

SOUTH AFRICA / JUDGMENT

Botselo Holdings (Pty) Ltd v National Transport Movement and Others (J479/16) [2016] ZALCJHB 377 (5 October 2016) [2016] ZALCJHB 377

COURT

Labour Court Johannesburg

BEFORE

Lagrange

CASE / FILE NUMBER

J479/16

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THE

LABOUR COURT OF SOUTH AFRICA

HELD

AT JOHANNESBURG

Case

no: J 479-16

In

the matter between:

BOTSELO

HOLDINGS (PTY) LTD

Applicant

and

NATIONAL

TRANSPORT

MOVEMENT First

Respondent

MEMBERS

OF THE NATIONAL TRANSPORT MOVEMENT Second

Respondent

(as

per the attached list of members)

JUDGMENT**ON APPLICATION FOR LEAVE TO APPEAL**

LAGRANGE J

Introduction

[1] The applicants for leave to appeal were the respondents in the urgent application brought by the respondent in the appeal application. In the citation above the original citations of the parties have been retained. For sake of convenience I will refer to the applicants for leave to appeal as 'NTM' and the respondent as 'Botselo'.

[2] In the judgement dated 18 March 2016 which interdicted the NTM and its members employed by Botselo from embarking on a strike, I found that the strike was unprotected on the basis that:

2.1 NTM had concluded a binding recognition agreement with Botselo, in terms of which it had agreed that it was not entitled to bargaining rights unless it had achieved a membership of 50% plus one of the relevant bargaining unit.

2.2 The recognition agreement also applied to pending disputes at the time the agreement was concluded, including the dispute giving rise to the intended strike.

[3] NTM appeals against the judgement on the basis that:

3.1 The court erred in not considering the 'fact' that NTM did meet the collective bargaining threshold in the agreement.

3.2 The agreement did not regulate wage negotiations for 2015.

3.3 The court ignored the fact that NTM had followed the procedures of the Labour Relations Act 66 of 1995 prior to giving notice of the strike action.

3.4 The recognition agreement could not operate retrospectively.

[4] There were some alleged defects in the leave to appeal application, but for the reasons which follow it is not necessary to address those.

[5] Considering the grounds of appeal, I am satisfied that:

5.1 At the time of the judgement, there was no proof that NTM had met the 50% +1 membership requirement as construed in the recognition agreement that would entitle it to collective bargaining rights.

5.2 The judgement did not purport to apply the recognition agreement retrospectively but only prospectively to the existing demands of NTM from the date of signing the recognition agreement on 25 January 2016. In terms of the collective agreement NTM had agreed that it was

not entitled to collective bargaining rights unless met the 50% +1 threshold and the agreement contained no exemption from this provision which would entitle it to pursue a collective bargaining dispute which existed at the time the agreement was concluded notwithstanding the threshold not been met.

5.3 On the evidence before the court, the dispute NTM wished to strike over concerned a refusal to bargain over terms and conditions, whereas it had bound itself to accept that it was only entitled to bargaining rights if it met the threshold requirements in the collective agreement.

- [6] In terms of section 17 (1) (h) (i) of the superior courts act, 10 of 2013, aside from other circumstances which are not applicable in this case, leave to appeal may only be granted if a judge is of the opinion that the appeal would have “a reasonable prospect of success” that does not mean that merely because another court might come to a different conclusion leave to appeal should be granted. The court must also consider if that is not merely a theoretical possibility but there is some likelihood that this would be the case.
- [7] The grounds of appeal advanced do not really take NTM’s case any further than where it was and were essentially addressed in the judgment. I am not persuaded that the appellants have demonstrated that there is a reasonable prospect that another court might find the judgement was wrong for the reasons they provide.

Order

- [8] The application for leave to appeal is dismissed, with costs.

Lagrange J

Judge of the Labour Court of South Africa

5 October 2016

(In chambers)

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