

Sneller Verbatim/HVR

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: J788/03

2003-

In the matter between

Applicant

VENTURE T/A SOUTH DEEP

and

NATIONAL UNION OF MINEWORKERS

Respondent

J U D G M E N T

LANDMAN J: On 15 April my sister, REVELAS J, granted a rule *nisi*, prohibiting the National Union of Mine Workers and its members from participating in an unprotected strike against Placer Dome Western Areas Joint Venture.

The respondents in that application, NUM and its members employed at Placer Dome, were entitled to

anticipate the rule on 12 hours' notice. They have done so. They seek to have the interim interdict discharged.

The basic facts of this matter are the following:

1. A dispute about the length of an Easter break arose between Placer Dome and NUM.
2. On 6 February 2003 NUM referred the dispute about the break to the CCMA. In its referral, form LRA711, it cited Mr Abey Mataboge as the employer.
3. It was common cause that Mr Mataboge is the IR Manager of Placer Dome.
4. On 1 April NUM and Placer Dome recorded that NUM will apply to substitute Placer Dome as a party to the CCMA proceedings. Placer Dome recorded that it would not oppose the application. The conciliation process was postponed to 10 April.
5. On 11 April Placer Dome's attorney confirmed that no order had yet been made substituting his client as a party to the proceedings. The attorney confirmed that the jurisdictional issue had still to be decided by Commissioner Johnson.
6. On 14 April NUM served a strike notice on Placer Dome to the effect that the strike will commence at 19:00 on 16 April.
7. An application for an interdict was launched and the order mentioned above was granted.

8. On the same day, in the absence of Placer Dome, Senior Commissioner Radebe listened to NUM's application to change the citation in the referral and ordered that the citation be changed from Mataboge to Placer Dome Western Areas Joint Venture.
9. This led to today's anticipated return date. It is argued, on behalf of NUM, that the union has complied with section 64 of the Labour Relations Act 66 of 1995 after having the defective referral cured.

One of the issues which was argued, is whether the senior commissioner amended the citation or substituted the party. The second issue was whether Placer Dome had accepted that it was a party and waived its right to object to the defective referral.

It was also contended by Mr Cassim, SC, who appeared on behalf of Placer Dome, that the ruling of the senior commissioner did not give legal force to the strike notice.

I do not propose to consider whether NUM's application was brought in terms of rule 26 or rule 27 of the Rules of the CCMA for the Conduct of Proceedings before the CCMA. See Government Notice 961 in Government Gazette 23611 of 25 July 2002.

In terms of section 115(6) of the LRA the CCMA was empowered to publish such rules. The rules were said to be made in terms of section 115(2)(A). This section was inserted in the LRA by the Labour Relations Amendment Act 12 of 2002. This Act came into operation on 1 August 2002 after the rules allegedly came into force.

The result would appear to be that the rules are *ultra vires*. However, it is unnecessary for me to decide this. But I should point out that the previous rules were repealed on the same day, namely 25 July 2002 by Government Notice, R956, in the same Government Gazette. In consequence there may have been no authority for the senior commissioner to have changed the citation or substituted the party on the referral form.

Section 64(1)(a) and (b) of the LRA reads as follows:

"Every employee has the right to strike and every employer has recourse to lock out if;

- (a) the issue in dispute has been referred to a council or to the commission as required by this act and
 - (i) a certificate stating that the dispute remains unresolved has been issued; or
 - (ii) a period of 30 days, or any extension of that period agreed to

between the parties to the dispute, has elapsed since the referral was received by the counsel or the commission, and after that;

- (b) in the case of a proposed strike, at least 48 hours' notice of the commencement of the strike in writing has been given to the employer.

For present purposes, a proper referral of a dispute for conciliation as contemplated by section 64(1) of the LRA is a dispute which is identified in form 7.11 in which the employer party is named and which is served on that employer.

Form 7.11, as completed by NUM, stated that Mr Mataboge was the employer. He is, of course, not the employer of the second and further applicants.

Mr Mataboge knew that NUM did not intend him to be the employer. He knew that the document referred to Placer Dome. It was processed as such. Placer Dome informed NUM that the referral was defective. It agreed that it would not object to an application for the citation of the employer party in form 7.11 to be amended but it reserved its rights regarding the jurisdictional issue.

In my view Placer Dome and NUM knew that the dispute concerned the Easter break, that this was a dispute between

Placer Dome and NUM, that the reference to the employer party in form 7.11 was intended to be and was a reference to Placer Dome, and that it was envisaged that if the dispute was not conciliated a strike would be called against Placer Dome.

NUM could have withdrawn the referral and referred the matter afresh. I do not believe it was obliged to do so. It may rely on the existing form. There has, in my view, been substantial compliance with the requirements of section 64(1) as regards the referral and with regulation 11 of the Labour Regulations (R939 of 25 July 2002 published in Government Gazette 236111) insofar as such regulations are valid.

In the premises, I am satisfied that the respondents have complied with section 64(1) of the Labour Relations Act and that paragraph 1.9 of the rule *nisi*, should be discharged with costs and it is so discharged.

**SIGNED AND DATED AT BRAAMFONTEIN ON 27 MAY
2003**

A A LANDMAN

JUDGE OF THE LABOUR COURT OF SOUTH AFRICA

APPLICANT: ADV N CASSIM

ADVOCATED BY: PERROT, VAN NIEKERK & WOODHOUSE

RESPONDENT: ADV LENGANE

ADVOCATED BY: MASERUMULE INC