LABOUR LAW UPDATE

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CASE 1

Transnet Soc Ltd v National Transport Movement and others - (2014) 23 LC 4.7.1

CASE SYNOPSIS:

Impact of representation on the right to strike

This matter is indicative of the future trend which appears to be coming with the new legislation of allowing certain rights irrespective of workplace representation.

After a verification exercise, it was established that the NTM's membership fell far short of the 30% threshold set for the acquisition of organisational rights by a collective agreement between the applicant and the recognised union.

After referring a dispute to the Transnet Bargaining Council, the NTM gave notice of its intention to call a strike over the issue. In an urgent application for an order interdicting the strike, Transnet argued that it was precluded by the threshold agreement from granting organisational rights to the NTM.

The Court noted that the threshold agreement between the applicant and the recognised unions regulated the acquisition and exercise of organisational rights only between the parties to the agreement. Since the respondent union was not party to the agreement, it was not bound by its terms, and the agreement had not been extended to all Transnet employees. That being the case; the NTA's members were not bound by the agreement. While 65(2)(a) permits unions to refer disputes about organisational rights for arbitration, it also specifically provides that they may strike if they prefer.

The court went further to find that, even if two or more unions together comprising a majority were permitted to conclude agreements under section 18, there is no express limitation in section 64 or 65 which preclude minority unions from demanding those rights and bargaining to acquire them. Section 18, accordingly, did not constitute a bar to the proposed strike.

The application was dismissed.

LESSON LEARNT

Agreements between parties which are not extended are not binding and further, representation, or lack thereof may not be a barrier to a proposed strike. Brace yourself for a very hostile and strike friendly environment moving into the future.

CASE 2

National Union of Mineworkers v Anglo American Platinum Ltd and others - (2014) 23 LC 5.2.1

CASE SYNOPSIS:

Procedural fairness in retrenchment

This case is an interesting exposition of a situation where more than one piece of legislation is applicable to a situation and also exposes the extent to which unions may or may not "bat off" employer proposals prior to the process proceeding.

The Mineral and Petroleum Resources Development Act 28 of 2002 has a requirement that a holder of mining rights must report contemplated mass retrenchments to the minister. In this case it was found that this has no direct bearing on the assessment of fairness of pre-retrenchment procedure under the LRA and it was found that the employer's failure to report the impending retrenchment to the minister did not render the retrenchment procedurally unfair.

In January 2013, the employer's CEO issued a statement indicating that the company was considering retrenching about 14 000 employees, and on the same day issued a notice of intention to consult the unions.

The retrenchment procedure was subsequently suspended to allow for discussions between the government, unions and management. After offering to disclose information, the employer engaged in further discussions with government officials and agreed to defer the commencement of retrenchment consultations for 30 days.

During subsequent tripartite meetings, the information earlier provided to the government by the company was shared with unions. The government's involvement ended with an agreement that the number of contemplated dismissals would be reduced to 6 000, and consultations with unions began in terms of section 189A of the LRA under the auspices of the CCMA.

During several meetings, the applicant union claimed that the respondent had no need to retrench, and pointed out that notice had not been given to the Minister as required by section 52(1) of the Mineral and Petroleum Resources Development Act 28 of 2002 ("MPRDA"). By this stage the number of workers facing retrenchment had been reduced to 3 168. After the dismissals of these workers, their union launched an urgent application under section 189(13)(c) of the LRA seeking their reinstatement until the company had complied with a fair procedure or awarding them compensation.

The Court noted that the union had alleged that the company had failed to consult over selection criteria and severance pay. When those issues had surfaced in several meetings, the unions had vehemently denied that there was any reason to retrench.

After that, the company had tabled its proposals relating to selection criteria and severance pay, to be met with a refusal to discuss those issues until the substantive issue was settled. By the time the union proposed that discussions on severance pay and selection criteria be reopened, and requested information for that purpose, the consultation process had already concluded.

The Court held that the company had satisfied its obligations to consult on all issues, including selection criteria and severance pay.

The application was dismissed, with no order as to costs.

LESSON LEARNT

An employer's process cannot be hijacked by unnecessary delay tactics. It is critical that employers must show that they had sufficiently attempted a consensus seeking discussion; however the procedure cannot be called into question if the union has applied these delay tactics and then not responded appropriately to the employer's proposals

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