



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Reportable

Case No: JS696/14

In the matter between:

SHADRACK UMJWARA & OTHERS

APPLICANTS

and

TIGER BRANDS (PTY) LTD t/a Albany Bakeries

RESPONDENT

Heard: 24 - 26 October 2016

Delivered: 2 December 2016

Summary:

Claim for unfair dismissal. Claim dismissed. Conduct of the union representative. Costs — union official ordered to pay costs in person.

JUDGEMENT

MOOKI AJ

Introduction

- [1] The respondent dismissed the applicants. The applicants allege that their dismissal was unfair, both substantively and procedurally. They seek reinstatement and compensation.
- [2] The respondent raised the following as preliminary points in relation to the statement of claim, namely:
1. Ingubelaphambili Trade Union (“the trade union”), alternatively, the first applicant, had no locus standi to institute proceedings on behalf of the remaining applicants.
 2. The applicants are not properly cited as parties before the court.
 3. The CCMA certificate of non-resolution did not confer the court with jurisdiction to hear the dispute on behalf of all applicants.
 4. Compensation is not competent relief because some of the applicants were not permanent employees.
- [3] The respondent persistent with the following points when the matter came before court:
1. That the 10 individuals who did not append their signatures next to their names on the list of applicants are “applicants”; and,
 2. That reinstatement is inappropriate relief in relation to the dismissal the part-time and permanent employees.

[4] The respondent led the following evidence.

Evidence by Ravi Moodley

- [5] Mr. Moodley gave the following evidence. He is the general manager at the respondent's Sasolburg operations, where the respondent produces bread for sale. The dispute pertains to the respondent's Sasolburg operations, where the respondent dismissed the first applicant and other employees ("the applicants") following what the respondent declared an unauthorised work stoppage. The dismissals were referred to the CCMA. Conciliation failed.
- [6] The dismissals came about as follows. He received a call from the sales supervisor on 4 June 2013 at about 03:30 that the sales crew refused to work. The sales crew delivers bread produced at the facility. Deliveries are made daily between 02: 30 and 05:30.
- [7] He drove to the facility on receipt of the telephone call. He arrived to find the trucks loaded but standing on the loading bays. He, together with other managers, including Bernard Lobelo, had various discussions with shop stewards during which they implored the shop stewards to get employees to return to work. The first applicant was one of the shop stewards.
- [8] The shop stewards advised that employees were dissatisfied that they had no uniforms and that the respondent would no longer employ people without a matric. He suggested to the shop stewards that employees should make the deliveries whilst some of their number stayed behind to discuss with management. The suggestion was rejected and the employees continued their stoppage.
- [9] The employees had raised the two issues the previous day, at a meeting in which he was introducing the new sales manager. He told employees in that meeting that the issue of uniforms was an operational matter. He also told them that the respondent had adopted a policy that a matric was a minimum requirement for permanent employment.
- [10] Employees later added a third complaint, namely that he called drivers "kaffirs". He explained to the shop stewards that the respondent has a grievance procedure which was the way to deal with their grievance.

The shop stewards had been with the business for a long time and were familiar with the respondent's grievance procedure.

- [11] He denied calling anyone a 'kaffir'. The respondent conducted an investigation into the allegation. There was no evidence to support the allegation and he was cleared. An external person conducted the investigation.
- [12] Three ultimatums were issued to employees on 4 June 2016. The first ultimatum was issued at 05:00. He read the ultimatum, with Bernard Lobelo interpreting for employees. Employees were handed the ultimatum after it was read. The first ultimatum recorded that the work stoppage was illegal and called on workers to return to work by 05:30.
- [13] The workers did not return to work following the ultimatum. The singing and dancing got louder at 05:30. A second ultimatum was issued at 06:00. Employees had to return to work by 06:30. Management was willing to meet with workers to address their issues once the workers had returned to work. There was no compliance with this ultimatum as well.
- [14] Ms. Linda Tyanti, the human resources manager for Sasolburg, arrived at the facility between 07:00 and 07:30. She has a long relationship with the shop stewards. She sought to engage with the shop stewards, who repeated the two issues and stated that they were not prepared to talk to her. The sales staff were requested to provide alternatives and were reminded to do their job and be responsible to customers. They ignored the pleading.
- [15] A final ultimatum was issued at 07:30. The sales staff had to return to work by 08:30. They were told that their failure to return to work could result in their dismissal for engaging in an illegal strike. They were also reminded to use the established grievance procedure. The sales staff tore the notices into pieces.
- [16] 19 members of the production staff came on duty at 07:00. They too did not work but joined the sales staff. An ultimatum was issued to the production staff at 08:30, advising them that they were engaged in an illegal work stoppage and that they should return to work by 10:00.

They were warned that non-compliance would result in disciplinary action against them. They were also advised to use established grievance procedures to raise their concerns.

- [17] 11 of the production staff returned to work on the issuing of the ultimatum. A second ultimatum was issued to the remaining production staff at 10:00, calling on them to return to work by 10:30; failing which disciplinary action could be taken against them. There was no compliance. A final ultimatum was issued at 10:30, calling for a return to work by 11:30; failing which the employees could be dismissed. The ultimatum was ignored. Seven of the production staff were then issued with a notice suspending them and notifying them of a disciplinary hearing to take place on 6 June. The production staff refused to sign for their notices.
- [18] Mr. Luthuli, from the representative union, arrived at the premises at about 16:00. He was apologetic and stated that the union did not encourage the work stoppage. He asked whether workers could return to work. He was told that the respondent had commenced the suspension and disciplinary process and that a disciplinary hearing was scheduled for 6 June 2014.
- [19] He gave evidence that reinstatement would be inappropriate. The incident occurred on 4 June 2014 and hurt the business, with the respondent losing a million Rand worth of sales on that day. It took the respondent two and a half months to recover its brand and customer faith, all of which could have been avoided. The respondent had since replaced all positions. He could not work again with the dismissed employees.
- [20] Mr. Moodley gave the following evidence under cross-examination. He denied that workers did not work on 4 June 2014 because he took their keys on 3 June 2014. He stated that the meeting on 3 June was to introduce the new sales manager and that he requested keys on 4 June 2014 after the workers were issued with suspension letters.
- [21] He tried to engage the workers on 4 June by encouraging them to return to work and to discuss the issues that they raised; all of which

failed. It was put to him that the applicants would deny refusing to talk to him. He repeated that he engaged three of the four shop stewards, who acted as intermediaries with the workers and that the workers did not want to talk to him.

[22] Mr. Luthuli then put to Mr. Moodley that “you know me; why didn’t you call us?”, to which he replied that attempts were made to contact Mr. Luthuli and that the respondent sent a fax to the union. It was put to him that the union did not receive any letter.

[23] The following exchange then occurred between Mr. Luthuli and Mr. Moodley. Mr. Luthuli put to Mr. Moodley that: “I came at 13:30 after our members told us that the company had stopped them from working”; “I left Bloemfontein at 12:30 and I arrived before 2pm; “witnesses will say there was no strike the whole day”; “I was there at 13:30, not 4 pm”; “we were discussing at approximately 4:30 why you and Derrick stopped the workers”; “the company refused, in my presence, to meet and talk”. Mr. Moodley denied that Mr. Luthuli arrived at 13:30, stating that Bloemfontein was more than 300 km from Sasolburg and that Mr. Luthuli must have been driving a very fast car if he left Bloemfontein at 12:30 and arrived at Sasolburg at 13:30.

[24] He denied that workers were not on a strike or had no grievance. The staff were unhappy that they had not received uniforms in a year. The grievance about uniforms and the matric requirement was not documented. The grievance was documented only after the strike, when a document headed “workers complaints against general manager” was sent. He denied that he did not contact shop stewards. He repeated that he engaged with three of the four shop stewards.

[25] He denied that there was no ultimatum and that he read the ultimatum in English whilst Mr. Lebelo interpreted in Sesotho. He explained that workers refused to sign the suspension and disciplinary hearing notices. He repeated that Mr. Luthuli was apologetic on his arrival. He denied refusing to cooperate and to meet with the union and that it was the members of Mr. Luthuli’s union who refused to cooperate. He repeated that Mr. Luthuli was told that workers would not return to work

because they had been suspended and were to be put through a disciplinary process.

- [26] He denied that the strike did not take the whole day. He pointed out that the respondent is in the bread business and lost a day when bread was not delivered in the morning. He denied that it was business as usual on 5 June. He also denied that the fact that the respondent was using staff from a labour broker a day after suspending the applicants showed that the respondent had made prior arrangements to dismiss the applicants. He insisted that the respondent gave the labour broker its requirements and the labour broker made staff available. He denied telling the drivers on 3 June that he was dissatisfied with their duties or that he took their keys because he wanted new people.
- [27] He disputed that production staff did not join the strike. Their shift started at 07:00. They met and decided to join those on strike. He realised at about 05:00 that the drivers and the crew would not work. He then instructed production to stop because there were no drivers. The production staff who started on the 07:00 shift were needed for the plant that was to start at 11:00. The production staff told Lebelo that they were joining the sales crew. The Sasolburg production is a three-hour operation. It stopped at 05:00 because there was no space. It takes 3.5 hours for bread to get to production. The intention was for the plant to start at 08:00. The misconduct by the production staff was refusing to start production and by joining the sales crew.
- [28] He was unaware of production staff who were charged but were requested to return to work. It was put to him that the applicants would give evidence in that regard.
- [29] Mr. Moodley gave the following evidence on being cross-examined about the disciplinary enquiry. He was a witness during the hearing. The applicants and Mr. Luthuli attended the enquiry on 11 June 2014. The hearing was adjourned. The applicants and Mr. Luthuli did not attend the hearing when it resumed on 13 June 2014.
- [30] He denied that Mr. Luthuli, the union and the applicants did not know that the hearing was scheduled for 13 June. He referred to a fax sent to

Mr. Luthuli on 12 June 2014. The fax recorded that Mr. Luthuli confirmed his availability on 13 June. The fax further recorded that the respondent would oppose any application to postpone the hearing. He disagreed that the services of the applicants were terminated without an opportunity to put their case to the respondent.

[31] Mr. Moodley gave the following evidence on his re-examination. The union was sent a fax on 4 June 2016 at 14:12, recording the names of workers who engaged in the illegal work stoppage. The fax also recorded the names of employees suspended from duty pending the outcome of a disciplinary hearing scheduled for 6 June 2014.

[32] The sales crew leave at about 03:00 and return between 10:00. Those who drive further returned after 10:00.

[33] He gave evidence that Mr. Luthuli's sudden alleged unavailability on 13 June 2014 was part of an attempt to derail a fair and proper disciplinary process. The 12 June fax to Mr. Luthuli advised that the meeting scheduled between Mr. Luthuli and the respondent's executive management on 13 June had been rescheduled. That was to allow Mr. Luthuli to attend the hearing on that date. The fax stated that the respondent will oppose a request for a postponement and that the hearing would otherwise proceed in the absence of the applicants.

Evidence by Ms. Linda Tyanti

[34] She is the respondent's HR manager. The union raised grievances concerning various issues in August 2013. The grievances included the development of employees, promotions and uniforms. The delay in issuing the uniforms was explained, namely that the problem lay with the supplier. The grievances were resolved on 22 and 23 August 2013. One of the resolutions was that a matric would be the minimum requirement to be employed by the respondent.

[35] A process was agreed on managing grievances, including that shop stewards were free to call her at any time. She developed a relationship with shop stewards, who knew to call her because she would resolve issues with management.

- [36] She received a missed call from Mr. Moodley at about 04:20 on 4 June 2014. She returned his call and was informed that employees were engaged in an illegal work stoppage. She then made her way to Sasolburg. She called the first applicant whilst en route to Sasolburg to establish why staff were refusing to work. The first applicant told her that staff were unhappy about several issues, including uniforms, registration of casuals and the behaviour of management. She told the first applicant that she was on her way and asked him to convince staff to return to work and that she would try to have their issues resolved. She also called Mr. Luthuli whilst still on her way to Sasolburg. Mr. Luthuli was unavailable. She sent him an SMS.
- [37] She arrived to find employees in the yard. Some were signing and others were chanting. There were pieces of paper thrown about. Mr. Moodley told her that the papers were notices served earlier on the staff. She was present when the third ultimatum was issued. She saw staff tearing the documents. Others refused to take the ultimatum.
- [38] A fax was sent to the union at 07:49, for Mr. Luthuli's attention. The fax recorded that the sales staff had been engaged in an illegal work stoppage since 03:30 and that management advised staff to return to work but that they refused. The union was asked to intervene because the respondent was incurring huge losses. The union did not respond. The staff continued outside until 13:30, when they told management that Mr. Luthuli was on his way.
- [39] Staff were given suspension letters and notices to attend a disciplinary hearing. This was done after the third ultimatum. Staff refused to sign for their notices. The bakery manager signed the letters. Workers tore the notices as they did with previous documents.
- [40] Mr. Luthuli was sent a fax at 14:12 on 4 June recording that the listed individuals had been suspended and were to attend a disciplinary hearing on 6 June 2014. Elias Masegare, whose name appears as number 4 under production staff, did not participate in the stoppage. The names of individuals who were said to have been asked to return to work do not appear on the list sent to the union on 4 June.

- [41] The union representatives had not arrived at Sasolburg when the fax was sent at 14:12. Mr. Luthuli arrived approximately between 16:00 and 16:15 in the afternoon. The site shop steward and other union officials accompanied him. The union was advised of what happened. A meeting then took place between the union officials and members of management. Mr. Luthuli apologised and said that he did not condone what the staff had done. He asked whether the staff could return to work whilst the union and the respondent discussed the issues. He was advised that the respondent had started the disciplinary process and that the process had to be seen to conclusion.
- [42] Mr. Luthuli indicated during the meeting that employees refused to work because they had grievances which they needed resolved. Mr. Luthuli knew how the respondent operated in relation to grievances. He was a party to the agreement.
- [43] Mr. Luthuli was advised on 9 June 2014 that the disciplinary hearing was postponed to 11 June. He was advised that the hearing would proceed should the applicants and union official fail to attend. This communication was sent to Mr. Luthuli at 08: 38. He replied on 10 June 2014, stating the following:
- “We have noted all the contents of your letter but it is denied that your company is to proceed with the hearings of these masses (sic) accused. The Trade Union wrote a letter to the CEO Peter Matlare about this incident that took place on 4 June 2014 after all suspended employees reported that the person that caused the workers to not (sic) continue working on 4 June 2014 was the same branch manager Mr. Ravi who called all black Africans working at Sasolburg “kaffirs”. Mr. Ravi also caused a workman to lose his arm (injured on duty) by forcing him to put his hand while the machine was operating. This resulted in all the suspended workers filing a grievances petition against him which he refused to take but considered calling the workers “kaffirs”.
- [44] She replied to Mr. Luthuli’s letter, repeating that the disciplinary hearing would continue as planned on 11 June 2014 and urged the union to

attend. She sent the letter at 13:22 on 10 June 2014. The hearing did commence on 11 June 2014 but wasn't concluded. It was agreed that the hearing would continue on the 13th of June.

- [45] The union wrote to the respondent on 12 June 2014 requesting that the hearing on 13 June be postponed because Mr. Luthuli was unavailable. Mr. Luthuli was aware that the hearing was scheduled for 13 June. The respondent replied on the same day, stating that the chairman would be asked that the hearing proceed in the absence of the applicants. The letter further stated that it was agreed on 11 June that the union will advise all affected employees of the set down. The respondent sent another fax to the union at 16:47, stating that the respondent would oppose any application for a postponement.
- [46] The union and the suspended employees did not attend the hearing on 13 June. The respondent led evidence. The chairman found the employees guilty. He directed that submissions be made in relation to aggravation and mitigation. The union did not make submissions on mitigation factors. The chairman recommended dismissal as a sanction. He pointed out that employees had the right to appeal. None of the employees appealed.
- [47] She gave evidence on various names whom the applicants included as part of the claimants. She pointed out that not all the people on the claimant list were dismissed on 18 June 2018. She also pointed out that some of the names on the list were not employees of the respondent. The respondent did not challenge the identity of applicants at the CCMA because the parties never got to that point.
- [48] Ms. Tyanti gave the following evidence under cross-examination. She repeated her evidence that employees were refusing to work; that employees were not working when she arrived at the premises; that she called the first applicant before arriving at the premises and engaged him on her arrival. Her phone record will show that she spoke with Mr. Luthuli and the first applicant.
- [49] She maintained that employees stated on 4 June 2014 that they had a grievance. She also maintained that employees were on a strike

because they withdrew their labour without following an approved process. She did not know about Mr. Moodley taking keys or that he admitted taking keys.

[50] She denied that the union was not contacted. She tried to get hold of Mr. Luthuli and sent him an SMS. She eventually sent him a fax, which is the mode of communication between the union and the respondent. She referred to her phone record and confirmed the telephone numbers that she used to contact Mr. Luthuli and the first applicant. She gave evidence on the time at which she called them or sent them text messages; all of which was in the morning of 4 June 2014.

[51] Mr. Luthuli put to her that he does not have a mobile phone and that he uses a landline. She replied that she called Mr. Luthuli using the mobile number that Mr. Luthuli gave her. She added that she has used the same mobile number in the past to speak to Mr. Luthuli. She uses both the mobile number and the landline to contact Mr. Luthuli.

[52] She repeated her evidence regarding what happened once Mr. Luthuli arrived. She denied that the respondent refused to cooperate with the union, but that it was explained to Mr. Luthuli that the process had started. She denied that the respondent intended to be rid of the workers because of its lack of cooperation with the union. She repeated her evidence that employees were given ultimatums, which they tore. It was put to her that employees will deny tearing the ultimatums.

[53] She denied that employees were terminated without a hearing. Employees had several opportunities to make their case. They knew of the hearing on 13 June. Mr. Luthuli was aware that the hearing was taking place on that date. Mr. Luthuli put to her that employees would deny being told about the hearing on 13 June and that he was unaware of the date of the 13th. She replied that Mr. Luthuli was aware. She referred to various letters in this regard.

Evidence by Derrick Thalaivirsan

[54] Mr. Moodley called him in the morning, stating that there was a work stoppage at Sasolburg. He then drove to Sasolburg from the East Rand. He arrived at Sasolburg at about 07:00. A work stoppage was in

progress. The site was full of trucks, which is not usually the case. Staff were congregated in the open space, with some milling about and others chanting and singing.

- [55] He tried to get hold of the union and sent a notice to the union about the stoppage. The union official arrived in the afternoon.
- [56] He was present when the second and third ultimatums were issued. He was also present when employees were given notices of suspension and to attend the disciplinary hearing. Mr. Luthuli was sent a letter advising him that a scheduled meeting between him and management had been cancelled. Mr. Luthuli was then free to attend the disciplinary hearing.
- [57] He gave the following evidence under cross-examination. He spoke to Mr. Moodley and asked if he engaged the staff, which he did. He agreed that the first ultimatum was drafted before he spoke to employees. He denied that he did not talk to the workers. He attempted to do so.
- [58] He did not issue the ultimatums himself. They were issued by Mr. Moodley and Herman, the sales manager in charge of the drivers. The ultimatum was for the staff to return to work.
- [59] He was asked whether Mr. Moodley told him that he (i.e. Mr. Moodley) requested drivers to return their keys. He did not recall this. He was also asked whether Mr. Moodley told him that he (i.e. Mr. Moodley) instructed production to stop. He replied that production was stopped because of space concerns.
- [60] He denied that there was no strike or that employees were standing because they were stopped from doing the job. The drivers refused to deliver stock. He was awoken early, drove to Sasolburg, spent the whole day at Sasolburg, and left after dark.
- [61] The following exchange occurred between him and Mr. Luthuli: “What time did Luthuli arrive?”, “What happened when Luthuli arrived?”, “Luthuli did not apologise – he asked why workers were not working; you did not answer me”, “what were my exact words regarding the

situation”, “did you contact the union or spoke to Luthuli before he arrived?”, “Why were you trying to get hold of Luthuli?”.

- [62] He did not recall speaking to Mr. Luthuli before he (i.e. the witness) arrived at the site. He recalls sending a fax to Mr. Luthuli in the morning. The fax failed repeatedly but finally went through. Mr. Luthuli arrived between 15:00 and 16:30. He apologised on arrival and said he would speak to the staff. He denied refusing to allow the workers to return to work. The respondent had already handed out suspension letters when Mr. Luthuli asked whether workers could be allowed to return to work. At least 12 hours had elapsed since the respondent tried to get staff to resume their duties.
- [63] It was put to him that there was no reason to institute a disciplinary hearing before the union officials arrived. He replied that the respondent followed its own procedure. He continued that Mr. Luthuli was remiss because he could have arrived hours earlier but did not. The respondent tried to resolve the matter and were left with no choice after 12 hours had elapsed. He computed the 12 hours on the basis that trucks depart the site at about 03:00 in the morning, which did not happen, and that Mr. Luthuli arrived between 15:00 and 16:30. The staff were breaking the rules.
- [64] He denied that some employees and production were allowed to return to work. He pointed out that some production staff heeded the ultimatum and returned to work. He could not recall people who are charged being asked to return to work. He denied that the respondent had already decided to dismiss employees only because the respondent could get workers from labour brokers. He pointed out that labour brokers had a multitude of people available at any time.
- [65] It was put to him that the applicants would lead evidence that the manager took their keys because he was unhappy with their service. He replied that that was never pointed out as a reason for the workers not working.
- [66] He denied that employees were dismissed without a hearing. The hearing was postponed on several occasions. The date of the 13th was

confirmed in writing. The union had an excuse about the 13th but was told that there was no conflict on that date.

[67] He confirmed, in re-examination, that the union was sent a list of employees suspended on 4 June 2014.

Evidence by Shadrack Umjwara

[68] He was employed as a truck driver. Mr. Moodley told sales employees in a meeting on 3 June 2014 that he was unhappy with sales and asked all drivers to return their keys. He gave Mr. Moodley his keys. He went to work as usual the following day. He did not work because he was refused keys. He did not find the keys from where they are normally kept. They asked Mr. Moodley about the keys. He told them that he was unhappy with their sales. No one was doing sales on that day.

[69] There was no strike or a refusal to work on 4 June 2014. No one was working on 4 June 2014 because the keys were taken from them. Mr. Moodley did not ask what was going on. The production staff did not start their shift at 07:00 because Herman Lobelo told them that Mr. Moodley had stopped the production plant.

[70] They decided to call the union leadership. They were told that the leadership was in Bloemfontein and would come. The union officials arrived at 13:30 and met with the shop stewards and the Sasolburg representatives. The company did not allow the union to talk about what happened. Employees were suspended before the union arrived. The respondent told the union that they had been suspended and were to attend a disciplinary hearing. He did not receive any document from the respondent.

[71] He denied speaking to Linda Tyanti on 4 June 2014. He did not have his phone with him as he left the phone in his car for safekeeping. He also denied that Derrick Thalavirsan spoke to the workers; or that he spoke to Abram Lobelo.

[72] There was no disciplinary hearing before he was dismissed. They did not receive documents inviting them to a hearing on 13 June and is

unhappy about how they were dismissed. He seeks reinstatement and compensation.

- [73] Shadrack Unjwara gave the following evidence under cross-examination. He was a shop steward for five years before his dismissal. The union had monthly meetings with management. He denied that the meeting on 3 June was a meeting of the employer; as opposed to a meeting of employees. He does not know why it was not put to Mr. Moodley that the meeting on 3 June was not to introduce Herman du Plessis.
- [74] He denied that grievances were mentioned in the meeting on 3 June 2014 or on 4 June 2014—there was no mention of uniforms or of grade 12 and that these issues were raised in 2013. He was referred to paragraph 3 of the third ultimatum, stating that grievances be dealt with in terms of the grievance procedure. He maintained that no grievances were raised on 4 June.
- [75] He left the keys at the gate. They usually get the keys from security. Security told them on 4 June that the keys were not there. They “stood there” and did nothing because their manager told them the previous day that he was dissatisfied. He did not ask for the keys because of what was said the day before. He could not ask Mr. Moodley for the keys because Mr. Moodley said on 3 June that he was unhappy with their performance and that there were people who could do their work.
- [76] He denied any contact with Mr. Moodley, Ms. Tjanti and Derrick on 4 June. Mr. Moodley went to the office on his arrival and did not go to the workers. Both Ms. Tjanti and Derrick went straight to the office on their arrival. He did not ask to speak to his counterpart from management.
- [77] He contacted the union between 10:00 and 11:00, using another employee’s telephone.
- [78] He denied receiving a suspension notice or a notice to attend a disciplinary hearing. He was asked why he did not go to work on 5 June if he did not receive the suspension letter. He replied that the union and management told them, in a meeting with management, to stay home because they were suspended. He was told that they were

suspended according to the letters that management had during a meeting with management, the union and other employees. Only management had the letters.

- [79] He denied that employees were issued with ultimatums or that the ultimatums were read to employees. Management did not engage workers on the ultimatum.
- [80] He denied that the union officials received a fax with a list of suspended employees that was sent on 4 June because the officials were in Bloemfontein. He later said the union officials did not receive the fax because the officials were in Sasolburg when the fax was sent. There was no one at the union's Johannesburg office.
- [81] He was asked why he said he telephoned the union if there was no one at the union's office. He replied that they had, at midday, the telephone number for Mr. Luthuli's driver. He later stated that the union representative was called at about 10:00 and that they arrived at 13:00.
- [82] He agreed that Ms. Tyanti made calls to his mobile number. He denied that Ms. Tyanti spoke to him on the phone. The seven-minute call shown in Ms. Tyanti's phone record perhaps went to his voicemail. He had left his phone in the car.
- [83] The union did not draw his attention to the respondent's letter of 9 June recording that the hearing would resume on 11 June 2014. The union drew his attention to Mr. Luthuli's letter of 10 June 2014. He did not know about the respondent's response to Mr. Luthuli's letter of 10 June. He was unaware that the respondent communicated with the union.
- [84] He was present at the hearing on 11 June, including when Mr. Moodley gave evidence. He was not informed about the respondent's letter to Mr. Luthuli on 12 June. He did not know about the agreement that the union would advise employees about dates for the hearing. He was unfamiliar with correspondence exchanged between the union and the respondent regarding the hearing scheduled for 13 June. The union did not inform him of the letters of 12 June and about the contents of those

letters. The union did not alert him to the outcome of the disciplinary hearing or alert him to his right to appeal.

[85] He was not re-examined. The applicants did not call further witnesses and closed their case.

Analysis

[86] It is unnecessary to consider the points in limine given the conclusion reached by the court. This should be apparent from the remarks by the court as set out below.

[87] The applicants engaged in a work stoppage on 4 June 2014. The stoppage was unauthorised. Officials of the respondent sought to engage with the applicants, including that deliveries be made whilst talks took place between members of management and representatives of the applicants. The contention on behalf of the applicants and evidence by the first applicant that there was no work stoppage are unfounded.

[88] The applicants did not explain why Ms. Tyanti and Mr. Thalaivirsan, who drove from the East Rand to Sasolburg, became obliged to attend at the respondent's Sasolburg premises on 4 June 2014 if there was no work stoppage. This is more so given phone records showing that Ms. Tyanti contacted the first applicant and Mr. Luthuli in the morning of 4 June 2014.

[89] I do not accept the first applicant's evidence that employees did not work on 4 June 2014 because Mr. Moodley took their keys as he was dissatisfied with the applicants and wanted new people to do their job. The issue of the keys is a red herring. The first applicant gave evidence that he gave Mr. Moodley his keys on 3 June 2014. He later said the keys were left with security and that the keys were not with security when he came to work on 4 June 2014. The first applicant could not have expected the keys to be with security when, according to his earlier evidence, Mr. Moodley confiscated the keys on 3 June 2014.

[90] The failure by the first applicant and other employees to work on 4 June 2014 had nothing to do with Mr. Moodley taking their keys. The applicants engaged in a work stoppage because they had a grievance

about uniforms and because the respondent had determined that a matric was a basic requirement for employment.

[91] The first applicant's denial that employees stoppage did not raise grievances on 4 June 2014 has no merit. The applicants, or the trade union on their behalf, addressed a document to the respondent, dated 4 June 2014 and styled "workers complaints against general manager". The document lists 14 complaints against Mr. Moodley, including that:

91.1 "Registration [workers must be registered without a matric]";

and

91.2 "Thandisizwe Ntyatho was injured at work and his right-hand has been amputated because they are told (sic) to put the hands on a moulding machine cannot stop them."

[92] The above-mentioned document is important for the following additional consideration. The document does not record that drivers could not work on 4 June 2014 because Mr. Moodley took their keys. The absence of reference to the "taking of the keys" in this document fortifies my conclusion that there is no merit in this complaint by the employees. It would have been an obvious subject to record as part of the complaints against Mr. Moodley. Similarly, Mr. Luthuli wrote to the respondent on 10 June 2014. He recorded in paragraph 2 of his letter that workers did not continue working on 4 June 2014 because Mr. Moodley called all black Africans working at Sasolburg "kaffirs" and that Mr. Moodley "also caused a workman to lose his arm (injured on duty) by forcing him to put his hand while the machine was operating." Mr. Luthuli did not state in that correspondence that the stoppage was due to Mr. Moodley having taken the keys of the drivers.

[93] The conclusion is inescapable that the first applicant and other employees engaged in an unauthorised work stoppage on 4 June 2014. I am satisfied that the respondent gave the applicants multiple opportunities to return to work, as set out in the various ultimatums issued on the day. I reject the first applicant's denial that the respondent did not issue ultimatums. This denial is of the same order

as his evidence that no grievances were raised on 4 June 2014 and that drivers could not render services because Mr. Moodley took their keys.

- [94] The respondent advised the trade union in the afternoon of 4 June 2014 that its members, as listed on a document sent to the trade union on that day, had been suspended and were to be subjected to a disciplinary enquiry on 6 June 2014. This list excludes individuals who are said to have been suspended and later requested to return to work. It bears pointing out; however, that the first applicant did not give evidence that the respondent re-employed anyone on the list sent to the trade union on 4 June 2014. There was no evidence to support the version put to witnesses for the respondent in this regard.
- [95] The first applicant and other employees had not, prior to their stoppage on 4 June 2014, complied with prescripts that might otherwise have entitled them to withhold their labour at no risk of being dismissed. The respondent was justified in subjecting them to a disciplinary process.
- [96] Mr. Luthuli, the representative of the applicants, knew that the disciplinary hearing was scheduled to continue on 13 June 2014. The hearing was rescheduled to 11 June 2014 from 6 June 2014. The respondent wrote to Mr Luthuli on 9 June 2014, reminding him and the trade union that the hearing was taking place on 11 June. Mr. Luthuli replied, stating, among others that the hearing be postponed until the issues mentioned in his letter had been referred to the respondent's head office. The respondent replied and maintained that the hearing would proceed on 11 June 2014.
- [97] The hearing did take place on 11 June 2014. It was not concluded. The respondent wrote to Mr. Luthuli on 12 June 2014 that the hearing would resume on Friday, 13 June 2014. The letter recorded that the trade union agreed on 11 June that [it] "will advise all affected employees of the set down".
- [98] The respondent wrote to the trade union on 12 June that the meeting between it and members of the executive of the respondent scheduled for 13 June 2014 had been cancelled and that Mr. Luthuli was now

urged to attend the disciplinary hearing on that date. The letter also recorded that the trade union should send another representative should Mr. Luthuli be unavailable. The letter concluded by recording that the respondent will ask the chairman to proceed with the hearing should employees and their representative choose not to attend. This correspondence was faxed to the union at 09:31 on 12 June 2014.

- [99] The trade union replied, also on 12 June 2014, indicating that Mr. Luthuli was unavailable on 13 June 2014 because he had a matter at the CCMA in Johannesburg. It bears noting that Mr. Luthuli's previous scheduled engagement on 13 June was to attend a meeting at the respondent. There was no reference to him also having to attend at the CCMA on the same date.
- [100] The hearing resumed on 13 June 2014. Neither Mr. Luthuli nor the applicants attended. The respondent led evidence. The chairman considered the evidence and issued his findings on 15 June 2014. He found the applicants guilty of gross misconduct. He directed the parties to submit mitigating and aggravating factors. The trade union did not submit mitigating factors.
- [101] The chairman issued his sanction and recommended that the applicants be dismissed. He drew attention to the fact that employees had the right to appeal in terms of the respondent's policy. None of the applicants lodged an appeal. The first applicant gave evidence that the trade union did not alert him to the outcome of the hearing or that he had a right to appeal.
- [102] I am satisfied that the respondent provided the applicants with the opportunity to state their case in relation to the events of 4 June 2014. Mr. Luthuli, on behalf of the trade union, undertook to communicate the dates for the hearing to the employees. Mr. Luthuli was aware that the hearing was scheduled for 13 June 2014. He did not communicate this fact to the applicants. The respondent cannot be faulted for Mr. Luthuli's ineptitude.
- [103] It is startling that Mr. Luthuli put to Linda Tyanti that the applicants would deny being told that the hearing would take place on 13 June

and that he himself was unaware of that date. To the extent that the applicants were unaware of the date of 13 June, as it was the evidence of the first applicant, this is a matter between the trade union, and Mr. Luthuli in particular, and the applicants. There was no evidence to contradict that the trade union, no doubt in the person of Mr. Luthuli, would advise the applicants of the sitting of the disciplinary hearing. Mr. Luthuli did not, in his letter dated 12 June 2014, contest that he was aware that the hearing was rescheduled to 13 June 2014. He also did not contest that he undertook to notify the applicants of the date of the hearing.

[104] I find that there is no merit to the complaint that the applicants were dismissed without an opportunity to state the case.

[105] Mr. Luthuli conducted himself in an appalling manner. That was the case despite him clearly being familiar with the litigation process; both in terms of the preparatory aspects and the actual conducting of the case in court. He is aware, for example, that a litigant must put a version in relation to the issues in dispute. He is aware that a representative acting on behalf of a litigant is not allowed to bring his person into the dispute; as opposed to putting a version for which witnesses will be called to provide evidence in support of such a version. All this notwithstanding, Mr. Luthuli put a version for which witnesses were not called. More fundamentally, Mr. Luthuli put his person in the dispute by putting to witnesses for the respondent what he himself did or did not do in relation to the dispute between the litigants. The court cautioned him on numerous occasions in this regard, including that he knew how to conduct proceedings and that he should not impose his person precisely because he was not going to give evidence as he was acting as a representative of the applicants. The admonition by the court was informed by, among others, what is recorded in paragraphs 22, 23, and 61.

[106] The court cannot define for litigants how they make their case. The court will not however take kindly to the process of court being effectively abused. I consider that this is precisely what occurred in the

manner in which Mr. Luthuli conducted himself and how he conducted the case on behalf of his clients. He did not do justice to his clients, who may want to consider their position in this regard.

[107] The applicants are unsophisticated members of the public. They reposed their trust and confidence not only on the trade union, but on the person of Mr. Luthuli. They have been let down, and badly so. The respondent became obliged to defend the claim made against it. The claim has been shown to lack merit. The respondent is entitled to being made good for costs incurred defending the claim. The applicants are men of straw. They have been hard done by their trade union and by Mr. Luthuli. The court does not see why the applicants should be saddled with costs.

Order

[108] I make the following order:

- 1.1. The claim is dismissed.
- 1.2. Mr. E Luthuli, the representative of the applicants, is ordered to pay costs.

Omphemetse Mooki

Judge of the Labour Court (Acting)

Appearances:

For the applicants: Mr. E. Luthuli (union official)

For the respondent: S. Kazee, instructed by William Berry Attorneys