



IN THE LABOUR COURT OF SOUTH AFRICA

(HELD AT JOHANNESBURG)

JUDGMENT

Not reportable

CASE NO: J 546/2020

In the matter between:

SKETS PROJECTS (PTY) LTD

Applicant

And

**SOUTH AFRICAN TRANSPORT AND ALLIED
WORKERS UNION**

Respondent

Date enrolled: 23 June 2020 (By agreement, decided in Chambers)

Date of judgment: 24 June 2020. Judgment distributed by email at 12:00

JUDGMENT

VAN NIEKERK J

- [1] This is an urgent application in which the applicant seeks to interdict a strike called by the respondent. The applicant is engaged in the security sector and employs security officers country-wide. The applicant contends that the respondent has called a strike that is unprotected, and seeks a final order in terms of which the respondent and its members cease engagement and participation in the strike.
- [2] The applicant is a party to a collective agreement with the South African National Security and Allied Workers Forum (SANSAWF). That agreement confers sole bargaining rights on SANSAWF and also establishes a closed shop, as contemplated by s 26 of the Labour Relations Act (LRA).
- [3] The respondent has sought organisational rights at certain of the respondent's premises. The papers before me do not disclose the extent of the demands, nor the specific organisational rights sought by the respondent. That notwithstanding, the applicant resisted the respondent's demands and the dispute between the parties was ultimately referred to the CCMA. On 1 June 2020, the CCMA issued a certificate of outcome reflecting that as at that date, the dispute remained unresolved. The respondent subsequently issued a strike notice and sought approval from the CCMA for picketing rules. On a date that is not disclosed, but it would appear after the strike notice was issued, the applicant referred the organisational rights dispute to arbitration in terms of s 21 of the LRA.
- [4] The applicant raises a number of grounds on which it contends that the strike is unprotected. First, the applicant submits that the strike notice lacks sufficient particularity, and that the strike should be interdicted on that basis. Secondly, the applicant appears to contend that it operates an essential service, certainly in so far as the National Disaster Management Act is concerned, and that the strike is unprotected for that reason. In the respondent's unsigned answering affidavit, the deponent makes mention of a unilateral change to conditions of employment in

respect of certain bonus payments, and appears to suggest that a dispute was referred to the CCMA in relation to this issue, and a certificate issued.

- [5] While it is correct that the strike notice says very little about the nature of the demand and the actions that the applicant is required to take to avert a strike, it is also not correct that the applicant is an essential service for the purposes of s 71 of the LRA. An essential service for the purposes of the National Disaster Management Act is not automatically an essential service for the purposes of the LRA. It is not apparent that security services generally speaking or any of the security services offered by the applicant have been declared essential services in terms of the LRA.
- [6] It would seem to me that the provisions of s 22 of the LRA entitle any party to a dispute about organisational rights to refer the dispute to arbitration. Ordinarily, a dispute that is one in respect of which a party has the right to refer to arbitration, may not be the subject of protected strike action. In the present case, the respondent clearly elected to strike in support of its demand, as it is entitled to do. Whether the applicant was entitled to pre-empt the exercise of that right by itself referring the dispute to arbitration is not an issue that was addressed at any length in the papers or in the written submission that was filed. For present purposes, I need make no ruling in this respect.
- [7] There is a more fundamental reason why the strike called by the respondent may well be unprotected. It is not in dispute that the respondent is a member of the newly formed National Bargaining Council for the Private Security Sector. It is also not disputed that the respondent is a party to the bargaining council, and that the applicant's operations fall within the council's registered scope. That being so, the provisions of s 19 of the LRA apply – registered trade unions that are parties to a bargaining council automatically have the rights contemplated by sections 12 and 13 of the LRA in respect of all workplaces within the registered scope of the council, regardless of their representativeness in any particular

workplace. In other words, the respondent enjoys at least the organisational rights of access and check off by virtue of its membership of the bargaining council. It is not clear to me on the papers whether the respondent's demands extended beyond those rights, and if so, to what extent. In respect of the rights of access and check-off at least, there is no reason to demand the establishment of those rights or strike in support of their establishment as the respondent has done – the respondent has those rights and is entitled to enforce them. For this reason, there is no real or live dispute between the parties that may legitimately form the basis of a strike.

- [8] In so far as the respondent relies on a dispute about a unilateral change to terms of employment, this does not appear to be the basis on which the strike has been called. Certainly the strike notice issued on 10 June 2020 makes no mention of it.
- [9] I am satisfied on the papers before me that the applicant has established a *prima facie* right to the relief that it claims. I intend therefore to grant an interim order, and to grant the parties leave to file supplementary affidavits prior to the return date.

For these reasons, I make the following order:

1. The respondent is called on to show cause on 11 September at 10 am, why an order should not be granted in the following terms:
 - a. the strike called by the respondent in support of its demand for organisational rights is unprotected;
 - b. the respondent and its members are interdicted and restrained from supporting and/or participating in the strike;
 - c. the respondent is to pay the costs of the application, including the costs of the postponed proceedings on 17 June 2020 when costs were reserved.

2. Pending the return date, the provisions of paragraphs a, b and c above shall operate as an interim interdict.

André van Niekerk

Judge of the Labour Court

LABOUR COURT