The employees by then, already knew that the employer had committed no wrong on their grading. They knew very well that from June to July 2013 they had embarked on a series of unprotected strikes with devastating economic effect on their employer. I take into account that the strike was accompanied by threats of violence, where Applicant's organiser, Mr Maduna was assaulted and threats were made even to members of Respondent's management. The employment relationship between the Respondent and these employees had clearly been irretrievably broken down. Their dismissal was substantively fair.

Night shift

[40] Their hands are not that clean. It is quite probable that their complaint about what had happened during their night shift, suspension of their two colleagues, was the reason for the unprotected strike. They were clever enough to complete their night shift with no incidents. I however, find that they are entitled to their primary relief, that of re-instatement. It has taken close to 7 years since they were dismissed. Fairness dictates that I must consider interests of both parties in this instance. It is true that these employees did not have to mitigate their damaged during the period close to 7 years. No evidence was led that any of them took employment elsewhere during this period. In my view, they are not entitled to a full back pay as their hands are not that clean. I also have to reflect on the impact of re-instatement to the Respondent's business.

[41] The following order shall accordingly issue, taking into consideration the costs aspect. I consider here also that, the Applicant made numerous attempts to bring the employees and the Respondent to a peaceful resolution of their issues.

Order:

1. The dismissal of the employees on day shift of 17 and 18 July 2013 by the Respondent was substantively fair.
2. The dismissal of the employees on night shift on 18 July 2013 by the Respondent was substantively unfair.
3. The Respondent is ordered to re-instate the contract of employment of the night shift employees, with effect from the date of their dismissal. The Respondent, is however, ordered to make a back pay of each of these employees' monthly salary with effect from 01 January 2017. Their starting salary on 01 January 2017 is to be computed on what they would have earned had they not been dismissed.
4. The Respondent is ordered to pay back night shift employees any benefits they would have been entitled to, had they not been dismissed, calculated in the same manner and period as with the back pay.
5. Payments in terms of paragraphs 3 and 4 above, are to be made within 30 days from the date of this order. Any payment not made within the said period attracts interest, at the regular rate.

6. The night shift employees are to report back at work, at 07h00, not later than 3 working days from the date of work resumption, post the national lockdown restrictions.

7. No costs order is made.

Cele J

Judge of the Labour Court of South Africa.

APPEARANCE:

For the Applicant: Adv P Schumann

Instructed by: Brett Purdon Attorneys

For the Respondent: Mr Dunstan Farrell from Dunstan Farrell Inc Attorneys