

Sneller Verbatim/MS

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: J3928/00

2003-02-05

In the matter between

NATIONAL UNION OF MINEWORKERS

Applicant

and

MUTUAL CONSTRUCTION COMPANY

Respondent

J U D G M E N T

LANDMAN, J: The seven individual applicants in this matter were employed by Mutual Construction Company TVL (Pty) Ltd t/a MCC Plant Hire. They were members of the National Union of Mineworkers, save for one of them, who subsequently became a member of the union. MCC dismissed the workers on account of its operational requirements on 14 April 2000.

The workers and the union challenged the dismissal on the basis that it was neither substantively nor procedurally fair. The workers were employed on a Witbank Mine where MCC had a contract to execute the work. The contract was one which the principal had extended from time to time. On 24 March, MCC issued a *pro forma* notice to the workers, advising them that the company contemplated retrenching workers at the Rustenburg and Witbank mining operations. These operations were terminated.

The workers were invited to take part in retrenchment proceedings. Details regarding the proposed retrenchment was supplied to them. NUM was advised of the proposed retrenchment on 28 March . A meeting took place between the workers and the mine manager of Witbank, Mr Jacobs and his engineering clerk, on 29 March. Mr Nkabinde, a worker and one of the individual applicants, testified that he attended the meeting and asked various questions. The workers were told that MCC would meet with NUM on 31 March.

Mr Jacobs met again on 30 March with some of the workers including Mr Nkabinde and Mr Sikatane. Mr Sikatane also testified for the applicants. Some discussion took place and a minute was prepared. On 31 March Mr Strike Sthwaele,

of NUM head quarters, attended at MCC's head office in Midrand and the consultation process between the company and the union began. Some notes are to be found in the file but they have not been shown to be the minutes of that meeting.

A further meeting was scheduled for 5 April. This meeting did not occur. Mr Malahlela of NUM's Witbank office, who was designated to attend the meeting, could not do so. The statement of case refers to an official from NUM's Rustenburg office, who should have attended but was unable to do so. MCC wrote to NUM on 4 April, stating that the meeting on 5 April would proceed with the other union involved, but it agreed to reschedule the final consultation to 7 April or 11 April.

On 11 April Mr Sthwaele wrote to MCC, saying that he was committed to wage negotiations, and could not attend the meeting. He proposed that the meeting be rescheduled to 19 or 20 April. Mr Sthwaele said that he had told MCC to contact the union officials, at Lydenburg, Rustenburg and Witbank, to deal with the matter as well as a certain Mr C Hulandi. (The handwriting is unclear and I may have the name wrong.)

MCC went ahead with the retrenchment process. On 14 April it retrenched the workers concerned, including the seven individual applicants, and paid them what was due, according to its records, and severance pay. Messers Nkabinde and Sikatane alleged that the meetings of 29 and 30 March took place at Rustenburg. They say they had been transferred there from Witbank, on or about 24 March, and were promised jobs at the Rustenburg operation. This is most improbable, as MCC had advised them on the 24th, that it was also closing its Rustenburg operations and that persons holding the same jobs, as they were holding at Witbank, would be retrenched. I find that the individual applicants were retrenched and this took place at Witbank.

I also accept that the individual applicants earned the wages reflected on their last salary advices. This is supported by the UIF cards. No objection was raised regarding the propriety of MCC meeting with the workers on 29 and 30 March, as MCC had already arranged to consult with the union. MCC could have postponed the final consultation to 19 or 20 April or to an earlier date. This may have had some effect, on the consultations with the other unions, but there was no reason why it should not have taken place. NUM could also

have made greater effort to attend on 5 April, 7 April or 11 April. NUM's explanation for not doing this is not entirely satisfactory. Nevertheless, MCC bears the onus of showing that the dismissals were substantively and procedurally fair.

I am satisfied that the dismissals were substantively fair. I am uncertain whether the dismissal were conducted according to a fair procedure, or whether the alternatives listed in the retrenchment notice, were considered. Mr Vos addressed some of these issues in his evidence, but the details concerning the retrenchments as applied to the individual applicants, could only have been addressed by Mr Jacobs and his staff. They did not give evidence. I am told that Mr Jacobs had left the company.

I also do not know how it came about that the seven applicants were dismissed, whereas only the retrenchment of the three employees was contemplated on 24 March. In the result I find that the dismissals were not procedurally fair. I have a discretion to award the individual applicants compensation. It is not competent to order their reinstatement where there is only the procedural defect.

In awarding compensation, I take into account, the union's contribution to the incomplete consultation, as well as

the inevitability that the workers such as the individual applicants, could not have easily been placed elsewhere.

I am of the view that compensation equivalent to three months remuneration would be sufficient. I make the following order.

1. The respondent is ordered to compensate the individual applicants in the amount equal to three times their respective monthly wage, as set out on pages 28 to 34 of Bundle A.
2. There will be no order as to costs.

**SIGNED AND DATED AT BRAAMFONTEIN ON 25
FEBRUARY 2003**

A A Landman

Judge of the Labour Court of South Africa

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