IN THE LABOUR COURT OF SOUTH AFRICA
SITTING IN DURBAN

OF INTEREST

CASE NO : **D573/2002**

HEARD ON: 30 July 2002
DELIVERED ON : 30 July 2002
REVISED ON: 27 AUGUST 2002

In the matter between:

ENFORCE GUARDING (PTY) LTD Applicant

and

NASUWU and OTHERS Respondents

BEFORE THE HONOURABLE MS JUSTICE PILLAY

ON BEHALF OF APPLICANT MR VAN NIEKERK

ON BEHALF OF RESPONDENTS MR I MOODLEY

TRANSCRIBER
SNELLER RECORDINGS (PROPRIETARY) LTD - DURBAN

J U D G M E N T

PILLAY J

[1] This is an application to confirm the rule *nisi* in an urgent application, with costs against the first respondent on an attorney and client scale.

[2] The respondents raise *in limine* the point that the rule should not have been granted in the first place as notice in terms of section 68(2) of the Labour Relations Act No 66 of 1995 (the LRA) had not been given. Notice, it was submitted, meant service of the Notice of Motion supported by affidavit.

[3] The judgment of LANDMAN J in *Automobile Manufacturers Employers Organisation v NUMSA* [1998] 11 BLLR 1116 [LC] relied upon by the respondents is distinguishable from this case. In that case the application related to the automotive industry. Furthermore, it related to a secondary strike where better notice was possible. This case concerns the security industry. Industrial action had serious implications for third parties, the clients of the applicant and their customers. But for certain features, such as the availability of

alternative labour, it is akin to an essential service. It was further submitted that the reasons for non-compliance with the notice period should be clearly stated in the affidavits.

[4] Although the applicant admitted that it did not serve notice by delivery of the Notice of Motion with affidavits, it notified the respondents in writing 48 hours before launching the application. The basis of the application and the relief sought were obvious from the notice. This court has on occasion granted urgent interdicts without written notice and on the basis of oral evidence. This matter was urgent as it concerned the security of clients of the applicant and their customers. In the circumstances, the Court remains satisfied that sufficient notice was given of the intention to launch the application.

[5] The second issue is whether the first respondent should be ordered to pay costs on an attorney/client scale. The respondents have tendered, without prejudice, an amount of ten thousand rand (R10 000,00) towards costs in settlement.

[6] The respondents' conduct has been deliberate, irresponsible and at best negligent. They made no serious effort to withdraw the strike

notice after they had received notice of this application. The strike in fact ensued after the notice was given. The respondents were alerted in writing to the fact that the issue giving rise to the strike had been resolved. Even if the applicant had conceded the issue after notice of the strike or if the respondents had only just become aware of the concession, they failed to take steps to avoid the strike.

[7] The first respondent required the concession to be recorded in an agreement, so it was submitted. The applicant's concession was already in writing in the form of a letter. The insistence on an agreement was unreasonable. Certainly it did not warrant recourse to such drastic measures as industrial action.

[8] All the evidence points to the probabilities that the first respondent sought the signing of a recognition agreement which was not the subject of the dispute on which the strike was launched.

[9] The respondents' conduct has also been substantially disruptive of the relationship of trust. They breached the undertaking not to rely on the certificate of non-resolution of the dispute. If the first respondent had decided to withdraw the undertaking, it should at least have forewarned

the applicant. The applicant may well have contributed to the breakdown of the relationship. However, in the picture presented to me, the respondents are in this instance principally culpable. In the circumstances :

a. the rule is confirmed.

b. the first respondent is ordered to pay the applicant's costs on an attorney and client scale.
