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‘The whole or any part of the population’: The definition of an essential service

Essential service – Essential Services Committee – whole or part of the population

On 8 October 2024, the Labour Court handed down judgment in *ArcelorMittal South Africa Ltd v National Union of Metalworkers of South Africa*. The applicant, ArcelorMittal, sought to review and set aside an essential services designation that its blast furnaces and coke batteries do not constitute an essential service. The issue concerned the meaning of the phrase “*the whole or any part of the population*” as it is stated in the definition of Essential Service in the LRA.

Section 213 of the Labour Relations Act (LRA) defines an essential service as, “*a service the interruption of which endangers the life, personal safety or health of the whole or any part of the population*”. Various services, such as ambulances and police, are currently designated as essential services. The consequence of the designation is that, in terms of section 65(1)(d)(i) of the LRA, any person engaged in that service cannot embark on strike action.

In 2021, ArcelorMittal applied to the Essential Services Committee (ESC) for its blast furnace and coke battery operations to be designated as an essential service. According to ArcelorMittal, its blast furnaces and coke batteries cannot be shut down, and must be constantly operated. If they are left unattended (potentially because of a strike), explosions may occur. However, it was common cause that the explosion radius would be limited to the ArcelorMittal plant, and would not affect any of the nearby communities.

Before the ESC, the National Union of Metalworkers of South Africa (NUMSA) argued that ArcelorMittal could actually shut down the blast furnaces and coke batteries, and preventative measures could be implemented to obviate any risk of explosions. NUMSA also argued that, even if explosions do occur, they would only affect remaining employees at the plant; the explosions, and any consequent fallout, would not extend to non-employees living in the nearby communities (a few kilometres away). There is a distinction between employees who continue working at the workplace during a strike, and “*the whole or any part of the population*”, as contemplated in section 213 of the LRA. Accordingly, to the extent that a strike at the blast furnaces and coke batteries does endanger the lives, safety and health of anyone, the population (in whole or in part) is not endangered.

The ESC accepted NUMSA’s argument in this regard. It found that, although employees are technically part of the population, “*an interpretation that is so broad as to recognise a workforce as part of the population in the context of essential services is impermissible.*” The ESC reached this conclusion having regard to the established restrictive approach to essential service designations, previous ESC precedents, and the fact that other legislation provides for the health and safety of employees.

ArcelorMittal applied to the Labour Court to review and set aside the designation. It argued on review that “*the whole or any part of the population*” must include employees who remain at the workplace.

The Labour Court adopted NUMSA's argument and the ESC's reasoning. It held that, "*there is a distinction between a workforce and the population or a part thereof.*" According to the court, an essential service designation is intended to protect large groups of people who cannot be identified, apart from their membership of the community (e.g. those in hospitals receiving care). The remaining employees at ArcelorMittal's plant during a strike do not fall within this category, and are anyway protected by other health and safety legislation. The court thus dismissed the review application.

In light of the judgment, an essential service will only be designated where the service impacts on the life, personal safety or health of the broader community. Even if a workplace has inherent dangers, if its operations (or interruption of its operations) do not pose a risk to the general population, then it does not constitute an essential service.

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