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IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN CASE NO: J62/03

2003-02-10

In the matter between

NATURAL STONE PROCESSORS (PTY) LTD Applicant

and

UNICIMESHAWU Respondent

J U D G M E N T

LANDMAN J: The members of the United Chemical Industries Mining and Electrical State Health Allied Workers Union, who were employed by the Natural Stone Processors (Pty) Ltd, engaged in a protected strike in support of a wage demand. The strike continued for two and a half months until the union suspended the strike pending the outcome of negotiations at

the CCMA. The union informed the company that the workers would return to work on 8 November 2002, but would not sign any new conditions of employment until the dispute was resolved. All the strikers returned to work on 8 November after signing affidavits stating that they were returning to work unconditionally.

The company acknowledged the suspension of the strike although it informed the union that the strikers must "sign the lock out notice". It nevertheless allowed them to work without doing so. On 14 November the company informed the union that it did not agree to the CCMA intervention in the wage dispute. After this some strikers accepted the company's wage offer. Others did not. The company issued notices to some of the strikers informing them of the commencement of disciplinary hearings and charges relating to misconduct allegedly committed during the strike.

The union's response to this step came in the form of its letter of 25 November 2002. It reads as follows:

"Notice is hereby given that if management does not settle the wage dispute and refuses to stop its victimisation, exploitation, suppression and harrassment of employees by the November 26, 2002, workers shall resume their legal and

protected strike any time thereafter. The demands are simple -

(1) Settlement of wages between 8% and R1,60 across the board backdated to the 1 July 2002.

(2) Drop all unfounded and outdated charges against all employees.

(3) Management to accept the reality that apartheid behaviour and all its evils are something of the past and will never be accepted in our new democracy."

More correspondence was exchanged between the union and the company. On 27 November 2002 the union stated in a letter of that date, *inter alia*:

"Notice is hereby given that the legal and protected strike which was suspended for the purpose of trying to settle the wage dispute amicably and without any further losses to the company and the employees' income shall resume on 28 November 2002. It should be noted that all employees which names appear in a court order dated 7 November 2002 are not allowed to come anywhere near the 500 metres of the company premises."

The company replied to this letter on the same day and said *inter alia*:

"1. The company is of the opinion that the resumption of the strike may not be legitimate and it reserves all its rights in this respect. The employees who wish to provide their services will be permitted to do soÈ]™žH[ÞYYHÈHšYÚÈ¯XÚ]HÜˆ››¯XÚ]H[ˆ››X›Y›šZŸHX›[€‹ˆÚ›[[žH[ÞYYH][™È€ÜšÈ›ÜˆHYÚ][X]HœÜŸHŸˆ[™š[™ÈZˆŸ¯šXŸÈˆHÚ[™H›Z]B¯YÈÈ€È[™H€€[žHÚ[››™H[ˆ[žHœ™XXÚŸˆH[¯™X›ˆƒB—ˆW™ZˆšMÃŒLÕ

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