

Employment Law

ALERT | 25 November 2024



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SOUTH AFRICA

Section 189A: Must there be compliance with your internal collective agreement before embarking on strike action?

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Section 189A: Must there be compliance with your internal collective agreement before embarking on strike action?

On 13 November 2024, ArcelorMittal South Africa (Pty) Ltd (AMSA) launched an urgent application to declare intended strike action by the National Union of Metalworkers of South Africa (NUMSA) and the General Industries Workers Union of South Africa and their respective members (employees), scheduled to commence at 05h00 on Thursday, 14 November 2024, unprotected and to interdict and restrain them from participating in the intended strike action.

The urgent strike interdict application was initiated due to the termination of the employees' contracts of employment, issued on 5 November 2024, following a facilitated large-scale retrenchment process. In response to the retrenchments, NUMSA issued a strike notice and demanded the reinstatement of the employees in terms of section 189A(7)(b)(i) of the Labour Relations Act 66 of 1995 (LRA).

The interdict was sought against two categories of employees: those who worked in the maintenance service and all other employees. An interim interdict was granted in favour of AMSA against employees who worked in maintenance services on the strength of a ruling by the Essential Services Commission which declared certain operations at AMSA to be maintenance services.

In relation to non-maintenance employees, the court had to determine whether the trade unions were required to follow the agreed dispute resolution procedures in the collective agreement. The court held that they were not obliged to do so.

AMSA argued that the strike was unprotected as NUMSA failed to follow the provisions of the collective agreement, which prescribed a dispute resolution procedure, prior to issuing a strike notice, nor had it referred the dispute to the Commission for Conciliation, Mediation and Arbitration (CCMA).

Findings

First, the court interpreted the dispute resolution procedure contained in the collective agreement as lacking the requisite clarity and precision to encompass or regulate disputes arising from large-scale retrenchments as contemplated under section 189A(7)(b)(i) of the LRA.

Second, the court held that even if the collective agreement included a dispute resolution mechanism specifically addressing disputes related to large-scale retrenchments, and such a mechanism sought to limit the rights conferred by section 189A(7)(b)(i), it is questionable whether such a limitation would withstand constitutional scrutiny. The court emphasised the importance of enforcing collective agreements to promote industrial peace, noting that parties who voluntarily agree to limit certain rights must generally be held to those agreements. However, any such limitation must not negate or unjustifiably restrict the rights and obligations enshrined in the LRA or any other applicable law.

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The court further clarified that parties cannot contractually exclude the application of the LRA or impose unjustifiable limitations on the rights of one party. Specifically, in the context of large-scale retrenchments, time is of the essence, and the enforcement of a dispute resolution mechanism that delays employees' right to strike under section 189A(7)(b)(i) would undermine this statutory entitlement.

If, however, the employees had chosen to challenge the fairness of their dismissals as opposed to embarking on industrial action they would have been required to first refer a dispute to the CCMA. We dealt with this issue in our alert dated in September 2024, which you can read [here](#).

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The logo for 'The Legal 500 EMEA 2024' is displayed in white text on a dark blue background. The words 'The LEGAL 500' are stacked, with 'The' in a smaller font above 'LEGAL', and '500' in a large, bold font below 'LEGAL'.

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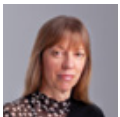
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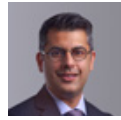
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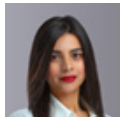
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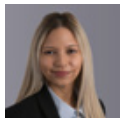
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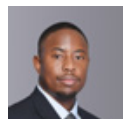
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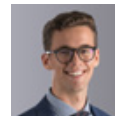
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Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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