

Sneller Verbatim/mc

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: J4485/01

2001-10-12

In the matter between

CONSTANTIA MINING SERVICES

Applicant

and

N U M

Respondent

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J U D G M E N T

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LANDMAN J: This is an application which is brought by Constantia Mining Services (Pty) Limited against the National Union of Mine-workers and 41 other individuals who are employees of the applicant and members of the Union.

The application is to interdict a strike which is due to take place at 18:00 today being 12 October 2001. This matter served before me yesterday and stood down until 10:00 today because the applicant had not complied with section 68(2) of the Labour Relations Act 66 of 1995.

Today Ms Shabalala, appears on behalf of the Union and has on their behalf withdrawn the strike and has intimated that a meeting will be held before 14:00 today to inform the would be strikers that the strike has been called off.

Ms Bernard, who appears on behalf of the applicant, has asked for costs against the respondents. In my opinion an order for costs should not be granted. First, because the notice referred to in section 68(2) was not given to the Union and secondly because I am of the opinion that the applicant does not have a case on the merits.

The applicant's case on the merits is that no strike could take place because after the dispute had been referred on 4 September to the CCMA, the CCMA convened a conciliation meeting for 1 October. The Union did not appear and the commissioner then dismissed the application. It was submitted that accordingly this had the effect of invalidating the referral.

However, section 64(1) of the LRA provides that every employee has the right to strike if the issue in dispute has been referred to the Commission and either a certificate that the dispute remains unresolved has been issued, or a period of 30 days, or an extended period, which is not the case here, has elapsed. There are of course other requirements. This is the only one which is relevant to this particular matter.

In my opinion as the period of 30 days had expired by 5 October the Union was perfectly entitled to give their strike notice. In the circumstances the application would not have succeeded and therefore the applicant is not entitled to costs.

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A A Landman

Judge of the Labour Court of South Africa