Sneller Verbatim/mc

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN CASE NO: J4285/01

2001-10-03

In the matter between

PROFAL Applicant

and

Respondent

J U D G M E N T

Delivered on 4 October 2001

REVELAS J:

1. The applicant has approached this court for an urgent interdict prohibiting a strike. The applicant contends that the strike is unprotected as the issue in dispute is one that is not capable of being the subject matter of a strike.

2. The first respondent, (or "the Union"), referred a further dispute to the bargaining council about "a refusal to bargain". This type of dispute may form the subject matter of a strike, as the applicant has indeed refused to bargain with the Union in respect of its demands pertaining to wage increases, severance pay, long service pay and certain other terms and conditions of employment.

3. The applicant contended that it is not obliged to consult and bargain with the Union because the applicant is a member of a registered employers' organisation, namely the Light Engineering Industries Association of

South Africa which is affiliated to the Steel and Engineering Industries Federation of South Africa (SEIFSA). The employers' organisation is also a party to the Metal and Engineering Industries Bargaining Council, (the "MEIBC"). SEIFSA generally deals with substantive negotiations with other connecting bargaining agents in the metal and engineering industry of the applicant.

4. As a member of the employers organisation, the applicant says it is bound as a party to the provisions of the collective main agreement of the MEIBC.

5. The first respondent is not a member of any employees' or trade union organisation which are a party to the collective main agreement of MEIBC. Therefore, the applicant argues it is required to give effect to the provisions of the main agreement of the MEIBC by virtue of its membership thereof. The applicant is bound by the provisions of the agreement and so are its employees, (the second and further respondents, insofar as the agreement relates to wages and substantive conditions of employment).

6. The applicant argues that whereas the first respondent is not a party to the main agreement, the main agreement is extended by the Minister of Labour from time to time. The main agreement governs the issues upon which the Union seeks to engage the strike action today.

7. According to the founding affidavit the main agreement was extended by the Minister to all non-parties in terms of notice no 941 published in Government Gazette no 20330 on 6 August 1999 for the period 16 August to 30 June 2001 which is the period in respect of the dispute between the parties. That agreement has lapsed.

8. A further agreement was concluded, again under the auspices of MEIBC for the period 1 July 2001 to 30 June 2002 in respect of wages and in respect of all other issues governed by the agreement. The agreement

was concluded and signed on 1 August 2001.

9. Previous disputes were referred by the Union, other interdicts were sought, further demands were made.

10. The applicant pointed out to the Union that in terms of section 37 of the Main Agreement, the Bargaining Council was the sole forum for negotiating matters contained in the main agreement. For example wages, severance pay and other conditions of employment.

11. The Union argues that the applicant generalises too much. The union was interested in specific demands to met. I was referred to many examples in the Main Agreement, which the applicant argues, demonstrated were issues to strike over.

12. On 17 November 2000 the Union referred the dispute about the applicant's refusal to bargain on issues listed in a letter from the Union to the applicant, stating its demands. The dispute was conciliated under the auspices of the MEIBC on 13 February 2001. At this meeting the applicant continued with its stance that it was not obliged to bargain about demands made by the Union as both issues related to wages and substantive conditions of employment which were governed by the main agreement. The dispute remained unresolved. An advisory award was obtained. The certificate of outcome of dispute stated:

"I certify that the dispute between NEWU on behalf of members and Profal (Pty) Limited, which was referred for conciliation on 17 November 2000, concerning the applicants' refusal to bargain on matters of interest, remains unresolved at 13 February 2001.

Comments: Alleged refusal to bargain."

13. The Union then brought urgent interdict proceedings in this court against the MEIBC, the concilliator, the applicant and SEIFSA.

14. The application was dismissed due to a lack of urgency. The parties filed

papers in the ordinary cause and the matter became before GERING AJ who handed down a judgment on 29 August 2001. The MEIBC was directed to appoint a concilliator, (other than the concilliator that presided over the previous proceedings), to furnish an advisory award within 14 days after the conclusion of the proceedings.

15.In its founding affidavit the applicant directed me to a passage in the judgment of GERING AJ at paragraph 26:

"**There is in my view another dispute in addition to the dispute that was referred to conciliation between the Union and the employer, namely in regard to the proper interpretation of the collective agreement. The Union contends that the correct agreement does not cover bargaining on the matter set out in the letter of 15 November, whereas the employers' contention is that under section 37 of the agreement the bargaining council is the sole forum for negotiating matters contained in the main agreement, that is wages, severance pay and other conditions of employment**."

And then in paragraph 31:

"**Whether the Union is correct or whether the employer is correct in regard to their respective contentions, involves the dispute as to the interpretation of the collective agreement and in my view it should be resolved in accordance with the process envisaged by section 24 of the Act. That, however, is not the dispute that has been referred in terms the dispute resolution agreement which is binding on the parties. If one of the parties wishes to refer the dispute as to the interpretation of the collective agreement, that party must take the necessary steps as set out in the collective agreement. It is not a matter on which it would be proper for this court to give a decision or express a view.**"

15. The time spent during Mr. Maluleke's argument to demonstrate, why the Main Agreement covered the demands of the Union illustrated that the decision in respect thereof was not capable of being made without reference to the Main

Agreement.

16. The dispute has been referred to the relevant Council and before that dispute is resolved, the applicants may not strike over those demands. The issue relates to the interpretation of the Main Agreement and therefore the matter must take its normal course in terms of section 24 of the Act.

17. The applicant has established that the matter is urgent and that it will suffer irreparable harm if this court does not come to its assistance. It has already, as demonstrated above, shown that it has a clear right.

18. Therefore, in the circumstances I make the following order:

1. The respondents are interdicted from calling for, engaging or participating in industrial action, pending the determination of the dispute between the applicant and the first respondent concerning the interpretation and application on the main agreement of the Metal and Engineering Industries Bargaining Council, the MEIBC, whether the first respondent can negotiate or bargain on matters at plant level which are governed by the main agreement of the MEIBC.
2. The first respondent is directed to take all steps necessary to restrain its members from creating or participating in any industrial action, pending the determination of the dispute referred to in the above paragraph.
3. The respondents are to pay the costs of the application jointly and severally. In this regard I may mention that I heard no argument on the question of costs and the applicant had asked for a cost order on a scale as between attorney and client.

19. In the circumstances the parties are entering into a process at the CCMA regarding a dispute between them and may have an ongoing relationship. I do not deem it appropriate to grant the cost order on a punitive

scale.

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E. Revelas