JUDGMENT

Snellers Verbatim/MS

IN THE LABOUR COURT OF SOUTH AFRICA

CASE NO: J363/2002

In the matter between:

Applicants

and

Respondent

JUDGMENT

LANDMAN J:

1. The South African Commercial Catering & Allied Workers Union and 11 others brings an urgent application against Mandate Meal Management for a rule *nisi*, to

declare the lock-out against the strike by the second and further applicants to be a nullity, and to interdict the employer from refusing to allow the second and further applicants from resuming their duties and directing the employer to pay them

their wages and to pay the costs of the application.

3. It appears in this case that the second and further applicants engaged in a protected strike. The strike was protected because the procedure laid down in the Labour Relations Act 66 of 1995 had been complied with. The dispute had been referred to the CCMA. The dispute related to wages and substantive increases. The union's demand was for an increase of R 350,00 per month for a minimum wage of R 1500,00 per month and a travelling allowance of R 250,00 per month. The employer had declined to comply with the demand.

4. Thereafter proper notice was given by the union and the employees embarked on a strike. The strike continued up until 17 January 2002. In the meantime the employer had furnished the union and employees with a notification of its intention to lock out in terms of 64(1)(c) of the LRA. This was furnished on 8 January 2002. The body of notice reads:

> "You are herewith given 48 hours notice from today's date of our intention to lock-out the striking workers. Please note that the rule of no work no pay will apply for the period not worked by the striking workers".

5. Once the striking workers tendered to returned to work, the employer informed them, in writing under the head of "Lock Out", that they were required to sign an agreement prior to resuming their normal duties. The employer also said that the replacement workers had been given notice and that they were to finish off on Thursday 31 January 2002. As a result the striking workers could resume their duties on Friday 1 February 2002.

6. Lastly the employer pointed out that should the agreement not be signed by the members of the union, it was their intention to proceed with the lock-out until such time as it is signed. The strikers declined to sign the agreement. The result is that the strikers who tendered to return to work were not allowed to work because the employer alleges that it is conducting a lawful and protected lock-out.

7. The union does not challenge the notice regarding the intention to

lock-out. But it does say that it was not acted upon and that it is merely notice of an intention to lock-out. There was in fact no lock-out.

10. The only lock-out permitted by the LRA is the exclusion of employees from their place of employment until such time as they comply with the employer's demands. Where employees are on strike there is no question of their being excluded because, by their own actions, they do not enter the premises and do not tender to work. Therefore the employer could not at that stage take physical steps to exclude them.

11. However, when they did tender their services the employer informed them of the terms of the lock-out. That lock out is a protected one and it is one that is still continuing. In the circumstances the application is dismissed.

Signed and dated at PORT ELIZABETH on this 6th Day of February 2002.

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AA Landman
Judge of the Labour Court of South Africa