

SOUTH AFRICA / JUDGMENT

**BMW (South Africa) (Pty) Ltd v National
Union of Metal Workers of South Africa
(NUMSA) obo Members (J 1752/2013)
[2013] ZALCJHB 238 (4 September 2013)
[2013] ZALCJHB 238**

COURT

Labour Court Johannesburg

BEFORE

Malindi

CASE / FILE NUMBER

J1752/2013

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REPUBLIC OF SOUTH AFRICA

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

CASE NO: J1752/2013

In the matter between:

BMW (SOUTH AFRICA) (PTY) LTDApplicant

and

NATIONAL UNION OF METALWORKERS OF

SOUTH AFRICA (NUMSA) OBO MEMBERSRespondent

Date of ruling: 4 September 2013 (in Chambers)

RULING: APPLICATION FOR LEAVE TO APPEAL

MALINDI AJ

Introduction

On 8 August 2013 I heard this matter in the urgent court and delivered an ex tempore judgment on the same day.

The applicant for leave to appeal, BMW (SA) had sought a declaration that the strike action called by the Respondent, NUMSA, is unprotected, for the reason that the demands contained in the strike notice are matters that are subject to a collective agreement that subsists with effect from 1 September 2012, and were therefore matters not susceptible to further negotiations and strike action for the duration of the Third Shift Agreement (“the Agreement”) between the parties.

In my judgment, I held, inter alia, that “it is clear from the collective agreement that regulates these matters that although parties have agreed on the implementation of a third shift, as set out, this would be subject to further consultation in terms of clause 4(a), and including issues that are set out therein”.

I therefore dismissed the application with costs.

Application for leave to appeal

BMW (SA) applies for leave to appeal on the grounds that, inter alia, clause 2, read with clause 2(a), of the third shift agreement deals with the payment of an afternoon and night shift allowances, matters that the parties are bound in respect of in terms of the Agreement, whereas clause 4 permits further negotiations and possible industrial action in respect thereof. The only matters under clause 4 that are open for further consultation being Sunday regular night shift, shift allowance in relation to 6 continuous night shifts, and weekend crew and/or four shift pattern.

The Applicant submits essentially that the parties, having agreed on the matters contained in clause 2, agreed further that the only matters for continuing negotiation are the ones contained in clause 4(a). It is submitted therefore, that the Respondent’s notice to strike is about a demand to increase both the afternoon and night shift allowances when such allowances had been agreed in terms of the Agreement under clause 2 and cannot be revisited for the duration of the agreement.

Conclusion

The issues referred to the task team in terms of clause 4 of the Agreement are set out in the Terms of Reference Relating to the Task Team dated 22 August 2012. The Applicant submits that the question of shift allowance was then resolved in terms of the third shift allowance agreement, thereby superseding previous negotiations on matters contained in the Terms of Reference dated 22 August 2012.

The Respondent submits that the matters which were under discussion in the terms of reference related to the shift allowances referred to in the third shift allowance agreement and which were permitted to be consulted on through the task team.

The matters on which the Respondent issued its notice to strike are night shift and afternoon shift allowances which the parties agreed to be bound to in terms of clause 3 of the agreement. Another court may come to a different conclusion as to whether they remain open for further consultation under clause 4.

It appears further that if the only matters that the parties could conduct further consultation on are the “six continuous night shifts” shift allowance then the Respondent would not be permitted to strike on the matters under clause 2. Another Court may therefore come to the conclusion that the notice to strike is not on matters upon which the Respondent may strike.

I conclude therefore that I must grant leave to appeal as another court may come to a different conclusion on these matters.

I therefore make the following order:-

Application for leave to appeal against the judgment under case number J1752/2013 dated 16 August 2013 is granted.

Costs shall be costs in the appeal.

G MALINDI

Acting Judge of the Labour Court

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