

CASE NO 432/90

IN THE SUPREME COURT OF SOUTH AFRICA
(APPELLATE DIVISION)

In the matter between

NATIONAL UNION OF METALWORKERS OF
SOUTH AFRICA

1st Appellant

17 OTHERS

2nd-7th Appellants

9th-16th Appellants

18th-20th Appellants

and

MACSTEEL (PTY) LIMITED

Respondent

CORAM: VAN HEERDEN, SMALBERGER, F H GROSSKOPF,
GOLDSTONE JJA et NICHOLAS AJA

Date Heard: 8 May 1992

Date Delivered: 21 May 1992

J U D G M E N T

GOLDSTONE JA:

The question in this appeal is whether in the circumstances of this case a concerted refusal by employees to work voluntary overtime constituted an unfair labour practice in terms of the Labour Relations Act 28 of 1956 ("the Act")

The respondent is the employer. It is Macsteel (Pty) Ltd, a substantial steel merchant and distributor. I shall refer to it as "Macsteel". The first appellant is a trade union duly registered in terms of the provisions of the Act. It is the National Union

of Metal Workers of South Africa to which I shall refer as "NUMSA". There are 17 other appellants. They were all employees of Macsteel at various of its four plants which are situate at Germiston and Wadeville.

Macsteel purchases large quantities of steel of from steel producers. In turn, it sells that steel in various sizes to customers in the engineering and construction industries. For some years the majority of the approximately 1000 employees of Macsteel have regularly worked overtime. That is necessary from the point of view of Macsteel because of the fluctuating demand for steel from its customers. For their part, the employees welcomed the opportunity of supplementing their wages. The working of overtime became the normal practice.

The 1988 wage negotiations between Macsteel and NUMSA began on 5 August. A number of meetings were held. No agreement was reached. On 18 August 1988 a

further meeting was held. NUMSA rejected the proposal which was tabled by Macsteel. On the same afternoon the shop stewards addressed the employees at a report-back meeting. It was attended by an organiser in the employ of NUMSA. From that evening the majority of the employees of Macsteel stopped working overtime. In consequence thereof Macsteel could not adhere to its production and delivery schedules and it sustained substantial pecuniary damage.

On 24 August 1988, Macsteel sent a telex to NUMSA. It referred to:

"a unilateral, illegal and unfair overtime ban ... introduced without prior warning or consultation."

Reference was made to prejudice caused thereby to Macsteel. NUMSA was requested to advise Macsteel whether it supported this "illegal strike" and in the event that it did not, it was called upon to disassociate itself from the strike.