

Sneller Verbatim/MB

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: J921/01

2001-04-23

In the matter between

MOCOM PLASTICS MANUFACTURING (PTY) LTD Applicant

and

S A C W U

1ST Respondent

2ND to 157th Respondent

“B” 158th to Further Respondents

J U D G M E N T

REVELAS J:

- 1.This is the return day of a *rule nisi* granted on 29 March 2001 on an urgent basis. The applicant now seeks confirmation of the relief granted which was a decelerator to the effect that the conduct of the second and further applicants constituted an unprotected strike. An interdict prohibiting the strike and certain ancillary relief was also granted. The applicant now seeks costs on the scale as between party and party. Previously it had sought costs on an attorney and client scale.
- 2.The application concerns an alleged strike in the context of change in shift times relating to the night work. The change was introduced after the introduction of the new provisions relating to such work, in the Basic Conditions of Employment Act 57 of 1997. ("The BCEA or Basic Conditions of Employment Act").
- 3.Previously, a three-shift system was worked by the applicants' employees.

After the introduction of the BCEA, the hours worked in terms of the three-shift system would constitute a violation of the Basic Conditions of Employment Act and in particular section 17 thereof. Section 17 of the BCEA provides as follows:

"Night work -

- 1. In this section night work means work performed after 18h00 and before 06h00 the next day.**
- 2. An employer may only require or permit an employee to perform night work if so agreed and if -**
 - (a) the employee is compensated by the payment of an allowance which may be a shift allowance or by reduction of working hours, and**
 - (b) transportation is available between the employee's place of residence and the workplace at the commencement and conclusion of the employee's shift."**

4. It is common cause that the first respondent, the Union, and the applicant concluded a collective agreement in respect of the new shift system. Of particular significance to this application, is clause 7 of the agreement which appears on page 39 of the papers. It reads as follows:

- "7. A R2 per shift travelling allowance will be paid to all afternoon and night shift employees on a weekly basis, together with the normal wages. This allowance will increase annually by the same percentage as the general increase in that year. The company agrees to deduct the transport fees from employees using the transport service and paying it directly to the service provider."**

5. It is common cause that there is a service provider by the name of Mkhize Transport (run by a Mr Mkhize), would take employees (the individual respondents), to and from home to work. It was in other words a door-to-door service.

6. The application is brought on the basis that the individual employees did not want to work in terms of the new four-shift system as required by the collective agreement.

- 7.The respondents believe that they are not bound by the agreement as the question of transport costs remained unresolved.
- 8.It appears from the papers that the implementation of the agreement was extended to 19 March 2001. The union requested an extension of the implementation of the collective agreement until 26 March 2001 which request was declined by the applicant.
- 9.The applicant's case is that there has always been night time work. The change only related to the shifts and that the second and further respondents' refusal to comply with the agreement and work in these shifts, constituted an unprotected strike for want of compliance with the provisions of the Labour Relations Act 66 of 1995.
- 10.The respondents' case is that since there was no agreement to the actual implementation of the agreement, the agreement was unenforceable and therefore any failure to work in terms of the new shift system, (the new four-shift system), would not constitute a strike.
- 11.It was argued on behalf of the respondents that certain questions still remained outstanding and that such issues had to be resolved before the implementation of the agreement could be agreed upon by the first respondent.
- 12.The outstanding issues referred to was the question of the shift allowance of R2,00. The union argues that it would be inequitable if night shift workers were to pay more than day shift workers for special taxis. It appears that the difference between the night shift and the day shift according to Mr Mkize's intended rates, would be R4,00 of which in terms of the agreement, the applicant would pay R2,00.
- 13.The respondents' argument is without merit. It is common cause between the parties that an agreement was reached. An implementation date was agreed upon. The fact that an extension thereof was not agreed to does not mean that the agreement could not be implemented.

14. There also appears that a pattern was followed by the respondents to frustrate the implementation of the agreement with one or other demand relating to the provision of transport for employees.

15. An employer is not obliged to provide transport other than in the terms set out in section 72 of the Basic Conditions of Employment Act.

16. In these circumstances the respondents are obliged to comply with the agreement and any failure to work in terms of the four-shift system as set out in the affidavit would constitute a strike. The strike is unprotected because it does not comply with the provisions of the Labour Relations Act and consequently the applicant had a clear right to approach this court and obtain the relief it had sought.

17. There is no reason why costs should not follow the result even though there has been some acknowledgement that the shift should be worked. This does not appear from the answering affidavit of the respondents and the supplementary affidavit of the applicant would show that there was still certain conditions, that the working of the four-shift system was still subject to certain conditions that had to be fulfilled. In these circumstances a cost order is justified.

18. I make the following order:

1. The rule is confirmed.

2. The respondents are to pay the applicants' costs, jointly and severally, the one paying the other to be absolved.

E. Revelas.