



## CONSTITUTIONAL COURT OF SOUTH AFRICA

### **South African Transport and Allied Workers Union and Others v Moloto & Another**

**Case no.: CCT 128/11  
[2012] ZACC 19**

**Date of Hearing: 10 May 2012  
Date of Delivery: 21 September 2012**

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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.*

On 21 September 2012 the Constitutional Court handed down judgment in a case concerning the proper meaning of a provision of the Labour Relations Act (LRA) about whether every employee who intends to strike is required to give notice of that intention to the employer beforehand.

In November 2003 the South African Transport and Allied Workers Union (the Union), the majority union for employees of Equity Aviation Services (Pty) Ltd (Equity), referred a wage dispute to the Commission for Conciliation, Mediation and Arbitration (CCMA), but no resolution was reached. The Union served Equity with a strike notice as required by the LRA. The Union members embarked on a strike in which other employees who did not belong to the Union and who had not themselves given a strike notice also participated. Equity took the view that the participation of the latter group of employees in the strike was unlawful and requested them to return to work. They did not and Equity dismissed them for unauthorised absenteeism.

The Labour Court found, in favour of the workers, that the dismissals were automatically unfair, because the dismissed employees were not required to be members of the Union or to give notice themselves in order to strike lawfully. The majority in the Labour Appeal Court (LAC) held that if a union has given the requisite notice on its members' behalf who embark on a strike, other employees who are not members of that union need not give notice for their strike action to be lawful. Equity appealed to the Supreme Court of Appeal (SCA), which reversed this decision and held that a separate notice must be given by non-union members in

order for their strike to be protected. The SCA concluded that the dismissals were therefore not automatically unfair.

In the Constitutional Court, the Union challenges the SCA's purposive interpretation of the relevant section of the LRA, while Equity argues in favour of it. The Union submits that the majority in the LAC was correct and that no notice is required from non-unionised employees. Equity argues that the SCA was correct in holding that such notice is required.

In a majority judgment per Yacoob ADCJ, Froneman and Nkabinde JJ, the Court held that the right to strike and the specific purpose of the notice provision in the LRA requires nothing more than 48 hours notice in advance of a strike. The Court held further that this interpretation of the relevant provision conforms better with the spirit, purport and objects of the Bill of Rights. To hold otherwise would place a greater restriction on the right to strike of non-unionised employees and minority union employees than on majority union employees. The majority granted leave to appeal, which it upheld.

In the minority judgment by Maya AJ, it was held that there is no reason to interfere with the decision of the SCA. The absence in the notice provision of the LRA of express identification of those who must issue a strike notice and who it must cover creates an ambiguity that cannot be cured by a literal interpretation of the section. The minority held that the purpose of a strike notice is to give the employer an indication of which of its employees might strike, in order for it to prepare for the impending power play. The minority concluded that it is essential that a strike notice indicates who is covered by the notice, and the strike notice in question did not comply with this requirement as far as non-union employees were concerned. The dismissed strikers' participation in the strike was, therefore, unlawful and their dismissal was not automatically unfair. While granting leave to appeal, it held that the appeal must fail.