

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT JOHANNESBURG

CASE NUMBER: J2286/08

In the matter between:

XSTRATA COAL SA (PTY) LTD

Applicant

and

NATIONAL UNION OF MINEWORKERS

First Respondent

PERSONS LISTED IN ANNEXURE A
TO THE NOTICE OF MOTION

Second to Further Respondents

JUDGEMENT

NGALWANA AJ

Introduction

[1] This is an extended return day in an application for all three forms of interdict known to man. The applicant seeks confirmation of a rule nisi issued by this Court on 27 October 2008. The rule was returnable

on 28 November 2008 but the respondents anticipated that day on 14 November 2008. On the latter date judgment was reserved and the rule consequentially extended to Monday 17 November 2008. On that date the rule was further extended until 20 November 2008 owing to some administrative confusion.

[2] The applicant seeks confirmation of the rule nisi in relation to

[2.1] a declaratory interdict that the conduct of certain named members of the first respondent constitutes an unprotected strike in breach of the requirements of section 64 of the Labour Relations Act, 66 of 1995;

[2.2] a prohibitory interdict restraining those named respondents from breaching their contracts of employment and provisions of the collective agreement, and restraining the first respondent from inciting and supporting an unprotected strike by its members;

[2.3] a mandatory interdict directing the named respondents to comply with their employment contracts and collective agreements, and directing the first respondent to intervene with a view to ensuring that its members comply with the

requirements of the Labour Relations Act as regards strike action, on the one hand, and the terms and conditions of their employment contracts and collective agreements on the other.

- [3] The respondents oppose confirmation of the rule nisi.

Common Cause Facts

- [4] The following facts are common cause.
- [5] On 15 October 2008 representatives of the first respondent and a number of the named respondents delivered a memorandum of nine grievances and demands to the management of the applicant. The grievances ranged from allegations that the applicant does not comply with its own procedures, on the one hand, to white workers being paid higher salaries than black workers at the same level on the other. All the issues raised in the memorandum are matters of mutual interest
- [6] The following day, on 16 October 2008, the ninth respondent (MP Medupe) who is one of the dump truck drivers was given a warning by a traffic officer in the applicant's employ for driving in excess of the

required speed limit. He was driving in excess of 60km/h in a 40km/h zone.

[7] From 17 October 2008 to date Mr Medupe and 85 other drivers have been driving at markedly reduced speeds despite the interim order granted on 27 October 2008.

[8] As a result of the reduced speeds, the applicant's production levels at ATCOM open cast mine have reduced by up to 62%.

[9] The applicant is a coal producing and exporting entity in competition with local and international coal mining companies. The bulk of its production is exported and its major customers are offshore companies.

[10] The applicant's ATCOM mine is contracted to supply

[10.1] 1.5 million tons of coal per year to Total Coal SA (Pty) Ltd;

[10.2] 1.5 million tons of coal per year to a Spanish energy utility; and

[10.3] 1 million tons of coal per annum to an Italian energy utility.

- [11] Failure by the applicant's ATCOM mine to supply these amounts of coal impact negatively not only on the applicant's business but also that of the customers.
- [12] The second to further respondents are all employed at the applicant's ATCOM mine.

The Dispute

- [13] While the applicant avers that the reduction in production levels is attributable solely to a go-slow embarked upon by the second to further respondents and supported by the first respondent, the respondents aver that these production levels reduced inevitably when one of their own (Medupe) was warned by a traffic officer for driving in excess of the required speed limit.
- [14] The respondents' version is in my view far-fetched and cannot reasonably be believed. It is too much of a co-incidence for a memorandum of grievances and demands to be delivered to management on 15 October 2008 only for production levels to reduce by up to 62% hardly two days later as a result of wide-spread reduction in the pace of work.

[15] There is no dispute that there is no pattern of speeding at the applicant's ATCOM mine. There is also no dispute that the warning issued to Medupe was not the first to truck drivers in the mine, and that there have been nine such warnings since April 2008. None of those warnings resulted in a dramatic reduction in production levels and marked reduction in speed levels. Mr Maimane for the respondents could not explain this seeming co-incidence that a speeding warning to one driver following a memorandum of demands to management should now result in safety concerns giving rise to general speed reduction when no such concerns and resultant speed reduction followed nine other previous warnings.

[16] That the respondents are engaged in unprotected strike action is beyond question on the facts of this case. The dispute that the respondents seek to generate as regards the real cause of the reduction in production levels is simply spurious and does not warrant serious consideration even though I have carefully considered its veracity.

Finding

- [17] In the circumstances, the rule nisi is confirmed with costs, excluding the wasted costs of Monday 17 November 2008.

Ngalwana AJ

Appearances

For the applicant: *Mr GA Fourie*
Instructed by: *Perrott Van Niekerk Woodhouse*

For the respondents: *Mr Maimane*
Instructed by: *KD Maimane Inc*

Date of hearing: *14 November 2008*
Date of judgment: *20 November 2008*