

IN THE LABOUR COURT OF SOUTH AFRICA
BRAAMFONTEIN

CASE NO: JR1949/08

DATE: 2008-11-06

REPORTABLE

In the matter between:

10 **NAMPAK METAL PACKAGING LIMITED**
T/A BEVCAN

Applicant

and

THE NATIONAL UNION OF METAL WORKERS
OF SOUTH AFRICA

First Respondent

20 **THE PERSONS WHOSE NAMES APPEAR**
ON ANNEXURE "A1" TO THE NOTICE OF
MOTION

Second and
Further Respondents

J U D G M E N T

PILLAY D, J:

The singular issue for determination in this urgent application to interdict a strike is whether the technological changes proposed by the applicant employer amounts to unilateral changes to the second respondent employees' terms and conditions of employment. If the answer to this question is "yes" then the proposed strike by the employees will be protected. If the answer is "no" the proposed strike will be unprotected.

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The employer proposed to modify its machinery to increase the speed of

producing beverage cans from 1600 to 1 800 cans per minute, the changes are to the machinery only. None of the changes affect the employees' terms and conditions of service. Their bonus is assessed on the same formula. In terms of the formula, the target remains 85% of efficient machine utilization (EMU). Bonus is calculated at 2.8% of an employees basic wage and is paid for every 1% achieved above target. Although the modified machines will produce 200 cans more per minute, the employees have to exert no greater effort to produce the extra cans. As the modified machines are capable of easily achieving the target of

10 1800 cans per minute, the employees' bonus remains unaffected.

The first respondent trade union and the employees adduce no evidence to suggest that the modification of the machinery will change any conditions of employment, the employees' hours of work, shift patterns or wages.

Other than a bald allegation that bonuses could be reduced, they do not demonstrate how this will occur, or how the changes to the machinery will make the targets less achievable if the employees continue to

20 operate the machines in exactly the same way after the modification as before and the machines are geared to achieve the higher target.

Nor can the respondents refute evidence that the changes will not require them to work harder. In the opinion of the court, the respondents' true concern is to secure for themselves a better wage remuneration

package based on the higher production targets. The real dispute, namely the respondents' quest for a wage increase, is camouflaged as a dispute based on alleged unilateral changes to conditions of employment. Another concern of the respondents may be the possibility of retrenchment if fewer workers are needed to meet production targets.

The Court finds that the employer's proposed changes to technology do not amount to unilateral changes to the terms and conditions of employment of the employees. Consequently, a strike triggered by the
10 technological changes is unprotected.

The application is granted with costs, such costs to include the costs of one counsel only.

PILLAY D, J

Judge of the Labour Court

Date of hearing: 05 November 2008

20 Date of Judgment: 06 November 2008

Date of Editing: 11 December 2008

APPEARANCES

For the Applicant: Adv N Cassim SC, Adv M J van As

Instructed by

Fiona Leppan of Cliffe Dekker Hofmeyer Inc

For the Respondent:

Adv J G van der Riet SC

Instructed by

Ruth Edmonds Attorneys