

SUPREME COURT OF APPEAL OF SOUTH AFRICA

PRESS RELEASE

30 November 2011

STATUS: Immediate

Equity Aviation v SATAWU (478/10) [2011] 232 ZASCA (30 November 2011)

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

The Supreme Court of Appeal today upheld an appeal against the majority decision of the Labour Appeal Court on the interpretation of s 64(1)(b) of the Labour Relations Act 66 of 1995. The section deals with the procedures to be followed by employees who intend to embark on strike action or employers who intend to lock-out. This case concerns only the right to strike.

Section 64 must be complied with in order for employees to strike lawfully, and to enjoy the protection afforded by the Act. It provides that every employee has the right to strike, and every employer has recourse to lock-out if, first (under 64(1)(a)), the issue in dispute has been referred to a council or the Commission for Conciliation, Mediation and Arbitration (the CCMA) for conciliation, and either a certificate is issued by the council or CCMA that the issue remains unresolved, or a period of 30 days has elapsed since the referral of the dispute; and, second, after the certificate has been issued, or time has lapsed, under s 64(1)(b) notice is given of the proposed strike. Section 64(1)(b) provides that in the case of a proposed strike, at least 48 hours' notice of the commencement of the strike, in writing, must be given to the employer.

Equity Aviation was an aviation logistics company that provided services on the runways and ramps of the major South African airports. The first respondent was the union that represented a majority of Equity's employees. It referred a dispute over wages to the CCMA. The dispute was unresolved and the union issued a strike notice.

But not only union members embarked on a strike: other employees, who had not complied with s 64(1)(b) also participated. Equity regarded their action as unlawful and dismissed them. They referred their dispute over dismissal to the CCMA and when it was unresolved sued in the Labour Court for an order declaring their dismissal unlawful, and asking for relief. The Labour Court found in their favour. Equity appealed to the Labour Appeal Court.

At issue in the appeal was whether, where a union has given the requisite notice on behalf of its members, and has embarked on a strike, other employees who are not members of that union need also to give notice in order for their strike action to be lawful. Khampepe ADJP and Davis JA held not. Zondo JP held that a separate notice must be given by the non-union members in order for their strike to be protected. The sole point of difference between the majority judgments and the dissenting judgment was whether the dismissed respondents were required to issue a separate strike notice to Equity, or whether the union's notice was sufficient to make the strike action by the non-union members lawful.

The SCA found that to give effect to the purpose of s 64(1)(b) – which is, in brief, to give an employee sufficient notice of the extent of the strike so that it can make informed decisions about whether to accede to employees' demands or to make adequate preparations for its business while strike action endures, as well as to protect employees under the Labour Relations Act – all employees who propose to strike must give notice either through a representative or personally. Where employees are not members of a union the union's notice does not suffice. The majority decision of the LAC was thus reversed.