

SOUTH AFRICA / JUDGMENT

Daniels and Others v Voltes (Pty) Ltd (PS37/2019) [2024] ZALCPE 38 (9 September 2024)

[2024] ZALCPE 38

COURT

Labour Court Port Elizabeth

BEFORE

Matyolo

CASE / FILE NUMBER

PS37/2019

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FLYNOTES:

LABOUR – Dismissal – Unprotected
strike –
Stock
from two divisions of company brought together – Applicants
refusing to pull stock for one division – Other
employees
had to do work of applicants – Applicants did not seek to
comply with requirements of protected strike –
Ignored
ultimatums and explanations from company – Persisted with
refusal to pull stock – Intended to resume
their actions if
reinstated – Dismissal was substantively fair.
THE
LABOUR COURT OF SOUTH AFRICA, GQEBERHA
Not Reportable
Case No: PS 37/2019

In the matter between: MZUKISI
TIMOTHY DANIELS
First
Applicant
MONWABISI
ROXA
Second
Applicant
LUYANDA
PHILLIP
Third
Applicant
and
VOLTEX
(PTY) LTD
Respondent

Heard: 31 July 2024

Delivered: This judgment was handed down electronically by
circulation to the parties' legal representatives by email and
publication on the
Labour Court's website. The date for
hand-down is deemed to be on 9 September 2024.

JUDGMENT

MATYOLO, AJ

Introduction

- [1] The Applicants filed a statement of claim seeking an order that their dismissal for embarking on an unprotected strike be declared to be substantively unfair and other ancillary relief.
- [2] The Respondent's pleaded case is that the dismissal of the applicants was substantively fair. The Respondent seeks an order that the referral be dismissed.
- [3] The matter has a somewhat long history in that after their dismissal, the applicants referred an unfair dismissal dispute to the Commission for Conciliation, Mediation and Arbitration (the CCMA) and after the dispute could not be resolved at conciliation, the applicants referred the dispute to arbitration.
- [4] The matter was set down for arbitration and the Commissioner found that the dismissal of the applicants was substantively and procedurally fair. The applicants took the arbitration award of the arbitrator to the Labour Court to have the award reviewed and set aside on the basis that the CCMA had no jurisdiction to proceed with arbitration because the applicants were dismissed for participating in an unprotected strike.

- [5] The Labour Court reviewed and set aside the arbitration award on the basis inter alia that the Commissioner erred in finding that the applicants were dismissed for insubordination in that the documents and evidence presented before the Commissioner indicated that the dispute was in fact a dispute about embarking on an illegal strike and refusing to comply with an ultimatum to pull Waco-R products and on that basis the dispute fell outside the jurisdiction of the CCMA. It is on that basis that the matter comes for trial before this Court.
- [6] The pre-trial minutes identified one of the issues to be decided by this Court, as whether this Court has jurisdiction to adjudicate the dispute. This point was abandoned because the judgment in the review application confirmed the jurisdiction of this Court, and that judgment has not been set aside on appeal.

The key issues for

determination

- [7] The parties concluded pre-trial minutes in terms of which they outlined the facts that were common cause and the facts that were disputed. I need not repeat those herein.
- [8] The key issue for the Court's determination in this matter is whether the dismissal of the applicants was substantively fair or not given the common cause fact that the applicants refused to pull the orders of Waco R. The Court is also required to determine the appropriate relief should it find that the dismissals were substantively unfair.

Summary of evidence

- [9] The Respondent led the evidence of Garry Adams, (Mr Adams) whose testimony was inter alia as follows:

9.1 He is currently employed by Voltex Electrical in the capacity of Branch Manager but previously occupied different roles including the role of Regional Human Resources Manager. He has an overall service of about 19 years with Voltex.

9.2 Voltex has over the years changed its operating structure and was previously split between the Eastern Region being East London and Mthatha and the Southern Region being Port Elizabeth (Gqeberha) and Mossel Bay. At some point, he occupied the role of Human Resources for Port Elizabeth and Regional Manager for Mossel Bay.

9.3 The applicants were known to him from the time they worked for the Waco-Division where they were store assistants and pulling stock for customers from the warehouses.

9.4 Testified on the Voltex organogram that the various divisions were all part of Voltex and that Voltex was the parent company with various divisions including Waco and Waco-R (Waco Retail). The only difference was that Waco Industrial Division (Waco-D) in Port Elizabeth supplied wholesalers while Waco-R supplied retail customers.

9.5 The two Waco divisions sell the same stock, and the only difference was that the stock at Waco-R was prepacked whilst the stock for the Waco-D was not.

9.6 He referred the Court to the letter of appointment for one of the applicant's, Mr Daniels, and indicated that the appointment letter was in the letterhead of Voltex, and it indicated that the appointment was with Voltex (Pty) Limited with the Waco-Division. He testified that the same terms and conditions of employment that were contained in the letter of appointment of Mr Daniels were the same for the two other applicants, Messrs Monwabisi Roxa and Luyanda Phillips. He also testified that their job descriptions were also the same.

9.7 He testified that for operational reasons, Waco-R was brought under the same roof as Waco-D in Gqeberha and all the prepacked deliveries that were done in East London were now to be done in Gqeberha as well. In this regard, they had meetings with staff members and explained that the work that was previously done in East London was to be done in Gqeberha as well.

9.8 The three applicants refused to pull stock that was previously done at Waco-R but continued to do the work that was related to Waco-D. This was brought to his attention by the then Branch Manager, Shelly Nicol who told him that the applicants were refusing to pull the Waco-D stock even after it had been explained to them that this was stock for the same company.

9.9 He explained to the applicants that Waco-D and Waco-R were in fact the same company and were divisions of Voltex, but the applicants still refused to pull the stock for Waco-R. He testified that the applicants maintained that this was additional work from a different company, and they wanted to be paid more for it or that the company should employ more people.

9.10 He testified that this had a negative effect on the operations of the respondent because other employees, the Branch Manager, and other sales staff, had to leave their roles and do the work that ought to have been done by the applicants.

9.11 After his meeting with the applicants, they still refused to pull the work of Waco-R and instead demanded a meeting with the Divisional Manager who was based in Johannesburg. Mr van Burren, the divisional Manager, came down from Johannesburg to explain the situation to the applicants but the applicants still refused to do any work that was previously done at Waco-R.

9.12 He testified that on 27 March 2017, the respondent issued a letter of instruction to the applicants in which it was explained that Waco-R was part of Voltex and that the applicants' refusal to pull and pack Waco-R products was unlawful and constituted a material breach of the terms and conditions of employment and that their continued action might result in the company taking severe disciplinary action. The applicant continued with their refusal by not pulling and packing Waco-R products.

9.13 Mr Adams also testified that there was no change to the working hours of the applicants and if for some reason there was an incident for such, such would be compensated within the overtime work remuneration pay structure.

9.14 He testified that another letter was given to the applicants on 3 April 2024 and the applicants were reminded of their failure to heed to the contents of the letter of 27 March 2024 and were given an ultimatum that, unless the applicants resumed their duties in full by close of business on 5 April 2017, severe disciplinary action would be instituted. This ultimatum did not bring about any changes as the applicants continued not to pull the Waco-R products.

9.15 On 19 April 2017, the applicants were then issued with notices to attend disciplinary enquiry which was scheduled for 21 April 2017. The disciplinary enquiry was held on 21 April 2017. He testified that the applicants were given an opportunity to be represented by a fellow employee and they chose not to be represented.

9.16 The applicants were found guilty, and their employment was terminated. The applicants appealed against their dismissal and in their appeal, they indicated that they believed that their dismissal arose out of a misunderstanding because they had not refused to carry out any lawful instruction and their actions had resulted in unintended consequences and that the sanction of dismissal was too severe. The appeal was unsuccessful.

9.17 He testified that the applicants did not provide the respondent with any notification of their strike they simply withheld their labour.

9.18 He testified that the relationship of trust has broken down irretrievably because even though they tried to explain the situation to the applicants even bringing someone from Johannesburg, the applicants simply followed through with their refusal to handle the Waco-R products.

9.19 He testified further that this had a bad effect because the orders of customers could not be processed on time, and this risked viability as customers could simply switch to other suppliers. In his view the applicants were given fair warnings before they were dismissed.

9.20 The applicants were given a fair opportunity to ask questions during the disciplinary enquiry, but they all indicated that they had no questions for the company witnesses.

[10] The respondent called its second witness, Denise Thomson, (Ms Thomson) whose testimony was inter alia as follows:

10.1 She is currently employed by Voltex at Waco Industries in Gqeberha and that she knew the applicants as she worked with them when they were employed pullers and packers. The applicants were employed by Voltex trading under the name Waco Industries.

10.2 In March 2017, Waco-R (Waco Retail) came over to Gqeberha which was the same product as Waco-D with the difference only being that Waco-R worked with distribution of prepacked orders.

10.3 They (staff members) were informed by management about two weeks before the container with the Waco-R stock arrived. Management

informed them that they were to get prepacked goods that would need to be distributed to customers. She was personally informed of this by the Branch Manager, Shirley Nicol.

10.4 When the goods arrived, they unpacked the container together with the applicants but when the invoices came for the packing and distribution to the customers, the applicants refused to pull the goods but continued to work on the Waco-D products. These are the same goods, and the only difference is that the Waco-R goods are repacked.

10.5 She had worked with Mr Daniels for several years and they were quite close. She testified that she spoke to Mr Daniels several times about the applicants' refusal to pull Waco-R goods, but Mr Daniels and the applicants did not listen to her.

10.6 This had a negative effect on the business because they had to leave their jobs and do the pulling of the stock for Waco-R customers because the applicants were refusing to pull the stock.

10.7 Her job did not change in any way because of the Waco-R products, and she believed the applicants' work did not change too. They had to deal with both Waco-D and Waco-R products in the same way. No other employees, other than the applicants complained.

10.8 She was involved in the internal disciplinary enquiry as a witness and she confirmed that because of the refusal by the applicants to pull the Waco-R products, Shirley, the Branch Manager, herself and others pulled the orders. The company was in too much pressure because other employees had to do the work of the applicants in as far as Waco R products were concerned.

10.9 The applicants' reasons for their refusal to pull the products of Waco-R was that they were not paid for it, but it was important that they serviced the customers because customers can leave if they do not get satisfactory service. In that regard, whatever they did should not affect the customers.

10.10 The respondent tried to talk to the applicants and the respondent even brought someone from Johannesburg to explain the situation to the applicants. The applicants continued with their refusal to work with the Waco-R products.

[11] The respondent closed its case.

[12] The applicants led the evidence of Mzukisi Timothy Daniels, (Mr Daniels) whose testimony was inter alia as follows:

12.1 He was employed by the Respondent and had a service period of about 16 years when his services were terminated. He together, with the other two applicants, was not given any warning before they were dismissed.

12.2 He confirmed that their letters of appointment indicated that they were employed by Voltex (Pty) Ltd which is indicated as the company in the letters of appointment. But that their understanding was that they were working for Waco Industries which was the division in Gqeberha.

12.3 He testified that in March 2017 they were instructed by Ms Shelly Nicol, the Branch Manager, to pull stock that was identified as stock for Waco-R, and they did not comply with the instruction because they were not employed by Waco R but by Waco Industries.

12.4 He testified that they indicated that they needed more people to help them do the work and they also demanded that they should be given a contract that showed that they were working for Waco-R. They also demanded that the respondent should increase their pay if it wanted them to do the work of Waco-R as well.

12.5 They believed that Waco-R was going to bring more work for them because in East London Waco-R had about 9 (nine) people doing the work that they were now required to do.

12.6 None told them anything about the relationship between the Waco companies before they were instructed by Ms Nicol to pull the Waco-R orders. He denied having any meeting with Mr Adams or anybody else but confirmed that they had a meeting with Mr Van Burren who came from Johannesburg.

12.7 He testified that they had requested from Ms Nicol to arrange that Mr Van Burren should come and talk to them so they could find a solution to the impasse.

12.8 Mr Van Burren spoke to them and gave them some explanation but did not show them any documents and thus did not resolve the problem. They did not believe his explanation.

12.9 On 27 March 2017 they were issued with the letters entitled "Refusal to obey lawful and reasonable instruction" in which it was indicated that they were urged to continue with their duties and failure to do so might result in the company taking severe disciplinary action, but the letters were not explained to them.

12.10 They still did pull the stock for Waco-R because they did not understand why they had to do the work for Waco-R when they were

employed by Waco Industries. They continued to do their work and to pull the stock of Waco Industries.

12.11 He testified that they continued with not pulling the stock of Waco-R even after they were issued with a second letter on 3 April 2017. This letter was also entitled, "Refusal to obey a lawful and reasonable instruction". The letter also indicated that, unless they, the applicants resumed their duties in full by the close of business on 5 April 2017, the company would institute disciplinary action against them. The applicants still did not pull the stock for Waco-R because they believed that they only worked for Waco Industries and not Waco-R. Mr Daniels indicated that they still held the same position as the date of the hearing of this matter.

12.12 He testified that dismissal was a harsh sanction, and they should have been given final written warnings but insisted that unless they were given new contracts, they would continue with their refusal to pull the stock of Waco-R.

Evaluation of evidence

- [13] The evidence revealed that meetings were held between the respondent's management and the applicants to explain the working relationship between Waco-R which had been operating from East London and Waco-Industries in Gqeberha where the applicants had been based. This fact is also confirmed as one of the common cause issues in the pre-trial minutes.
- [14] It also became common cause that when the applicants continued to refuse to pull the work of Waco-R and demanded that a senior manager, Van Burren, be brought to explain the situation, he came and held a meeting with them and they did not accept his explanation and they in fact, confirmed their demands to him.
- [15] The evidence revealed further that the work required of the applicants in relation to the Waco-R products was the same work and the only difference being that the Waco- R products were prepacked as opposed to the Waco Industries products which were not prepacked.
- [16] The applicants were warned in a letter dated 27 March 2017 that their actions constituted serious misconduct for which they could face severe disciplinary action. This was followed by an even more stern warning in a letter dated 3 April 2017 in which the applicants were given an ultimatum and told if they did not resume their duties in full by 5 April 2017, the respondent would institute severe disciplinary action.
- [17] The applicants, having insisted that Van Burren be brought from Johannesburg ignored his advice for them to do their work in full and also ignored warning letters one of which was an ultimatum warning them that if they did not do their work in full, they would face severe disciplinary action.
- [18] It was not disputed by the applicants that because of their refusal to do the work of Waco-R, other employees including sales personnel, and the Branch Manager had to leave their positions to pull the orders for Waco-R customers to ensure that the business did not lose those customers.
- [19] The minutes of the disciplinary enquiry reveal that the applicants were provided with an opportunity to ask questions of the respondent's witnesses and to lead their own evidence. By this time, it must have been clear to the applicants that the respondent was treating the matter as serious, but the applicants did not treat the process with any level of seriousness.
- [20] Mr Daniels testified that if this Court were to re-instate the applicants, they would start all over again and continue with their actions until their demands were met.

The legal framework

- [21] In an application to the Labour Court in which they sought an order for the arbitration award to be reviewed and set aside, the applicants submitted that the Commission for Conciliation, Mediation and Arbitration, (the CCMA), had no jurisdiction to entertain the dispute because their actions constituted a strike as defined by section 213 of the Labour Relations Act 66 of 1995 as amended.
- [22] That the dispute before this Court deals with a strike was defined by the applicants in their review application when they sought to have the arbitration award indicating that they were dismissed for insubordination reviewed and set aside. That this is so, was confirmed by the Labour Court in its judgment under case number P 377/2017.
- [23] Section 23(2)(C) of the Constitution guarantees the fundamental rights of workers to strike. That fundamental right is operationalised through the Labour Relations Act, 66 of 1995 as amended. Section 64 of the Labour Relations Act sets out the requirements for a strike to be protected under the Labour Relations Act.
- [1] [2018] 8 BLLR 756 (LAC); [2018] ZALAC 9.
- [2] [2007] 12 BLLR 1097 (CC); (2007) 28 ILJ 2405 (CC).
- [3] Ibid at para 79.

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