

IN THE LABOUR COURT OF SOUTH AFRICA(HELD AT CAPE TOWN)CASE NO: C1163/01DATE: 30-11-2001

In the matter between:

CENTURY CASINO CALEDON (PTY) LTD t/a ApplicantTHE CALEDON CASINO HOTEL & SPA

and

TECHNICAL EMPLOYEES UNION OF SA Respondent

J U D G M E N TLANDMAN, J:

1. Century Casino Caledon (Pty) Limited t/a The Caledon Casino Hotel & Spa applies for an rule *nisi* incorporating an interdict and a declaratory order against the Technical Employees Union of South Africa. The application is primarily directed at a declaration that a strike, which was called by the union and which commenced on 24 November 2001 is unprotected and in breach of the Labour Relations Act 66 of 1995 ("the LRA").

2. Section 64 of the LRA deals with the right to strike and the recourse to a lock-out. It provides that:

"every employee has the right to strike if the issue in dispute has been referred (in this case to the Commission for Conciliation, Mediation & Arbitration ('the CCMA')) as required by the Act and a certificate stating that the dispute remains unresolved has been issued."

30-11/11:58

In /...

JUDGMENT

In addition, at least 48 hours' notice of the commencement of the strike in writing

must be given to the employer, except in certain circumstances which are not relevant in this matter.

3. The union in this matter became engaged in a dispute with the employer in regard to certain matters. Thereafter a number of matters constituting a dispute or, if one would have it, disputes were referred to the CCMA in terms of the applicable process. The referral form. LRA 7.11 set, out in very brief terms what the dispute was about. A conciliation meeting was held. At this conciliation meeting the Commissioner set about determining what the dispute was about and what the demands were. One of those demands was for a 15% wage increase. Thereafter the union served a strike notice on the employer. This notice dated 16 November set out eight items in respect of which the strike was to be called. It is to be noted that this was a reduction of the number of items in dispute or, if one will, the number of disputes.

4. The employer complained about some of these items, as it was entitled to do. The union served an amendment to its strike notice on 23 November. It reduced the disputes in respect of which the strike was to be called, to three items. The employer has objected today that two of the three items were not the subject of conciliation. The first item refers to wage increases, that have been conciliated. The second one refers to a yearly bonus. It is submitted on behalf of the employer that this was not conciliated. I am prepared to accept for purpose of this application that this is the case. The third item refers to refreshments

30-11/12:02

to /...

JUDGMENT

to be supplied by employer to shift workers at no cost. Once again I am prepared to accept that this was not a subject of the referral and conciliation. However, the common thread running right through all the notices is the fact that there is a

demand for a wage increase. This is a legitimate demand. It is one which was referred to the CCMA. There was an attempt at conciliation. It has not been resolved. It was mentioned in the notice of 16 November. It was repeated in the notice of 23 November. The trade union is entitled to call a strike on that aspect.

5. I must point out that there was no obligation in terms of the LRA on the union to set out in its strike notice the issues in respect of which it was going to strike. It could have, if the issues had been properly defined in its referral notice to the CCMA or at the conciliation session, simply given notice of a strike. It would be implied that it was then going to strike on all the items. However, as I have indicated, these items have been reduced considerably. At the moment only one item remains.

6. I am therefore of the opinion that the employer is not entitled to the relief which it seeks. It would be entitled on my findings to an order that the union may not strike in regard to the second and third items on its letter of 23 November, i.e. the yearly bonus and refreshments to be supplied by the employer to shift workers at no cost. However, the employer has not sought alternative relief which would prohibit the strike on these grounds. But the union may not strike on those grounds and if it were to do so the employer could at that stage seek proper relief.

30-11/12:05

7. /...

JUDGMENT

7. In the circumstances therefor the application is dismissed. In view of the ongoing relationship between the parties I make no order as to costs.

Signed and dated at BRAAMFONTEIN on this ____ Day of January 2002.

Landman AA

Judge of the Labour Court of South Africa