

Sneller Verbatim/MB

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: J2743/01

2001-07-06

In the matter between

UNITED TRANSPORT AND ALLIED TRADE UNION Applicant

and

METRORAIL Respondent

J U D G M E N T

EX TEMPORE

REVELAS J:

1. The applicants seek the following urgent relief:

Interdicting and restraining the respondent from distributing to any of the applicant's members a notice entitled "undertaking not to participate in UTATO strike particulars whereof are set out in the annexed founding affidavit hereinafter referred to as "the undertaking";

Interdicting and restraining the respondent from requiring applicant's members to sign the undertaking.

Interdicting and directing the respondent to withdraw the undertaking from those of the applicant's members who have already signed;

Interdicting and restraining the respondent from discriminating against and/or victimizing the applicant's members.≡

The applicants also seek costs against the respondent.

2. The document (or Undertaking), which lies at the heart of the applicant's complaint, is a standard letter of undertaking to be signed by all UTATO members who are about to commence on a strike today. The relevant part of this letter reads as follows:

"Should they sign and avail themselves for work as required by management for the duration of the strike, they will not be locked out. A lock out notice has been faxed to all the partners. Contact the department secretary if you have not received your copies. Please display the notice immediately.

The undertaking form is to be used for those who do not wish to strike. Note: The individual need not resign from the Union and you may not under any circumstances encourage people to resign from the Union. Copies of this undertaking must be kept in a safe place and a copy is to be faxed to the HR manager's office. Please keep a summary and a check against the list of Utato members which HR will be providing.

I will be meeting with the strike committee at 14h00 whereafter there will be further contact."

3. The standard undertaking reads as follows:

"I, employee number hereby commit not to participate in a strike called by Utato in Metrorail. By giving this undertaking I am aware that I will be making myself available to work as and when required by the company."

4. The members of the Union are also advised in this letter, that they need not resign from the union in light of the aforesaid and that it should not be so construed.

5. The question to be decided is whether these letters constitute a breach of Sections 4 and 5 of the Labour Relations Act 66 of 1995. In my view they do not. On the evidence presented by the respondent and on the papers of the applicant, there is no case made out to demonstrate that

3 JUDGMENT

the respondent committed with some unlawful act in handing out these letters.

6. In my view, it is perfectly legitimate to send such letters. It forms part of the general power play which takes place during a strike. I am unpersuaded by the submissions that if these letters are continued to be given to members the strike will not take place. If the strike does not proceed, so be it. An employer faced with a protected strike is not precluded from resorting to measures to prevent the strike from taking place, provided such action does not constitute, intimidation or a breach of the provisions of the Act.

7. It is the Union's duty to ensure that a strike called by it continues, and not that of the courts.

8. In the circumstances the application is dismissed with costs.

E. Revelas