

**IN THE LABOUR COURT OF SOUTH AFRICA**  
**(HELD AT CAPE TOWN)**

**Case no:**C248/02

**DATE:**

8-3-2002

In the matter between

**NUMSA & OTHERS**

First and Further Applicants

and

**ANDRAG MACHINERY (PTY) LTD**

Respondent

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**JUDGEMENT**

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**WAGLAY, J:**

1. This matter comes before me as one of urgency. The first applicant, a trade union together with its members, who are the second to further applicants seek an order that the lock-out with which the respondent persists be declared unlawful.
2. Briefly, the history of the matter is that the respondent proposed certain changes to the terms and conditions of employment of the second to further applicants. The parties after holding discussions

reached a deadlock in respect thereto. In response the second to further applicants embarked on a strike and the respondent reacted thereto by implementing a lock-out. The condition of the lock-out was that the applicants accept the new terms and conditions proposed by the employer as a condition precedent for the uplifting of the lock-out. Some time later, or at least by 5 March, the applicants came to the view that the changes sought by the respondent and therefore the demand made by it as a condition to withdraw the lock-out was in breach of the Bargaining Council Agreement (BCA), to which respondent is a party, and therefore unlawful. Applicant then approached the respondent and advised that its members no longer wished to continue with the strike and they were tendering their services. The tender, however, meant that they were not prepared to accept the condition precedent of the employer which the respondent required compliance with before it would uplift the lock-out. The employer therefore rejected the tender of the end to the strike and continued with the lock-out.

3. The applicants have referred the respondent's refusal to accept their tender together with the other issues relevant to the strike and lock-out to the Bargaining Council for resolution. The resolution of the dispute would require the determination of whether or not the changes sought by the respondent are allowed in terms of the BCA as

well as whether the tender by the applicants and the continued lock-out by the respondent was fair and/or lawful. Notwithstanding the above referral applicants seek that I declare the lock-out unlawful.

4. This lock-out was in response to a strike which applicant called. The demands made by it are, if I have to accept the *ipse dixit* of the applicants, unlawful. However, they are not unlawful *per se*, they are unlawful in terms of the BCA and this is a matter which the Bargaining Council will decide in due course. I do not see why I should declare the lock-out unlawful at this time. The prejudice that the employees suffer if the lock-out continues is that they do not get paid. If, in due course it is found that the demands made by the respondent were unlawful and that the tender by the applicants was in fact a tender to perform duties which was in compliance with the Bargaining Council Agreement and that the demands of the employer was unlawful, then obviously it could institute an action to claim those salaries as from the date on which they withdrew the strike action. At this time, therefore, I do not see any reason to grant the interdict because the applicants do have alternative remedy in due course. With regard to costs there is an ongoing relationship between the parties and this matter will be proceeding further. Having considered all of the above

I am of the view that this is not a matter in which costs should follow the result.

5. In the circumstances the application is denied. There is no order as to costs.

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WAGLAY, J