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Can a strike be rendered unlawful as a result of unlawful acts including acts of violence?

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National Union of Food Beverage Wine Spirits and Allied Workers (NUFBWSAW) and others v Universal Product Network (Pty) Ltd In re Universal Product Network (Pty) Ltd v National Union of Food Beverage Wine Spirits and Allied Workers and others (2016) 25 LC 9.5.3

ISSUE(S)

What must a strike notice say (notice of intention to strike)?

Can a lawful strike be rendered unlawful as a result of unlawful acts, including acts of violence?

The appropriateness of seeking interim relief as opposed to final relief in declaring a strike unlawful.

COURT'S DECISION

In the recent case of *National Union of Food Beverage Wine Spirits and Allied Workers (NUFBWSAW) and others v Universal Product Network (Pty) Ltd In re Universal Product Network (Pty) Ltd v National Union of Food Beverage Wine Spirits and Allied Workers and others* (2016) 25 LC 9.5.3, the National Union of Food, Beverage, Wine, Spirits and Allied Workers Union ('the trade union') addressed a letter to Universal Product Network (Pty) Ltd ('UPN') setting out a list of demands concerning the terms and condition of employment of its members. Shortly thereafter, the trade union referred a dispute to the CCMA alleging a refusal to bargain on the part of UPN. The dispute was settled and negotiations commenced. The negotiations were unsuccessful. The trade union then issued a notice of intention to strike after which the parties agreed to picketing rules. The Labour Court later issued an order in terms of which the strikers were bound to adhere to the picketing rules, which UPN later sought to enforce by way of a contempt of court application.

UPN then sought an interim order declaring the strike unlawful alleging that the strike notice was defective because it did not properly articulate the demands that UPN was required to meet. In addition, UPN alleged that the strike had lost its protection because of the violence involved and the political nature of the demands levied. An interim order was granted against the strike declaring it unprotected by virtue of the strike notice being defective and by virtue of losing any protection due to the threats of violence and political nature of the demands made during the strike.

On the return day, the Court considered the provisions of Section 64(1)(b) of the Labour Relations Act 66 of 1995 ('LRA'). The section states that in the case of a proposed strike, at least 48 hours' notice must be given, in writing, to the employer. UPN had alleged that the notice delivered by the trade union was defective because it did not properly articulate the demands of the trade union's members. The Court held that "a strike notice must place the employer in a position reasonably to know which demands a union and its members intend to pursue through strike action and that it must therefore meet to avoid the prospect of industrial action." The Court found that UPN was in fact fully aware of the demands which were being sought, and that therefore the strike notice was not defective.

With regard to the level of violence that must be reached before a court will intervene, the Court specifically had regard to the following question posed by Professor Rycroft: 'Has misconduct taken place to an extent that the strike no longer promotes functional collective-bargaining, and is therefore no longer deserving of its protected status'? In answering this question the Court found that the nature and extent of the violence did not delegitimise the process of collective bargaining, and furthermore that the trade union had made efforts to curb the violence.

The Court also noted that it has become a common practice that applicants seek interim orders declaring a strike unlawful and that this route is chosen because it requires a lower threshold than would be required if seeking a final order. With interim orders the applicant need only establish a prima facie right, whereas with final orders the applicant has to show that it has a clear right. Often, as a consequence, the Court is used as an instrument through which the parties embark on a power struggle, and when the interim order is then granted, the trade union's right to embark on industrial action is halted on the employer's terms, leaving the trade union with a lack of alternative remedies. On the facts in this case the Court concluded that in its opinion, the application should have been treated as one for final relief.

IMPORTANCE OF THIS CASE

This case raises three important issues relating to industrial action. Firstly, it states that the minimum content required in a strike notice is that the employer must be made aware of the demands sought.

Secondly, the Court noted that while a strike may be delegitimised as a result of violence, the Court will weigh the level of violence with the attempts to curb it. Where it is found that the violence is outweighed by the trade union's attempts to dissociate itself from the violence, the Court will be less likely to intervene. Furthermore, where it is found that the strike action is no longer functional to collective bargaining, the strike may lose its protection.

Lastly, the Court noted that where urgent applications are sought in order to halt strikes on the basis that the strike is unlawful, the Court should direct the parties to file full sets of papers and treat the application as one for final relief.

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