

Trade Union Representation: AFGRI Animal Feeds v National Union of Metalworkers South Africa and Others

CCT188/22 (21 June 2024)

BACKGROUND

The Appellant is AFGRI Animal Feeds (being the respondent in the court a quo), a division of PhilAfrica Foods (Pty) Ltd (AFGRI), which manufactures and distributes animal feeds (“**the Appellant**”). The First Respondent is National Union of Metalworkers of South Africa (“**the First Respondent**”), a trade union registered under the Labour Relations Act 66 of 1995 (“**LRA**”), representing the dismissed employees (“**Second to Fourteenth Respondents**”). The First to Fourteenth Respondents are collectively referred to as “**the Respondents**” (being applicants in the court a quo). In terms of the First Respondent’s constitution, membership of the First Respondent is restricted to workers in the metal and related industries.

In September 2017, the Second to the Fourteenth Respondents participated in an unprotected strike following the Appellant’s refusal to grant the First Respondent organisational rights. The Second to the Fourteenth Respondents were dismissed on 1 December 2017 for their participation in the unprotected strike. The First Respondent, on behalf of the Second to Fourteenth Respondents, referred the dismissal to the Commission for Conciliation, Mediation and Arbitration (“**CCMA**”). The dispute was not resolved in the CCMA and thereafter the Respondents referred the dispute the Labour Court.

THE LABOUR COURT (“the Court”)

As a preliminary point, the Appellant disputed that the Second to Fourteenth Respondents were members of the First Respondent and submitted that the First Respondent lacked locus standi to act on the Second to Fourteenth Respondents behalf. The Appellant submitted that the First Respondent’s constitution states that persons “*working in the metal and related industries are eligible for membership of the Union*” and since the Second to Fourteenth Respondents were in the animal feed industry, the referral of the dispute under section 200 of the LRA was invalid.

By **Juliette Vermeulen** (Candidate Attorney), and **Pierre van der Merwe** (Partner)

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The Court upheld the preliminary point and dismissed the application with costs. The Respondents appealed to the Labour Appeal Court.

THE LABOUR APPEAL COURT (“the LAC”)

The LAC held in the context of arbitration proceedings, that when exercising organisational rights such as the right to engage in collective bargaining, a trade union must establish that it has a right to act on behalf of workers by proving that they are its members and unions are limited to representing their members. However, in dismissal disputes, the workers are usually parties to the proceedings and as such employees have the right to choose a representative since different considerations apply, namely fairness.

The LAC overturned the Court’s decision and upheld the appeal. The Appellant appealed to the Constitutional Court.

THE CONSTITUTIONAL COURT (“the CC”)

The CC confirmed its decision in *National Union of Metal Workers of South Africa v Lufil Packaging (Isithebe) and Others* where it was held that a trade union is bound by its constitution and cannot admit members outside its defined scope.

Accordingly, the CC held that First Respondent lacked legal standing to represent the Second to Fourteenth Respondent in the Court because their employment in the animal feeds industry placed them outside the First Respondent’s scope and therefore the First Respondent did not have the authority to act of behalf of the Second to Fourteenth Respondent.

The Constitutional Court upheld the appeal and set aside the order of the LAC.

CONCLUSION

A trade union cannot represent employees in dismissal disputes, if such employees are not permitted to be members in terms of the trade union’s constitution.

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Pierre van der Merwe
(Partner)



Juliette Vermeulen
(Candidate Attorney)