

EMPLOYMENT

Unprotected strike action: An ‘essential service’ in terms of the National Disaster Management Act 57 of 2002 (“NDMA”) is not automatically regarded an essential service terms of the Labour Relations Act 66 of 1995 (“LRA”)

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Issue

Whether an essential service in terms of the NDMA is deemed an essential service for the purposes of the LRA, thus barring employees from engaging in protected strike action.

Summary

The categorisation of a sector as an essential service in terms of the NDMA does not automatically result in the sector being deemed as an essential service in terms of the LRA. While employees of essential services, as defined in terms of the LRA, are unable to engage in protected strike action this does not apply to employees of ‘essential services,’ as defined in terms of the NDMA.

Facts

In *Skets Projects (Pty) Ltd v South African Transport and Allied Workers Union* (J 546/2020) [2020] ZALCJHB 99 the Labour Court considered the above issue. Skets Projects (Pty) Ltd (“**Skets**”) sought to interdict a strike called by the South African Transport and Allied Workers Union (“**Union**”). The facts of the matter are briefly as follows.

Skets is engaged in the security sector and employs security officers country-wide. The Union sought organisational rights at certain of Skets’ premises. Skets refused to award organisational rights to the Union. The Union referred an organisational rights dispute to the Commission for Conciliation, Mediation and Arbitration (“**CCMA**”). The matter was not resolved at conciliation and the Union then issued a strike notice. Skets launched an application in the Labour Court to interdict the strike, arguing that the strike was unprotected because, firstly, that the strike notice was not clear enough and, secondly, because Skets operated as an essential service under the NDMA. As a result, the Union should be barred from engaging in strike action. It is the second argument which is considered for purposes of this note.

Labour Court’s evaluation

The Labour Court did not agree with the argument that Skets was an essential service for the purposes of section 71 of the LRA. The Labour Court found that an essential service for the purposes of the NDMA was not automatically an essential service for the purposes of the LRA. Security services have not been declared essential services in terms of the LRA. The argument, then, that the employees were barred from striking because they were employed by an ‘essential service provider’ under the lockdown regulations and directives was dismissed.

The Labour Court did, however, grant, for unrelated reasons, an interim order that the strike was unprotected and interdicted and restrained the Union and its members from supporting and / or participating in the strike.

Importance of the case

A service which is declared an essential service in terms of the NDMA and the lockdown regulations is not automatically also an essential service for purposes of the LRA.



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