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Strike action in circumstances where there has been a long delay between the issuing of a certificate of outcome and the subsequent election to embark on a strike

12 May 2016 *4 min read*

PRASA t/a Metrorail v SATAWU and Others (C190/2016)

ISSUE

Whether a strike is protected in circumstances where there has been an unreasonably long delay between the issuing of a certificate of outcome and the subsequent election to embark upon strike action.

COURT'S DECISION

In *PRASA t/a Metrorail v SATAWU and Others* (C190/2016), a decision handed down by the Labour Court on 12 May 2016, the court was faced with deciding whether strike action embarked upon by SATAWU was legal or not. Werksmans represented PRASA in the dispute and successfully argued that the strike action should be regarded as unprotected.

In September 2014 SATAWU referred a dispute of mutual interest to the Commission for Conciliation, Mediation and Arbitration ("CCMA"). SATAWU demanded that PRASA, in the Western Cape, absorb all fixed term employees on a permanent basis and conclude salary parity in all departments in the region. The dispute was unresolved and on 21 October 2014 a certificate of outcome was issued.

Upon receiving the certificate of outcome SATAWU elected not to engage in strike action. To the contrary, they engaged in on-going negotiations with PRASA on both a regional and national level regarding, among others, the issues forming the subject matter of the certificate. On 4 April 2016, some 18 months later, SATAWU gave notice of its intention to embark upon strike action on 6 April 2016.

The Court held that the demand that all fixed term employees be made permanent was no longer a demand of mutual interest by virtue of the enactment of section 198B(3) of the Labour Relations Act 66 of 1995, as amended ("LRA"). This section deals with the fact that, absent just cause, a fixed term employee who is employed on a temporary basis for a period of three months is regarded as being employed on a permanent basis and has therefore rendered this an issue of right, not of mutual interest.

The court also gave consideration to the argument that by SATAWU failing to embark upon strike action and by continuing negotiations, SATAWU could be said to have waived, estopped or abandoned their right to strike.

In having regard to prior case law the Court held that:

The inquiry should not centre on a waiver of the right to strike. Rather, it is a failure to rely on a specific certificate of outcome that is discernible in a case such as that before [the court]...the right to strike is retained, but after an unreasonable delay in acting on the issuing of a certificate, a union is required to go through the procedural steps set out in section 64 of the LRA once more. This approach accords with the speedy resolution of disputes on which the LRA is premised. It is also imminently sensible: over a period of 18 months there are likely to have been charges in the collective bargaining relationship. The procedural requirements clothing strike action with protection, which

include the opportunity for parties to reach a settlement agreement through the conciliation process, may produce a different outcome, given the effluxion of time".

IMPORTANCE OF THIS CASE

This case is a further reiteration of the need for a speedy resolution to disputes in terms of the LRA. It requires a consideration of the particular facts of a matter to determine whether, in the particular circumstances, there has been an unreasonable delay between the issuing of a certificate of outcome and the embarking upon strike action. This is a factual question. Should this be found to be the case, then the union concerned must once again follow the steps required by the law before embarking on strike action.

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