



## CONSTITUTIONAL COURT OF SOUTH AFRICA

### **Transport and Allied Workers Union of South Africa obo its members v PUTCO Limited**

**CCT 94/15**

**Date of hearing: 10 November 2015**

**Date of judgment: 8 March 2016**

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#### **MEDIA SUMMARY**

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*The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.*

Today, the Constitutional Court handed down judgment in a matter concerning whether an employer can lock out members of a trade union that is not party to a bargaining council where a dispute has arisen and has been referred for conciliation.

The applicant, the Transport and Allied Workers Union of South Africa (TAWUSA), acting on behalf of its members, instituted urgent proceedings in the Labour Court, seeking an interdict against a lock-out effected by the respondent, PUTCO Limited (PUTCO).

In the Labour Court, TAWUSA argued that PUTCO was not entitled to lock out its members because they were not on strike. In response, PUTCO argued that the Labour Relations Act 66 of 1995 (LRA) entitled it to lock out all of its employees once a strike had commenced. This, PUTCO argued, was an implication of the collective bargaining scheme under the LRA. The Labour Court found for TAWUSA, holding that there was no basis in the LRA to imply that a lock-out could be directed at all employees. The primary purpose of a lock-out is to compel employees to accede to a specific offer by the employer. The Labour Court found that there was no dispute between the parties, given that TAWUSA was not party to the bargaining council where the dispute arose, being the South African Passenger Bargaining Council (Bargaining Council). Accordingly, no

offer had been made to TAWUSA's members. The Labour Court concluded that since a demand cannot be made of employees with whom the employer does not have a dispute; it was impermissible to lock out TAWUSA's members who were not on strike.

PUTCO appealed this decision to the Labour Appeal Court. The Labour Appeal Court held that PUTCO's lock-out of TAWUSA's members was lawful and reversed the decision of the Labour Court. It reasoned that the plain wording of the LRA was clear; once a union was on strike, all employees could be locked out for as long as they did not accede to the demand(s) of an employer. The Labour Appeal Court found that there were ongoing negotiations taking place at the Bargaining Council. Therefore, the outcome of these negotiations would bind all TAWUSA's members despite the fact that they were, at that time, unrepresented at the Bargaining Council. In addition, TAWUSA's members would benefit from any agreement reached through industrial action. PUTCO could accordingly lock out TAWUSA's members until they agreed to PUTCO's demand. Given its finding that there was a dispute between the parties, the Labour Appeal Court concluded that TAWUSA rejected PUTCO's demand and that the lock-out was lawful. Dissatisfied with this result, TAWUSA appealed to this Court.

In this Court, TAWUSA argued that the Labour Appeal Court incorrectly held that the lock-out was lawful. It contended that a lock-out notice cannot be lawfully served in terms of the LRA on a non-striking union because it is not a party to the dispute. TAWUSA contended that when there is no dispute between the parties, there can be no demand. Since an employer can only resort to a lock-out where it has made a demand, in the absence of a dispute between a union and an employer, the union's members cannot be locked out.

PUTCO, on the other hand, submitted that the Labour Appeal Court correctly decided the matter. In support of its view, it argued that TAWUSA was effectively a party to the ongoing dispute between PUTCO and the other unions at the Bargaining Council by virtue of the fact that the gains made by those unions would automatically apply to TAWUSA's members as well. PUTCO accordingly could, and did, make a demand of TAWUSA's members. PUTCO argued that this demand was rejected by TAWUSA, which accordingly entitled it to lock out its members.

In a unanimous judgment written by Khampepe J, the Court found that in order for an exclusion of employees from a workplace to amount to a lock-out in terms of section 213 of the LRA, that exclusion must serve the purpose of compelling the excluded employees to accept a demand. This means that a demand must have been made to the employees sought to be locked out. As no such demand was made in this case, TAWUSA's members could not be locked out.

The Court further found that even if PUTCO's conduct did constitute a lock-out for the purposes of section 213, it did not comply with section 64(1) of the LRA. The Court reasoned that because there had been no attempt at conciliation between PUTCO and TAWUSA, no industrial action, including a lock-out, was yet permitted. That TAWUSA had an interest in the outcome of the dispute at the Bargaining Council did not mean that it was a party to the dispute for the purposes of section 64(1).

Accordingly, TAWUSA's appeal was upheld with costs.