

IN THE LABOUR COURT OF SOUTH AFRICA

(HELD AT JOHANNESBURG)

CASE NO: JR 302/10

In the matter between:

DRIVER BROTHERS CLOSE CORPORATION

T/A CARGO WORKS

Applicant

and

SOUTH AFRICAN TRANSPORT AND

ALLIED WORKERS

1st Respondent

C S PHAKATHI & OTHERS

2ND and Further Respondents

JUDGMENT

LAGRANGE,AJ

1. The return day for this matter was 16 March 2010. After hearing argument, judgment was reserved and the rule issued on 10 February 2010 was extended until 18 March 2010. The judgment with brief reasons is set out below.
2. The first and further respondents did not oppose the issue of the rule nisi in this matter which was granted on 10 February 2010.

3. In terms of the rule the respondents were interdicted from committing various unlawful acts of intimidation, violence and damage during the course of a protected strike. On the return day, 16 March 2010, the respondents opposed the confirmation of the rule and insofar as the applicant had not relented in seeking an order of costs on the return day opposed the same, seeking in turn a cost order against the applicant.
4. The applicant sought confirmation of the rule because of alleged acts of violence and damage to property committed by the individual respondents which took place after the interim interdict was issued. In a supplementary affidavit only filed the day before the return day, the applicant provides some details of the incidents which occurred.
5. The applicant alleged that on Monday 15 February 2010 one of its trucks had its windows broken whilst driving with four occupants in the vehicle. Details of a similar incident on Thursday 4 March 2010 are provided. This incident, in which the driver of the truck was injured, led to a criminal case being opened. The second respondent was identified as the person who threw a stone which smashed the truck window on that occasion.
6. The supplementary affidavit with its annexures, showed on the face of it, that specific acts of violence had occurred after the interim interdict had been handed down. As the strike has not been resolved, Ms Du Randt for the applicant argued that this justified the rule being confirmed as the individual respondents might perceive a final order would carry more force, even if as a matter of law an interim interdict is just as much an order of this Court as a final interdict. Mr Ngako who represented the respondents pointed out that no incidents were alleged to have occurred after 4 March 2010, and there was no justification for only filing the supplementary affidavit on 15 March 2010. However, no request for a postponement to answer the allegations was made and the respondents have not put in issue the allegations in the founding papers of the applicant concerning incidents of violence, threatening

behaviour and other unlawful activities on the 3rd, 4, 5 and 8 February 2010. Mr Ngako also argued that even on the applicant's version the application was indiscriminate because it sought confirmation of the interdict against all the respondents, without having identified any particular wrongdoers. It is true that except in one instance individual respondents are not identified, but there is sufficient detail provided in the applicant's affidavits that at least some of the striking employees were engaged in such acts. In the circumstances, in the absence of any contrary evidence, it would be wrong, on the facts of this case, to go behind these allegations. Accordingly, I accept them as evidence of the facts to which they relate.¹

7. As the strike is ongoing and there is sufficient reason on the available evidence to believe that there is a reasonable apprehension of future harm occurring, I believe it is appropriate to confirm the rule, though its longevity must be limited by the duration of the strike.

Costs

8. Ms Du Randt urged me to impose a punitive order of costs on the respondents to indicate the court's disapproval of their conduct of the strike. There are a number of difficulties with this. Firstly, cost awards ordinarily are related to the outcome and how the parties conduct the litigation. In the case of cost orders in litigation under the Labour Relations Act, 66 of 1995, there are also statutory provisions governing cost awards. Section 162 of the LRA states:

¹ See *Polyoak (Pty) Ltd v Chemical Workers Industrial Union & Others* (1999) 20 ILJ 392 (LC) at 397F-G, in which Brassey AJ held the court was constrained to grant relief despite the lack of evidence detailing the acts of individual striking employees.

“162 Costs

(1) The Labour Court may make an order for the payment of costs, *according to the requirements of the law and fairness.*

(2) When deciding whether or not to order the payment of costs, the Labour Court may take into account-

(a) whether the matter referred to the Court ought to have been referred to arbitration in terms of this Act and, if so, the extra costs incurred in referring the matter to the Court; and

(b) *the conduct of the parties-*

(i) *in proceeding with or defending the matter before the Court; and*

(ii) *during the proceedings before the Court.*

(3) The Labour Court may order costs against a party to the dispute or against any person who represented that party in those proceedings before the Court.” (emphasis added)

9. Secondly, even assuming that it was otherwise appropriate to make an order of costs against the individual applicants for the reason advanced by the applicant, it would mean that all the applicants would financially penalized on account of the actions of some. In my view, strike misconduct is more appropriately dealt with by means of disciplinary action and, where necessary contempt proceedings.
10. By enacting section 162(1) of the LRA, the legislature has chosen to impose on this Court a requirement that cost orders are to be made in accordance with

the requirements of law and fairness. In practice this has meant that this Court has been less ready to simply apply the general principle that costs follow the result, particularly where a cost order may complicate relations between employers, their employees and unions.

11. In this instance, I believe the following factors are relevant:

- 11.1 the respondents did not oppose the interim interdict;
- 11.2 the respondents opposition to the confirmation of the rule seems, at least in part, a result of the applicant insisting on persisting with a claim for costs on the return day;
- 11.3 the respondents have not conducted themselves in the litigation in a vexatious or obstructive manner;
- 11.4 the parties are engaged in an ongoing relationship even if it is somewhat fraught at the moment², and
- 11.5 misconduct on the part of the strikers is better dealt with through measures which focus specifically on the culprits.

12. Having regard to these factors, I believe it would not be appropriate to make any cost order in this matter.

Order

Accordingly, the following order is made -

- 12. the rule *nisi* issued by this Court on 10 February 2010, is confirmed for a period ending 30 ordinary days after the current strike action ends.

² See *Solidarity & Others v Eskom Holdings* (2008) 29 ILJ 1450 (LAC) at 1460 par [26]

13. no order of costs is made.



**ROBERT LAGRANGE
ACTING JUDGE
LABOUR COURT**

Date of Hearing: 16 March 2010

Date of Judgment: 18 March 2010

Appearances

For the applicant:

Ms J Du Randt of Du Randt Du Toit Pelser Attorneys

For the respondents:

Mr X Ngako of Ruth Edmonds Attorneys