

SOUTH AFRICA / JUDGMENT

Witkoppen Health & Welfare Centre v NEHAWU and Others (J552/18) [2018] ZALCJHB 202 (21 June 2018) [2018] ZALCJHB 202

COURT

Labour Court Johannesburg

BEFORE

B Witcher

CASE / FILE NUMBER

J552/18

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IN

THE LABOUR COURT OF SOUTH AFRICA

HELD

AT JOHANNESBURG

Case

no: J 552-18

Not

Reportable

In

the matter between:

WITKOPPEN
HEALTH & WELFARE
CENTRE Applicant
and
NEHAWU First
Respondent
PERSONS
APPEARING IN ANNEXURE “AW
2” Further
Respondents

Heard:

7 June 2018

Delivered:

21 June 2018

JUDGMENT**WHITCHER J**

- [1] Pursuant to a dispute which appears to be a wage dispute but is characterised as a ‘refusal to bargain’ dispute by the respondents, an advisory award and a certificate of outcome, stating that the matter remains unresolved were issued on 19 January 2018.
- [2] On 20 February 2018 the first respondent advised the applicant that it intended to serve a strike notice on 22 February 2018.
- [3] In response and on an urgent basis, the applicant applied to this court for an interim order interdicting the strike. The order was granted and this is the return date of the order.
- [4] The crux of the applicant’s claim in its founding affidavit is that it renders an essential service because it provides healthcare to an average of 6000 patients per month.
- [5] In an opposing affidavit, dated 24 May 2018, the respondents submitted that the applicant failed in its founding papers to prove
that it is an essential service.
- [6] In its replying affidavit, dated 6 June 2018, the applicant indicated that it had referred the matter to the Essential Services Committee. Both parties had attended the hearing on 4 June 2018, at which hearing both parties were given an opportunity to make
representations to the ESC, and thereafter the ESC issued a written

ruling.

- [7] In terms of the ruling, which is attached to the replying affidavit, the ESC found as follows:

‘(a) The applicant is a health and welfare non-profit organisation that receives funding from the Government and private donors. The applicant services the underprivileged communities from Diepsloot, Lion Park, Msawawa and Cosmos City. It provides primary health care, advanced clinical care for paediatric and complicated HIV positive patients, HIV/TB management services, mental health clinic, antenatal and post-natal care, social services focusing on orphans and vulnerable children.

- (b) The following services rendered by the applicant are essential services:

Emergency health services and the provision of emergency health facilities to the community or part thereof;

‘Nursing;

Medical and paramedical services

Mental health care

Diagnostic assessments of new referrals in respect of people with intellectual and psychiatric disabilities.

Psychological assessments

Therapeutic counselling services and any other form of counselling

Mental health crises management

Court preparation and assistance for victims who are users

Rehabilitation services

Treatment (including assistance with adherence to medication

Training (only to the extent that it is offered to the mental health users

(c) The following support services are not essential services: support services of dispensary, laundry and transport.'

[8] In light of the ruling by the Essential Services Committee, this court finds that only those employees who render services as

described in (c) above of the ruling have the right to strike once they have complied with section 64 (1)(b) of the Labour Relations

Act, 1995 (the rule pertaining to a strike notice).

[9] It is, however, suggested (because this court does not have the power to order same), that the parties conclude a minimum services

agreement prior to any strike.

[10] In the premises, I order as follows:

Order

1. The Order of this Court, issued on 27 February 2018, is confirmed in respect of only the respondent employees who render services as described in (b) above of the ESC ruling.
2. There is no order as to costs.

B Witcher

Judge of the Labour Court of South Africa

Appearances:

For the applicant: S Swartz

Instructed by:

Bongani Khanyile Attorneys

For the respondents: V J Chabane

Instructed by:

Mophosho Inc Attorneys

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