



## CONSTITUTIONAL COURT OF SOUTH AFRICA

**National Union of Metalworkers of South Africa v Intervale (Pty) Ltd and Others**

**CCT 72/14**

**Date of hearing: 4 September 2014**  
**Date of judgment: 12 December 2014**

---

### MEDIA SUMMARY

---

*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 an application for leave to appeal against a decision of the Labour Appeal Court denying the joinder of employers to a dispute regarding the alleged unfair dismissal of 204 employees.

The National Union of Metalworkers of South Africa (NUMSA), the applicant, represents the employees who were dismissed after participating in a strike at an industrial site known as the “Pretoria Works”. These premises are shared by a number of engineering companies including Steinmüller Africa (Pty) Ltd (Steinmüller), Intervale (Pty) Ltd (Intervale) and BHR Piping Systems (Pty) Ltd (BHR). On behalf of the dismissed employees, NUMSA referred an unfair dismissal dispute to the appropriate bargaining council, but cited only Steinmüller as the employer when in reality some of the employees were employed by Intervale and BHR. NUMSA attempted a second referral that cited all three employers but this late referral was not condoned. Seven months later, NUMSA took the first referral to the Labour Court along with an application to join Intervale and BHR.

The Labour Court permitted joinder of the additional employers, finding that the three companies shared Human Resources services and representation in the conciliation proceedings, operated out of the same premises and transferred employees between them without terminating employment contracts and instituting new ones. Additionally, the dismissal letters to the employees were identical. The Labour Court thus held that the failure to refer the other two companies to conciliation was not fatal. The Labour Appeal Court, however, overturned that decision. It found that NUMSA had not complied with

section 191 of the Labour Relations Act 66 of 1995 (LRA), which requires referral of a dispute to conciliation before it can be adjudicated in the Labour Court. Because NUMSA did not timeously refer the dispute against Intervale and BHR to conciliation, the Labour Court did not have jurisdiction to join the two additional employers.

In a majority judgment written by Cameron J (Mogoeng CJ, Moseneke DCJ, Khampepe J, Leeuw AJ and Zondo J concurring), the Constitutional Court granted leave to appeal, but rejected NUMSA's arguments and dismissed the appeal. Cameron J found, first, confirming Labour Appeal Court jurisprudence, that section 191 makes the referral to conciliation of a dismissal dispute a precondition to the Labour Court's jurisdiction. Second, NUMSA did not comply with section 191. The close association between the companies, and the fact that Intervale and BHR knew about the referral citing Steinmüller, were not sufficient. The purpose of the statutory provision is to put each employer party individually on notice that it may be liable to adverse legal consequences if the dispute involving it is not effectively conciliated. But the referral cited only Steinmüller as the sole target in the intended litigation. This sent out the opposite message to the other two companies.

In a concurring judgment, Zondo J concluded that the dismissal disputes between BHR and Intervale and their employees were not referred to conciliation because they were separate disputes to the one involving Steinmüller. Therefore, these disputes could not be adjudicated by the Labour Court. There was no substantial compliance with section 191 of the LRA. Zondo J agreed with the main judgment that the appeal should be dismissed.

In a dissenting judgment, Nkabinde J (Froneman J, Jafta J, Madlanga J and Van der Westhuizen J concurring) held that there has been substantial compliance with section 191 of the LRA, when interpreted to give effect to the rights to fair labour practice and access to courts, together with the LRA's primary object to promote effective resolution of labour disputes. Nkabinde J held that the interpretation the respondents advanced and the Labour Appeal Court accepted was formalistic because Steinmüller, Intervale and BHR were aware of the dispute that NUMSA referred for conciliation. She held that requiring strict compliance in the circumstances conflicts with the primary object of the LRA. As a result, she would have granted and upheld the appeal and reinstated the order of the Labour Court.

In a separate dissent, Froneman J (Madlanga J and Nkabinde J concurring) agrees with most of the main and concurring judgments' exposition of the law, but concurs in the judgment and outcome proposed by Nkabinde J. The main judgment tilts the scale too far towards compliance with form rather than substance. The concerns regarding the mistake can adequately be resolved by examining whether there was any practical prejudice because of non-compliance.