

EMPLOYMENT

Stretching Boundaries: Can a Trade Union Represent Employees Who Fall Outside of its Registered Scope in Employment Disputes?

20 November 2024 7 min read

and Yendiswa Sithole – Candidate Attorney

The Constitutional Court ("**the CC**") in *AFGRI Animal Feeds (A Division of PhilAfrica Foods (Pty) Ltd v National Union of Metalworkers of SA and Others* (2024) 45 ILJ 1937 (CC), handed down a judgment regarding the legal standing of trade unions to represent employees in disputes as envisaged in sections 161 and 200 of the Labour Relations Act 66 of 1995 ("**the LRA**").

Facts of the Case

Following AFGRI Animal Feeds' ("**Afgri**") refusal to grant the National Union of Metalworkers of South Africa ("**NUMSA**") organisational rights, numerous Afgri employees embarked on an unprotected strike in support of this demand. The employees were subsequently dismissed, after which NUMSA referred an unfair dismissal dispute on their behalf to the Commission for Conciliation, Mediation and Arbitration. The dispute remained unresolved and was referred to the Labour Court ("**the LC**") in terms of section 191(5)(b) of the LRA.

Afgri raised a preliminary point before the LC that NUMSA was not entitled to represent the employees as its constitution prohibited the membership of employees who worked outside of the metal and related industries. The relevant portion of NUMSA's constitution provided that persons "*working in the metal and related industries are eligible for membership of the Union*", which Afgri submitted was to be read to exclude employees in the animal feeder industry in which Afgri operated. NUMSA alleged that the dismissed employees obtained membership in July 2017, were in good standing and could therefore be represented by NUMSA.

LC Findings

Afgri relied on 161(1)(c) of the LRA, which provides that a party to proceedings in the LC may appear in person or be represented only by a member, office-bearer or official of that party's registered trade union. The LC referred to sections 161(1)(c) and 200 of the LRA. Section 161(1)(c) of the LRA provides that –

"(1) In any proceedings before the Labour Court, a party to the proceedings may appear in person or be represented only by –

...

(c) any office-bearer or official of that party's registered trade union or registered employers' organisation."

Section 200 of the LRA provides that –

"(1) A registered trade union or registered employers' organisation may act in any one or more of the following capacities in any dispute to which any of its members is a party –

(a) in its own interest;

(b) on behalf of any of its members;

(c) in the interest of any of its members.

(2) A registered trade union or a registered employers' organisation is entitled to be a party to any proceedings in terms of this Act if one or more of its members is a party to those proceedings."

The LC upheld Afgri's preliminary point following a two-part enquiry. The LC first considered whether NUMSA had the right to refer the dispute in its own interests and in the interests of its members. On the basis of the provisions of section 191(5)(b) as read with sections 161(1)(c) and 200(1)(b) and (c) of the LRA, the LC found that a trade union may only refer a dispute to or represent dismissed employees in the LC if: (i) it is registered as such and (ii) the said employees are not only parties to the dispute but are also members of that union.

Following this, the LC considered whether NUMSA had the right to represent the dismissed employees. The LC cited the CC's decision in *National Union of Metalworkers of South Africa v Lufil Packaging* (2020) 41 ILJ 1846 (CC) ("**Lufil**"), for the principle that a voluntary association such as NUMSA "*is bound by its constitution and has no power to act beyond it*". The LC held that trade unions are generally voluntary in nature and so the realms of its membership would be governed by its registered constitution. Consequently, NUMSA lacked the legal standing to refer the dispute on behalf of the dismissed employees and was ordered to pay costs.

The LC concluded that NUMSA's referral of the dispute in terms of section 200 of the LRA, was invalid and void from the outset.

Findings of the Labour Appeal Court ("LAC")

The LAC overturned the decision of the LC following an appeal by NUMSA. The LAC held that different considerations apply when deciding whether employees are entitled to representation by a trade union under section 200 of the LRA on the one hand and section 161(1)(c) of the LRA on the other. Furthermore, the LAC held that fairness and the employees' right to representation in individual disputes are then relevant considerations.

When considering whether NUMSA could represent the dismissed employees when they worked in an industry that fell outside of the scope of NUMSA's constitution, the LAC distinguished between a trade union's exercise of organisational rights and its representation of employees in unfair dismissal disputes by relying on the LAC's decision in *MacDonald's Transport*.^[1]

The LAC's interpretation of *MacDonald's Transport* held that in the context of arbitration proceedings, that when exercising organisational rights such as the right to engage in collective bargaining, a trade union must establish that it has a right to act on behalf of workers by proving that they are its members. However, in dismissal proceedings, generally the workers (not the trade union) are parties to the proceedings and have a right to select a representative.

The LAC held that, as provided for in section 200(1)(b) and (c) of the LRA, NUMSA was a party to the proceedings because it was acting on behalf of and in the interests of its members and had duly appointed an attorney, not an office bearer, as provided for in section 161(1)(a) of the LRA.

CC's Findings

Upon granting leave to appeal, the CC was tasked with deciding whether NUMSA had the authority to represent the dismissed employees.

The CC held that Afgri was mistaken in its categorisation of NUMSA's act of representation as being governed by section 161(1) of the LRA. This was because NUMSA and the dismissed employees were represented by a firm of attorneys in the Labour Court proceedings, as duly empowered to do so by section 161(1)(a) of the LRA. Instead, and as held by the LAC, section 200 of the LRA would be applicable to determining NUMSA's legal standing.

The CC made reference to the provisions of section 4(1)(b) of the LRA, which provides that every employee has the right to join a trade union "*subject to its constitution*", which constitution would then govern the relationship between the union and its members and to which the union would be bound. The CC made further reference to the *Lufil* decision, in which it held that "*NUMSA is precluded from concluding membership agreements with workers who fall outside its scope*". Based on the scope of NUMSA's constitution, the CC held that NUMSA had no authority to represent the dismissed employees (who did not work in

metal and related industries) and, inevitably, had no legal standing in the LC proceedings. However, the dismissed employees could continue with the proceedings in their own names.

Importance of the Case

This case considers important issues surrounding the limitations of trade union representation in proceedings before the Labour Court. The CC's ruling that a trade union must act within the bounds of its registered constitution clarifies that freedom of association is not unlimited where a trade union has chosen to circumscribe its scope of operation in its own constitution.

[1] *MacDonald's Transport Upington (Pty) Ltd v Association of Mineworkers and Construction Union* (2016) 37 ILJ 2593 (LAC).



Jacques van Wyk

Director

[View Profile](#)



Danelle Plaatjies