

EMPLOYMENT

The binding nature of collective agreements on minority unions

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ISSUE(S)

Whether a collective agreement concluded between a majority union and an employer, but extended to a minority union, can prevent the minority union from engaging in strike action.

Whether a certificate of outcome, issued by the Commission for Conciliation, Mediation and Arbitration (“CCMA”), is determinative of whether the issue in dispute is or is not capable of being the subject matter of a strike.

SUMMARY

COURT’S DECISION

In the case of *South African Airway (Soc) Ltd v South African Cabin Crew Association and Others (J949/17) 2017 ZALCJHB (10 May 2017)* the Court had to consider the above issues.

South African Airways (“SAA”) regulates collective bargaining on an internal central level. To this end a Main Bargaining Forum Constitution (“Constitution”) was concluded between SAA and all representative trade unions. The Constitution created a Main Bargaining Forum (“MBF”) and a Main Consultation Forum (“MCF”). The MBF dealt with ‘substantive issues’ whereas the MCF dealt with ‘operational issues’ (i.e. issues that are, among others, not considered substantive issues or matters of mutual interest).

The term ‘substantive issues’ was defined in the Constitution as meaning “any matter of mutual interest or any issue relating to employees’ terms and conditions of employment or any substantive agreement concluded between SAA and the trade unions or any other issues with financial implications not covered by the employees’ contracts of employment.”

The recognised trade unions included the National Transport Movement (“NTM”), United Association of South Africa (“UASA”), South African Transport and Allied Workers Union (“SATAWU”) and the South African Cabin Crew Association (“SACCA”). The National Union of Metalworkers (“NUMSA”), while not a recognised union, is also involved in SAA.

NUMSA and UASA, acting together, concluded a wage agreement with SAA in the NBF. This wage agreement was a collective agreement for the purposes of the Labour Relations Act 66 of 1995 (“LRA”). The wage agreement was extended, in terms of section 23(1)(d) of the LRA, to the other unions, including SACCA. The wage agreement was applicable from 1 April 2016 to 31 March 2017.

The wage agreement stipulated that “meal issues are an operational cost intended to provide sustenance to employees on official business and it therefore does not constitute a term and condition of employment.” As such, ‘meal allowance’ was to be dealt with in the MCF and not NBF.

The issue of an increase to international meal allowances subsequently became an issue of contention between SAA and SACCA. SACCA approached the CCMA, on 10 June 2016, for a determination as to whether, among others, the collective agreement had been validly extended to it and, if so, whether the wage agreement resolved the conditions of employment dispute between SAA and SACCA. The CCMA agreed that it had. On 14 September 2016 SACCA then referred a refusal to bargain / mutual interest dispute to the CCMA. SAA countered by referring, on the same day, a dispute about the interpretation / application of the wage agreement. The disputes were consolidated. The consolidated dispute was subsequently resolved on the basis that the parties would engage on ‘objective discussions’ regarding the refusal to increase the international meal allowances. After discussions with SAA proved unfruitful SACCA referred a new mutual interest dispute to the CCMA regarding an increase to meal allowances. The CCMA issued a certificate of non-resolution declaring the dispute unresolved and that ‘strike action was competent.’

On the 26 April 2017 a number of cabin crew, being members of SACCA, (“strikers”) commenced strike action after having given notice of same to SAA on 21 April 2017. At this juncture SACCA had complied with the *procedural* requirements to declare a lawful strike as set out in section 64 of the LRA.

In response SAA approached the Labour Court on an urgent basis seeking an interim order that the strike be declared unlawful. The urgent application was unopposed. The order was granted. On 3 May 2017 the Labour Court was concerned with whether the interim order should be confirmed (i.e. made a final order).



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