
SOUTH AFRICA / JUDGMENT

Southern African Clothing And Textile Workers Union v Wayne Plastics, A Division of Feltex Holdings (Pty) Ltd (JS830/2011) [2014] ZALCJHB 448 (14 July 2014)

[2014] ZALCJHB 448

COURT

Labour Court Johannesburg

BEFORE

Van Niekerk

CASE / FILE NUMBER

JS830/2011

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

REPUBLIC OF SOUTH AFRICA

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

CASE NO JS 830/2011

Not reportable

In the matter between:

SOUTHERN AFRICAN CLOTHING AND

TEXTILE WORKERS UNION

APPLICANT

and

WAYNE PLASTICS, A DIVISION OF

FELTEX HOLDINGS (PTY) LTD

RESPONDENT

Trial: 9 -10 June 2014

Judgment

delivered: 14 July 2014

VAN NIEKERK J

Introduction

- [1] This is a referral in terms of Rule 6, in which the applicant (the union) seeks to have its members reinstated following their dismissal during August 2011, for participation in strike action. Six of the union's members were dismissed on 18 August 2011 for participating in a partial retardation of work between 4 and 8 August 2011 (the go-slow). Fifteen were dismissed on 24 August 2014 for participation in a strike in the form of a complete work stoppage that took place on 16 August 2011 (the strike).
- [2] At the trial, despite an initial contention to the contrary, the union conceded that the go-slow constituted an unprotected strike. The key issue for determination in this regard is whether the dismissals effected by the respondent for participation in the go-slow were substantively fair. In respect of the dismissals effected for participation in the strike, the union contends that they were automatically unfair because the strike was protected because the respondent failed to comply with the provisions of s 64
- (4) and (5) of the LRA by failing to restore the status quo within 48 hours of a referral by the union of a dispute to the bargaining council concerning a unilateral change to terms and conditions of employment. The union also relied, initially at least, on a contention that the dismissals were automatically unfair because they constituted a breach of s 187 (1) (c). This claim was not pursued. In the alternative, (i.e. assuming that the strike is found to be unprotected), the union disputes the substantive and procedural fairness of the dismissals and contends that the respondent failed to comply with the provisions of Item 6 of the Code of Good Practice: Dismissal in Schedule 8 to the Act.

The factual background

- [3] The material facts are not in dispute and can be gleaned from the evidence of Mr. Deon van Rensburg, the only witness at the trial. The respondent manufactures boots using injection-moulding techniques. To this end, it engages five boot-making machines in what is a highly mechanised and automated production process. Each of the machines is operated by a team of at least five employees who, working as a team, manage the production process. Team members rotate frequently between different functions on a machine.
- [4] For many years, the respondent has operated a two shift system. This requires employees to work in excess of the maximum overtime hours provided for in the main agreement concluded under the auspices of the Leather Industry Bargaining Council (the main agreement). That agreement provides for maximum overtime hours of 10 hours per week, but permits additional overtime hours in terms of collective agreements concluded at plant level. In the case of the respondent, the practice was to negotiate and conclude a plant level agreement on additional overtime, and the terms on which overtime would be worked. The agreement was then ordinarily submitted to the bargaining council in the form of an application for exemption from the terms of the main agreement, and would expire in June

of the following year. For instance, during 2010, the respondent and the union (together with NULAW, another union recognised in the respondent's workplace) commenced negotiations on overtime work during June, but only concluded an agreement during October 2010. This agreement expired in June 2011. The agreement assumed some significance in these proceedings, and I shall refer to it as 'the 2010 agreement'.

- [5] In terms of the 2010 agreement, employees agreed to work overtime in excess of the maximum permitted by the main agreement, on the basis that overtime would be paid at time and a half for the first 15 hours of overtime and thereafter at double time, calculated on a weekly basis.
- [6] On 14 June 2011, during the course of the meeting between respondent's management and shop stewards, the pending expiry of the 2010 plant agreement was discussed.
- [7] On 5 July 2011, the respondent wrote to both unions requesting a meeting the next day to discuss an extension of the overtime agreement. The letter records that the meeting was urgent because the shop stewards had indicated that they would give 48 hours' notice of their intention to stop working overtime, since the current agreement had expired. During the course of a series of meetings that took place in July 2011, the respondent proposed the introduction of

a three-shift system. The effect of this, of course, would be a reduction in overtime available to the respondent's employees.

The union resisted this proposal and demanded that the provisions of the 2010 agreement be retained, with some variations, including a bonus payable in December of each year and the addition of extra number of hours in respect of an agreed shift allowance. On 27 July the union's proposal (in essence to retain the first 15 hours at one and half times with the balance at double time formula) was reiterated, in response to which the respondent noted it was looking to introduce a three shift system in the new year. At the meeting, union officials resolved to advise their members to continue 'the way they were working before the meeting i.e. 42 hours and 10 hours overtime'. The respondent's position was that it wished to return to the provisions of the 2010 agreement and continue to prepare for the introduction of the three-shift system. The minutes note however that 'if the employees choose to work 42 hours and only 10 hours overtime (as per bargaining council agreement) we will not stand in their way'.

- [8] On 29 July 2011, the respondent wrote to the union regarding what it termed an illegal go-slow at its premises. The letter recorded that the go-slow action of the workforce and 'their refusal to work overtime in excess of 10 hours' is illegal. It called on the unions to restore operations in terms of the 2010 agreement i.e., 42 normal hours plus 15 hours overtime at a rate of one and a half times basic pay, with any additional overtime hours at double pay. The letter concluded with a statement that 'Should the workforce fail to immediately comply with the above we reserve the right to proceed with more stringent measure (sic)'.

- [9] The go-slow had commenced during the nightshift on 27 July 2011, after the meeting between the parties had resulted in a deadlock. The go-slow resulted in a large backlog in the manual trimming and packing of boots that takes place once the largely automated injection moulding process has been completed. The result of the go-slow action was that production figures declined and the factory floor was filled with unfinished boots. This was a concerted collective effort by the production workforce. As I have indicated, despite the denials in the pleadings and pre-trial conference minutes, the union conceded that the conduct of its members amounted to a strike, that the procedural requirements established by s 64 of the LRA had not been met and that the go-slow was therefore unprotected.
- [10] The response to the go-slow was to call on the unions to meet urgently to finalise consultations on the implementation of a three shift system and to address the letter dated 29 July 2011 (referred to above). The significance of the letter for present purposes is the requirement by the respondent that employees work overtime according to the terms of the 2010 agreement.
- [11] On 2 August 2011, the respondent met with the unions. A Mr. Burland, the group CEO, attended the meeting. The minute of the meeting reflects that Burland insisted that negotiations would not commence until the unions intervened and the go-slow ceased, and there was a revision to working overtime in terms of the 2010 agreement. According to the minutes, Burland insisted that the plant agreement remained valid as it had been 'unilaterally terminated and there is no agreement superseding thus the old one is in force. We have taken a legal opinion.'
- [12] Van Rensburg conceded during cross-examination that Burland's statements were factually and legally devoid of merit and that the statement was made consistent with the bargaining position adopted by the respondent. In any event, Van Rensburg did not correct Burland during the meeting, nor any of the misstatements contained in his letter dated 29 July.
- [13] The meeting ended in deadlock. On 3 August 2011, in an effort to bring the go-slow to an end, the respondent devised a strategy which effectively involved the random selection of a few individuals for disciplinary action. On that date, the respondent wrote to the union stating that:
- Please be informed that we are in the process of charging your members who embarked on an illegal "go-slow". This is being done through giving individuals to perform their tasks at normal and acceptable output standards that have been comfortably achieved in the past. We will then take action against those who persist in sub-standard performance. Accordingly, you are invited to submit your representation on why they should not be suspended.
- [14] On about 3 or 4 August 2011, managers instructed particular individual workers (whoever happened to be on rotation that day) to stay on the trimming machine for the entire shift. If, in the respondent's opinion, the particular worker was not working fast enough, he would be suspended and charged with participating in the go-slow action. Employees were not given production targets in respect of the expected output, nor was there any other objective

manner in which their performance was assessed. The decision to suspend was at the unfettered discretion of the supervisor. This much was conceded by Van Rensburg.

- [15] Six of the union's members were suspended in this fashion. On 18 August 2011, the six employees were dismissed for participation in the go-slow, following a disciplinary hearing.
- [16] On 5 August 2011, the respondent wrote to the unions requesting their attendance at a meeting to be held on 11 August 2011, to be chaired by a private facilitator. The facilitation session did not yield any fruitful results. On 11 August the union referred a dispute to the CCMA. In the referral document the dispute was described as follows:

The company is forcing workers to work more than 10 hours overtime and have suspended them for refusal.

- [17] On the same day, the union wrote to the respondent stating that:

It is common cause that the [facilitation] meeting did not bear any fruits as the proposed shift by the company was not admissible to the labour. It is also common cause that the employer has decided to change the conditions of employment of our members by making it compulsory for the workers to work overtime and also to work overtime that is above the 10 hours that is regulated by the collective agreement.

Section 64 (4) and (5) of the act does give us the way forward in terms of the actions by the employer in this letter serves to confirm that. It is also common cause that the employer I have already implemented these changes hence the suspension of our members.

- [18] The referral document triggered the application of s 64, i.e. incorporated a demand that the respondent restore changed conditions of employment, or not implement the change. The facts as summarised by the union are the following:

- [19] On 15 August 2011, the entire workforce embarked on strike action, from the commencement of the day shift. The respondent's HR manager delivered an ultimatum to return to work immediately and indicated to the shop stewards that the strike was unprotected as NULAW had not yet referred a dispute to the CCMA. In order to avoid any potential risks, the shop stewards decided to call off strike as there was a degree of certainty about its legality. The entire workforce returned to work just after 8:00, without any consequences.

- [20] On 16 August 2011, from the commencement of the day shift, the entire workforce embarked on a strike. The respondent issued an ultimatum to workers to return to work by no later than 8:15 or face disciplinary action. During the course of the same morning, the respondent addressed a letter to both unions in which it described the referral of the dispute as 'improper, unlawful and opportunistic, as we have not, as you contend, varied your members terms and conditions of employment, unilaterally or otherwise.' The union does not dispute that the letter signalled a fundamental change to the respondent's approach – since 29 July 2011, the respondent had insisted that the refusal to work to the terms of the

2010 agreement was illegal as that remained in force. In the letter, the respondent states clearly that employees are required to work overtime in terms of the main agreement (i.e. a maximum of 10 hours), and that they should return to work by 11:00 or face a disciplinary hearing in which they would be charged with participating in an unprotected strike.

- [21] Shortly before 13:00 on 16 August 2011, the striking workforce was given a collective notice to attend disciplinary hearings on Friday 19 August to explain why they should not be dismissed for participating in unprotected strike action. On the same day, the union responded by way of a letter in which it requested an urgent meeting with the respondent to resolve the issue and in which it stated that it would be improper for the union to participate in the disciplinary hearings as the witnesses were also on strike. The union repeated its assertion of a unilateral change the terms and conditions of employment.
- [22] On 18 August 2011, the union addressed a letter to the bargaining council requesting its urgent intervention in respect of what it claimed to be the unilateral amendment to terms and conditions of employment which had resulted in the workers embarking on strike action.
- [23] On 19 August 2011, the disciplinary hearing proceeded in the absence of the employees concerned and in the absence of any union representation. The chairperson of the enquiry found employees guilty of participation in unprotected strike action. On 24 August 2011 the chairperson recommended a sanction of dismissal, which was duly imposed by the respondent.
- [24] The union then referred unfair dismissal disputes to the CCMA. Those disputes, but for the disputes concerning the dismissal of shop stewards were insubordination, are the subject of the referral to this court.

Applicable legal principles

- [25] The legal principles to be applied to a dispute concerning a dismissal for participation in an unprotected strike are well established. Item 6 (1) of the Code of Good Practice contained in Schedule 8 to the LRA reads as follows:

6 Dismissal and industrial action.

- (1) Participation in a strike that does not comply with the provisions of Chapter IV is misconduct. However, like any other act of misconduct, it does not always deserve dismissal.

The substantive fairness of dismissal in the circumstances must be determined in the light of the facts of the case, including –

- (a) the seriousness of the contravention of this Act;
- (b) attempts are made to comply with this Act; and

- (c) whether or not the strike was in response to unjustified conduct by the employer.
- (2) Prior to dismissal the employer should, at the earliest opportunity, contact a trade union official to discuss the course of action it intend to adopt. The employer should issue an ultimatum in clear and unambiguous terms that should state what is required of the employees and what sanction will be imposed if they do not comply with the ultimatum. The employee should be allowed sufficient time to reflect on the ultimatum and respond to it, either by complying with it all rejecting it. If the employer cannot reasonably be expected to extend the steps to the employees in question, the employer may dispense with them.

[26] The Labour Appeal Court recently observed that it is clear from the provisions of s 68(5) of the LRA that a Judge called upon to determine the fairness of a dismissal effected on the ground of participation in an unprotected strike should consider, in addition to Item 6 of the Code, the provisions of Item 7. That provision regulates dismissals for misconduct more generally, and requires the determination of whether dismissal was inappropriate sanction for the contravention of a relevant rule or standard. (See NUMSA v CBI Electric African Cables [2014] 1 BLLR 31 (LAC)). The determination of the substantive fairness of a strike-related dismissal must therefore take place in two stages – first, under Item 6 when the strike-related enquiry takes place and secondly, under Item 7. In other words, a strike-related dismissal

which may meet the requirements of item 6 may nonetheless fail to meet the substantive fairness requirements under Item 7, particularly

when dismissal is adjudged not to be a fair sanction in the circumstances (see paragraph [29] of the CBI judgment).

[27] The LAC referred (with approval) to Grogan: Dismissal, Discrimination and Unfair Labour Practices (Juta 2005), where the author expresses the view that Item 6 is neither exhaustive nor rigid, and that other factors including the duration of the strike, the harm caused by the strike, the legitimacy of the strikers' demands, the timing of the strike, the conduct of the strikers and the parity principle are all relevant.

[28] The requirement in Item 6 of the Code that an employer should, at the earliest opportunity, contact a trade union official to discuss the course of action it intends to adopt, affords the union an opportunity to persuade the strikers to resume work and secondly, provides a safeguard against possible rash action by the employer. When an employer issues an ultimatum, it should meet the requirements of the Code, and in particular, must ensure that it allows employees sufficient time to reflect on the ultimatum and to respond to it (paragraph [35] of the CBI judgment). This court has long held that the requirements of procedural fairness incorporated in Item 6 do not constitute a series of steps with which the employer must comply for the sake only of compliance. The purpose of contacting a trade union regarding an unprotected strike is not a formal requirement of notice – it is to afford the union an opportunity to intervene and bring its influence to bear on the situation before any dismissal is effected, and to afford the union the opportunity to make representations to

the employer.

[29] Further, the courts have for some years made clear that the audi alteram partem principle applies in the case of a dismissal for participation in an unprotected strike, irrespective of whether there has been a failure to comply with an ultimatum. In *Modise v & others v Steve's Spar Blackheath* (2000) 21 ILJ 519 (LAC), the LAC held that an ultimatum and a hearing serve two separate and distinct purposes. A hearing serves the purpose

ultimately of affording employees or a union acting on their behalf the opportunity of stating why they should not be dismissed,

notwithstanding their failure to comply with an ultimatum.

Analysis

[30] As I have indicated above, the union does not pursue its claim that the dismissals were automatically unfair because the reason for dismissal was to compel employees to accept a demand in respect of a matter of mutual interest as between employer and employee.

[31] In respect of the six employees dismissed for participation in the go-slow, the union contends that the dismissal was unfair because the go-slow was in response to severe provocation by the respondent (which included unfair bargaining tactics), the manner in which the six individuals were selected for disciplinary action was unfair, and that the respondent was inconsistent in the application of discipline. In respect of those employees dismissed for participation in the strike, the union contends that the strike action was protected and that the dismissals were therefore automatically unfair. As I have indicated, in the alternative, the union contends that the dismissals were unfair in that the sanction imposed was unduly harsh.

[32] I deal first with the dismissals for participation in the go-slow. It is not disputed that the entire production workforce was involved in the go-slow action, which commenced during the nightshift on 27 July

2011. It is also not disputed that the conduct of the employees amounts to a strike as defined by s 213 of the Act, since those engaged in the action were acting in support of the demand made by the unions during the meeting held earlier on the same day. Again, as I have indicated, the union concedes that the procedures established by s 64 were not followed, and that the go-slow was therefore unprotected.

[33] There is nothing in the evidence that suggests that the respondent was guilty of any conduct that might be said justifiably to provoke the go-slow. The bargaining over a possible extension to the plant agreement was hard, and while the respondent can be criticised for the mixed messages conveyed to the union in relation to the continuity of the 2010 agreement and exactly what it required of employees in relation to overtime work, prevarication should not be equated with provocation. It is clear that once deadlock had been reached at the meeting on 27 July 2011, the union was intent on pursuing its demands

and placing pressure on the respondent by means of a go-slow.

[34] However, I am less convinced of the fairness of the basis on which the six employees dismissed for participation in the go-slow were selected. Selection for individual performance assessment commenced a week after the go-slow action commenced. Van Rensburg's evidence recounted a process of selection in terms of which when the respondent introduced individual performance measurement at the trimming function on 3 or 4 August 2011; the employee who happened to be on rotation on that shift was in effect selected for performance measurement. Contrary to the normal rotation routines, the employee was instructed to perform the trimming function for the entire day. The manner of assessing the performance of individuals so selected was entirely arbitrary. The employee concerned was not told how many the boots he was expected to trim, nor was there any count of the number of boots that a particular employee had trimmed in any particular shift. Instead, a manager would simply assess whether the situation on the production floor seemed even more chaotic than at the start of the shift. Van Rensburg conceded that he did not want to take disciplinary action against the entire workforce for participation in the go-slow, since this would have brought production to a halt. On the probabilities, the respondent's management simply wished to select a number of individuals (effectively at random) to make an example of a few, in the hope that the rest of the workforce who would work normally. Stripped of all its essentials, the selection process was random. If an employee, also participating in the go-slow, happened to be fortunate enough

not to be selected for performance assessment, then he was not dismissed. Further, Van Rensburg testified that the nightshift employees were not disciplined because the nightshift manager was unable to conduct any assessment. As such, if an employee happened to work nightshift, he would have escaped the prospect of dismissal despite participation in the same go-slow. In my view, the

arbitrariness in the selection for assessment and dismissal, and the inconsistency in the application of discipline in respect of all of those employees who were clearly participating in the same misconduct, rendered the dismissal of the six employees substantively

unfair.

[35] In relation to the strike, it should be recalled that on 11 August 2011, the union referred a dispute in respect of an alleged unilateral change terms and conditions of employment and demanded that the respondent revert to overtime hours as regulated by the main agreement. At this stage, certainly in the period after the 2 August meeting, the union could have been under no illusion that the respondent's position was that it wished to have overtime work regulated by the 2010 agreement. Even if there was any change to the status quo (in the form of the respondent's insistence of employees' continuing to work overtime in terms of the 2010 agreement despite its expiry, and in the face of the lesser number of overtime hours permitted by the main agreement), the respondent's letter dated 16 August 2011 is an agreement by the respondent to meet the union's demand. The status quo, for the

union, was the main agreement. Despite any previous intimation, prevarication or threats, that is what the respondent undertook to apply. While the respondent's stance might not historically have been as unequivocal as the letter suggests, the respondent's position as at 16 August was clear:

We reiterate that we have not and will not unilaterally vary your members' terms and conditions of employment, neither have we demanded that any overtime be worked in excess of that provided for in terms of the main collective agreement which regulates hours of work in our industry. Your members accordingly have had clear and unequivocal undertakings, and as such, they have no excuse in perpetuating and continuing their unprotected strike action.

[36] In these circumstances, the respondent having in effect conceded to the status quo identified and demanded by the union, on the union's version, the strike became unprotected (if it was ever protected, which is not an issue I need decide) and the union's demand having been met, the employees ought to have returned to work. In these circumstances, in my view, the employees were correctly dismissed for participation in an unprotected strike and the claim of an automatically unfair dismissal on account of having been dismissed for participation in a protected strike stands to fail.

[37] The union contends that in any event, the dismissals were substantively and procedurally unfair. The onus of proving the fairness of the dismissal in both respects rests on the respondent. Section 68 (5) of the LRA provides:

Participation in a strike that does not comply with the provisions of this Chapter, or conduct in contemplation or in furtherance of that strike, may constitute a fair reason for dismissal. In determining whether or not the dismissal is fair, the Code of Good Practice: Dismissal in Schedule 8 must be taken into account.

In regard to substantive fairness, as the above summary of the applicable principles records, the court must necessarily take into account the seriousness of the contravention of the LRA, attempts made to comply with the Act and whether the strike was in response to unjustified conduct by the employer. Item 3 (4) of the Code also provides that it is generally not appropriate to dismiss an employee for a first offence unless the misconduct is of such a gross nature that it renders a continued employment relationship intolerable.

[38] In the present instance, I have already found in the context of the union's claim in relation to those employees dismissed for participation in the go-slow that the strike did not occur in circumstances where it can justifiably be said that there was any extreme provocation by the respondent. I am unable to make any finding on the subjective beliefs of the union officials and/or employees in relation to the protected or otherwise nature of the strike – the union closed its case without leading evidence. However, it would appear from Van Rensburg's evidence and the supporting documentation that a degree of caution was exercised by shop stewards, at least in that the strike called for Monday, 15 August 2011 was called off on account of concerns about NULAW's compliance with the Act. It is not unreasonable to assume that when the strike commenced early on the morning of 16 August, the employees

believed that it was protected. The strike lasted a single morning. The first ultimatum issued to employees calling on them to return to work was issued at about 8:15. By lunchtime, employees had been given

notice to attend a disciplinary hearing on Friday, 19 August 2011, to give reasons why they should not be dismissed for participation in the strike. Van Rensburg conceded during cross-examination that this notice (which does not repeat an ultimatum to return to work) effectively amounted to suspension notice. In the absence of any evidence of a tender to return to work made by the union or any further ultimatum to return to work issued by the respondent, on the probabilities, in my view, the notice was intended and was understood to mean that the strikers were suspended until the disciplinary hearing, and thus relieved of any further obligation to work. If this was not the intention, the respondent would have issued further demands to return to work between 16 and 19 August. None were issued.

- [39] Further, there is no evidence of any violence, intimidation or damage to property by any of the union's members during the course of the strike. While it appears from the papers before me that the respondent experienced some unrest in the period following the disciplinary hearings, no specific allegations of misconduct were made against any individual, and there was no evidence produced to suggest that any of the applicants in this matter were involved in any misconduct of the strike.
- [40] Taking all of the above factors into account, in my view, the dismissal of the employees who participated in the strike on 16 August was substantively unfair in that dismissal was too harsh a sanction for the misconduct committed.
- [41] In regard to procedural fairness, as I have indicated above, the Labour Appeal Court has recently underlined the importance of engagement by an employer with the union before issuing an ultimatum and in particular, the obligation on an employer, at the earliest opportunity, to contact of the trade union to discuss the course of action that it intends to adopt. In the present circumstances, there was no attempt by the respondent to comply with these provisions. On the other hand, the respondent notified the union of its intention by issuing notice of the disciplinary hearing. The union was aware by midday on 16 August that the respondent intended to conduct disciplinary hearings later that week. The respondent convened a formal disciplinary enquiry at which the employees were afforded an opportunity to state their case. They refused to avail themselves of this opportunity, on grounds that are nothing less than spurious. In these circumstances, I am not persuaded that the dismissals for participation in the strike were procedurally unfair.

Remedy

- [42] In relation to remedy, reinstatement is the primary remedy in terms of the Act and indeed, that is the remedy sought by the applicants. The matter was first enrolled for trial on 27 May 2013, almost two years after the dismissals. There is no indication that the union or its representatives took any steps to expedite the hearing. Further, on 27 May 2013, the matter was postponed, on account of extensive amendments effected by the union on 24 May. For

reasons that are not apparent, the matter did not proceed on 16 October 2011 or on 3 February 2014, both dates on which the case had been enrolled for trial. For some time, the court has been willing to 'fast track' cases that concern the dismissal of more than 10 employees. This is such a case, but no effort was made by the union to expedite these proceedings. In these circumstances, in my view, it is neither just nor equitable to visit the respondent with an order of retrospective reinstatement. I intend therefore to make an order that compensation be paid to those employees who were unfairly dismissed. I see no reason to deny them the maximum available, i.e. the equivalent of 12 months' remuneration.

[43] Finally, the court has a broad discretion in relation to costs. The present dispute is one between collective bargaining partners, which ordinarily militates against a costs order. I must also take into account that the applicants have not succeeded in all of their claims, some of them raised and abandoned only at the stage of trial. I have already addressed the failure by the applicant to pursue this litigation with any degree of urgency, an issue that impacts on the issue of costs. Having regard to all of these factors, in my view, it is just and equitable that each party pays its own costs.

I make the following order

1. The dismissal of those of the respondent's employees dismissed for participation in a go-slow during August 2011 and for participation in an unprotected strike on 16 August 2011 was substantively unfair.
2. All of the employees listed in Annexure A to the statement of claim are awarded compensation in an amount equivalent to 12 months' remuneration, to be calculated at the rate of remuneration payable as at the date of dismissal..
3. There is no order as to costs.

ANDRE VAN NIEKERK

JUDGE OF THE LABOUR COURT

REPRESENTAION:

For the applicants: Adv. G Fourie, instructed by Cheadle Thompson and Haysom Inc.

For the respondent: Adv. F Venter, instructed by Fluxmans Inc.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZALCJHB/2014/448.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/southern-african-clothing-and-textile-workers-union-v-wayne-unknown-topic-alcjhb-2014>

Prepared on 14 October 2026 · Esheria