

## Can a union suspend a strike and take it up again?

By Johanette Rheeder

Unions may want to use different tactics when on strike, to enhance the collective effect thereof. One such tactic is to suspend and start the strike again when it feels it can have the best effect and hurt the employer the most. The question that arises is whether, for the strike to remain protected, whether it must the matter be referred back to the CCMA if they wish to strike again after the initial 48-hour notice?

In the judgment of *Moloto*<sup>[1]</sup>, the Court dealt with the requirements for a valid notice in terms of Section 64(1) (b) of the LRA and held as follows:

*“That section 64(1)(b) does not go beyond the requirement of giving notice of commencement of the strike, has been accepted and followed in many Labour Court cases, often in a generous manner. The notice need not specify the precise time of the day when the strike will start. Employees are not obliged to commence striking at the time indicated in the notice. If employees who have already commenced striking temporarily suspend the strike, they need not issue a fresh notice to strike or refer the dispute for conciliation again. Where strikers have given insufficient time in their original notice, but cured that in a later notice, the time given in the two notices is taken cumulatively*

*So-called 'grasshopper' strikes - brief repetitive work stoppages - do not require fresh notices. Provided that the strike notice sets out the issue over which the employees will go on strike with reasonable clarity, these cases show that orderly collective bargaining and the right to strike, in its proper sense as a counter-balance to the greater social and economic power of employers, has been considered to be well served by the acceptance of a single strike notice.”(my emphasis)*

It also seems clear that a once-off notice is sufficient in the case of a strike continuing, as long as the strike is not ceased in totality but only suspended and clearly not abandoned, it is not a requirement that a new strike notice be served or the dispute be referred afresh.

When the strike notice is considered it is not the amount of time it is served that is crucial but the purposive approach adopted by the Labour Appeal Court, which requires that a strike notice should sufficiently and clearly articulate a union's demands, so as to place the employer in a position where it can take an informed decision to resist or accede to those demands. In other words, the employer must be in a position to know with some degree of precision which demands a union and its members intend pursuing through strike action, and what is required of it to meet those demands<sup>[2]</sup>.

In the case of *Transportation Motor Spares*<sup>[3]</sup>, the union members suspended a strike to continue with retrenchment consultations. The court found as follows:

*“I am of the opinion that the language used by the legislature in enacting sec 64(1)(b) does not permit the interpretation that a second strike notice must be given before the resumption of a strike which was previously suspended. Whereas sec 64(1)(b) relates to a notice of the commencement of a strike, the second notice would not be a notice of the commencement of the strike but a notice of the resumption of the strike. In my view the second notice would not qualify as a sec 64(1)(b) notice..” and “While it is true that one of the primary objects of the Act is to promote orderly collective bargaining, this does not mean that simply because a particular strike disrupts the employers’ business, collective bargaining is rendered disorderly. I say this because a strike is, by its very nature, disruptive. The legislature wanted to ensure that, before a strike can be resorted to, various steps would have been taken to try and avoid it because of the harm and pain it may inflict. There is a possibility that conciliation can help avoid that. Once attempts through conciliation to avoid the strike have failed, and the workers are determined to strike, before the strike can commence, the legislature gives the employer the last opportunity to avoid the strike or to prepare for it. It does this by requiring that a written notice of the commencement of the strike be given.”*

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<sup>[1]</sup> See *Ceramic Industries Ltd t/a Betta Sanitary Ware v National Construction Building and Allied Workers Union (2)* (1997) 18 ILJ 671 (LAC) at 676 ; *Equity Aviation Services (Pty) Ltd v SA Transport and Allied Workers Union and Others* (2009) 30 ILJ 1997 (LAC) at para 146 ; *Moloto* (supra) para 89 – 90

<sup>[2]</sup> *SA Airways (Pty) Ltd v SA Transport and Allied Workers Union* (2010) 31 ILJ 1219 (LC) at para 27

<sup>[3]</sup> supra