

IN THE ESSENTIAL SERVICES COMMITTEE (ESC)

HELD AT JOHANNESBURG

Case Number: ES46/16

In the matter between:

PG GROUP (PROPRIETY) LIMITED t/a

APPLICANT

PFG BUILDING GLASS

and

NUMSA

1ST RESPONDENT

CEPPAWU

2ND RESPONDENT

UASA-THE UNION

3RD RESPONDENT

SOLIDARITY

4TH RESPONDENT

RULING

INTRODUCTION

1. This is an application in terms of section 75 of the Labour Relations Act, 66 of 1995 as amended ("**LRA**").
2. The Applicant, PFG Building Glass, seeks a determination that its business is the manufacture of glass with a global footprint in the building and automotive sectors.

3. Section 75(1) of the LRA provides that ***“a service is a maintenance service if the interruption of that service has the effect of the material physical destruction to any working area, plant or machinery.”***

Details of the hearing and representation

4. The matter was set down for hearing on 19th May 2016, 11th July 2016 and 12 July 2016 at the Applicant's premises in Springs. The ESC Panel comprised Ms. J Nkopane (Deputy Chairperson of the ESC), Adv. N. Memani and Mr. J Koen.
5. The Applicant was represented by Ms F. Leppan of Cliffe Dekker Hofmeyr Attorneys.
6. The Respondents ie NUMSA was represented by H. Tshabalala, CEPPAWU by Ms J. Msibi, UASA by Scolt, Solidarity by F. Vosloo.
7. The Essential Services Committee (“ESC”) Panel convened a meeting with the parties on 19th May 2016. The purpose of the meeting was to clarify the nature of the dispute between the parties as well as to assess what has been done by the parties to try and conclude a collective agreement (as provided for in section 75 (2) of the LRA).
8. The ESC Panel, having satisfied itself that the parties were not able to conclude a collective agreement relating to the provision of a maintenance service, adjourned the matter for an inspection in loco on 11th July 2016 and for hearing on 12th July 2016.
9. The ESC Panel took note that the Applicant in this instance made application, in writing, to the ESC for a determination that the whole or a part of the employer's business or service be declared a maintenance service.

10. All parties were directed to file statements of case within set time frames, which were agreed upon between the ESC and the parties. This was also confirmed in writing by the ESC. The Applicant filed a statement of case and the 1st Respondent a response.
11. As per agreement to the arrangement as set out above, the inspection in loco was conducted on 11th July 2016. The hearing, took place on the 12th July as scheduled.

Issue to be decided

12. The issue to be decided is whether the services, as referred by the Applicant, fall within the definition of a maintenance service, as defined in Section 75 (1) of the LRA.

Background

13. The Applicant is a (Propriety) Limited, trading as PFG Building Glass, a company with limited liability which is registered in accordance with the provisions of the Company Law of the Republic of South Africa, with its principal place of business situated at 216 Industry Road, New Era, Springs, Gauteng.
14. According to the Applicant it operates a critical plant, machinery and equipment includes:-
 - the batch plant and silos;
 - the furnances and furance control rooms;
 - the tin baths;
 - the lehrs which includes all fans and electrical heater;
 - the closed circuit cooling water system;
 - high pressure gas supply;
 - gas fired stream generation boilers;
 - liquefied petroleum gas (LPG) gas distribution tanks;

- LPG decanting facility;
- Hydrogen (H₂) packaged and Nitrogen plants;
- Electrical back-up power diesel generator systems;
- The hot end up to the main breaker including cullet return conveyers and batch conveyers;
- Electrical supply and distribution network, which includes 22kv electrical supply distribution network, transformers and switch rooms;
- Stores (to supply essential equipment for repair purposes, even after hours by way of standby)

Survey of the evidence and arguments

15. On the first day of the hearing the Applicant led the evidence of two witnesses.
16. The first Witness for the Applicant; Ms Chantal Reddy testified that she is employed as an Operations Manager.
17. She testified that the Company is situated on a 54 hector site and employs some 771 employees (permanent, contract, and service provider employees on the site) to produce high quality float glass, laminated glass products, mirrors and putty.
18. The Company's first float production line, called SP3, was commissioned in 1997 and a second float line, SP4, was introduced in 2007. The two central lines, SP3 and SP4 are fully operational.
19. The Company operates two advanced float glass manufacturing lines that operate 24hours daily and 365 days a year non-stop. The Applicant is the only flat glass manufacturer in sub-Saharan Africa and is the main supplier of automotive and building glass within Southern Africa glass market. She stated that any change in supply would have significant impact on the market.

20. Further that a full repair of a float glass line costs in the region of R1 billion. The cost is severe because of the nature and magnitude of the components making up that line which have to be sourced from overseas. Notwithstanding that, if planned maintenance is required, one would have to start the repairs 2-3 years in advanced to take account of logistics required.
21. The float lines operate for 24 hours a day, 7 days a week without shutting down due to what she termed "the operating risks to the plant". It requires a 'continuous shift operation' on both lines. She further testified that a float line's life expectancy is 15 years and it is '*not expected to stop at all in these fifteen years*'.
22. The second witness Mr Van Vuuren testified that he is employed as Maintenance Engineering Manager.
23. He confirmed the evidence of Ms Reddy that the floatlines comprise intricate industrial equipment which need to be supervised properly at all times to protect the equipment. He stated that the equipment failure has hazardous and dangerous consequences particularly when regards had to the extreme heat conditions under which the manufacturing process takes place.
24. He further testified that the production operation commences at the silos and batch plant where essential raw materials, such as silica sand, soda ash dolomite, limestone, are received which are used in the manufacturing process. Batches are sent to SP3 and SP4 plants every 8 minutes. The batching process is important because if a batch is out of tolerance it can impair the furnace.
25. He further testified that the batch materials are fed into a furnace for melting process at a temperature of approximately 1600 degrees Celsius.

26. He further stated that the Applicant has an obligation to respect statutory duty of care in terms of the Occupational Health Safety Act 53 of 1993 ('**OSHA**'). The testimony was further detailed in the bundle of documents submitted and he also demonstrated in inspection '*in loco*'.
27. This concluded the Applicant's case.
28. The respondents were afforded an opportunity to submit opposing arguments to the statement of case that was filed. Only NUMSA filed its opposition documents. The second to fourth respondents did not submit any documents and on the last days of the hearing UASA failed to attend and participate further in the process.
29. In essence NUMSA in its arguments does not dispute that the services may be declared maintenance service but argues that the services are not essential.
30. On behalf of NUMSA it was submitted that in cases of industrial action the applicant can put the main breaker or soak the furnace. This would ensure that the applicant has enough staff to monitor, man and supervise and maintain the machinery that falls within the ambit maintenance service as set out in Section 75 of the LRA.
31. The 1st respondent also conceded that the Applicant's application is necessary.

Analysis of the evidence and submissions

32. Section 75(1) of the LRA defines a maintenance service as: "a service if the interruption of that service has the effect of material physical destruction to any working area, plant or machinery".

33. An interruption of a service that may lead to financial loss to the employer (or even product or stock loss) will not be regarded as a maintenance service. The same can be said in relation to an interruption that may result in inconvenience.
34. In proving its case the Applicant took the committee through the plant on an inspection in loco. The evidence of the Applicant, which was not disputed was that the batches for the furnace are mixed in the batch plant and are transported through the conveyors to the furnace. The cullet is transported through the conveyors back to the batch plant.
35. On behalf of the applicant it was submitted further that the furnace is where the glass is melted to form molten glass and this process happens at 1600°C. The undisputed evidence of the Applicant was that if this process is interrupted the refractory structure of the furnace would fail. Further that even during planned shut down the furnace had to be retained in "soak state"
36. The Applicant led evidence that the furnace had to be cooled and this meant that the fan system had to be continually working. It was submitted that the gas and diesel firing system had to be working and monitored otherwise this can lead to the collapse of the plant and it may take about fifteen months to rebuild the plant at an enormous cost.
37. The Applicant through its witness demonstrated how the tin bath functions. On the evidence submitted which was not challenged by all the respondents, the Committee was satisfied that the Applicant has led sufficient evidence to prove that if the plant is not manned properly, the whole plant or part thereof may be damaged irreparably.
38. The store room however is not part of the plant and or machinery. It is so that equipment that is necessary to maintain the plant may be stored in the store room but this does not make the store room a part of the plant or machinery. The fact that a particular area supports the plant does not necessarily make it part of the plant. The interruption of services would not

result in any destruction of the store room. Accordingly but the Panel was not persuaded that a store room can be declared a maintenance service.

39. The 1st Respondent during the hearing opposed that the store room be declared a maintenance service.
40. After considering the evidence, the ESC Panel is of the view that the all other arrears except the Store room falls within the definition of a maintenance service as defined in Section 75(1) of the LRA.
41. On the submissions made, it is clear that All strategic aspects of its manufacturing business fall within the definition of a maintenance service as provided for in Section 75 (1) of the LRA however it must be noted that the store room is not part of the plant or machinery in the manufacturing business and it falls within the supporting area for maintenance service and it cannot be declared a maintenance service.

Determination

In the premise the ESC makes the following determination:

- a) The following strategic aspects of manufacturing business that is the plant, machinery and equipment as stipulated in paragraph 14 are declared a maintenance service in terms of section 75 (1) of the LRA.
- b) The store room does not fall under strategic areas of the business, it is however a supporting area for maintenance and therefore falls outside of section 75 (1) of LRA . Consequently its application to have it declared as a manitenance service fails.

Signed on this 7 September 2016



JOYCE NKOPANE

Deputy Chairperson

Essential Services Committee