THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
Date: 30 November 2011
Status: Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal

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Neutral citation: *Eskom Holdings v National Union of Mineworkers* (840/2010) [2011] ZASCA 229 (30 November 2011)

In 1997 the generation, transmission and distribution of power was declared to be an essential service as envisaged by the Labour Relations Act 66 of 1995 (the LRA). The effect of such a declaration is that persons employed in an essential service lose the right to strike. However Eskom and various trade unions representing its employees subsequently concluded a minimum services agreement which was ratified by the Essential Services Committee in 1998. The effect of such an agreement is to allow certain workers in an industry designated as an essential service to strike while at the same time maintaining a level of production or services at which the life, personal safety or health of the whole or part of the population will not be endangered.

The trade unions concerned unilaterally cancelled the essential services agreement with effect from 1 March 2004. For several years thereafter the trade unions and Eskom attempted to reach agreement on a new minimum services agreement but were unable to do so, the talks becoming deadlocked in regard to the number of employees necessary to provide an

acceptable minimum service. Finally in April 2007 the unions referred the dispute concerning the terms of a proposed minimum services agreement to the CCMA for conciliation and possible arbitration. In doing so they relied on s 74 of the LRA. Eskom disputed the CCMA's jurisdiction, contending that s 74 of the LRA was of no application to a dispute concerning the terms of a minimum services agreement. When the CCMA ruled against Eskom, it sought to review that decision in the Labour Court which, in due course, upheld Eskom's argument and concluded that the dispute could not be referred to the CCMA. Unhappy at this, the National Union of Mineworkers and NUMSA appealed against the Labour Court's decision to the Labour Appeal Court. This appeal succeeded, the Labour Appeal Court concluding that the CCMA was entitled to deal with the dispute under s 74 of the LRA which, so it held, empowered the CCMA to resolve the dispute as to the terms of the minimum services agreement by way of arbitration if needs be.

Eskom was in turn unhappy at the outcome in the Labour Appeal Court. It proceeded to appeal to the Supreme Court of Appeal which today ruled that the Labour Court had been correct and that the Labour Appeal Court had erred in concluding that the dispute concerning the terms of a minimum services agreement was one which could be resolved by the CCMA under s 74 of the LRA. In doing so, the Supreme Court of Appeal upheld the contention of the Essential Services Committee, which had appeared in the appeal as an intervening party, to the effect that such committee was the body entitled to determine the dispute under the provisions of s 73 of the LRA. The appeal therefore succeeded and the order of the Labour Appeal Court was set aside.

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