IN THE SUPREME COURT OF SOU
(APPELLATE DIVISION)

In the matter between:

CONSOLIDATED TEXTILE MILLS LIMITED... appellant

and

THE PRESIDENT, INDUSTRIAL COURT..... first respondent,

and

SOUTH AFRICAN ALLIED WORKERS' UNION AND OTHERS..... second and further respondents

CORAM: CORBETT, HOEXTER, SMALBERGER, STEYN et EKSTEEN, JJA.

DATE OF HEARING: 20 September 1988

DATE OF JUDGMENT: 30 September 1988

J U D G M E N T

CORBETT JA:

This is an appeal from a decision of the Eastern Cape Division. The judgment (delivered by Zietsman J and concurred in by Kannemeyer J) has been reported: see

1987 (4) SA 665 (E). The full facts appear from the reported judgment and need not be repeated in their entirety. I shall merely emphasize those factual aspects which are pertinent to the issues raised on appeal.

The appellant, Consolidated Textile Mills Limited, is part of what is termed "the Frame Group of Industrial Organizations". Appellant, together with certain other members of the Frame Group, carry on textile manufacturing operations at a factory complex in East London. On 26 July 1984 a work stoppage occurred at the factory, as a result of which certain employees were dismissed. Thereafter new workers were engaged and some of those who had been dismissed were re-employed. At the time there were two trade unions to which members of appellant's work force belonged. They were (i) the South African Allied Workers Union ("SAAWU"), an unregistered trade union, which claimed to have more than half the workers

at appellant's factory as members, and (ii) the Textile Workers' Industrial Union, a registered trade union, said by SAAWU to be a management-sponsored union. The work stoppage arose from attempts by SAAWU to meet with the management of appellant so as to gain recognition for the union and to establish channels of communication, and the alleged rebuff of these attempts by management. The dismissed workers who were not re-employed were in the employ of appellant and its associated companies, but this case concerns only appellant's former employees. Their dismissal gave rise to an industrial dispute, it being alleged by them, and by SAAWU on their behalf, that their dismissal and non-reinstatement and the attendant circumstances constituted an "unfair labour practice", within the terms of sec 43(1)(c) of the Labour Relations Act 28 of 1956, as amended ("the Act").

In due course and by means of a letter dated 2

November 1984 this dispute was referred to the National Industrial Council for the Textile Manufacturing Industry of South Africa ("the Industrial Council") in terms of sec 43 of the Act. The letter was received by the Industrial Council on 5 November 1984. Sec 46(9)(a)(i) of the Act provides that -

> "If a dispute such as is referred to in section 43(1)(c) has been referred to -
>
> (i) an industrial council having jurisdiction in respect thereof, and that council has failed to settle such dispute within a period of 30 days reckoned from the date on which the dispute was referred to the council, or within such further period or periods as the Minister may determine, the dispute shall be referred to the industrial court for determination; ....."

A "dispute such as is referred to in sec 43(1)(c)" is a dispute concerning an alleged unfair labour practice.

Sec 46(9)(b) provides that -

> (b) The Minister may, in his discretion, from time to time, by writing under his hand delegate his powers in

> regard to the fixing of such further period or periods to any officer and may at any time withdraw any such delegation."

The Minister in question is the Minister of Manpower (sec 1(1) of the Act).

On 20 November 1984 the secretaries to the Industrial Council wrote to the Minister of Manpower requesting an extension of time until 15 February 1985 within which to endeavour to settle the dispute. This was done at the instigation of appellant, which wished to have more time within which to submit its response to the representations of SAAWU and the other applicants, being the dismissed employees (to whom I shall refer as the "dismissed employees"). Power to grant such an extension had been validly delegated by the Minister in terms of sec 46(9)(b) to a Mr L L L Olivier, Deputy Director, Labour Relations, of the Department of Manpower. In the course of a telephone conversation on 14 December 1984 (ie

after the lapse of the 30-day period stipulated in sec 46(9)(a)(i)) Olivier purported orally to extend the period for the settlement of the dispute to 15 February 1985, with retrospective effect as from 20 November 1984.

On 11 February 1985 the Industrial Council considered the dispute. SAAWU, being an unregistered trade union was not represented on the Council. The Council took a resolution, which in terms of sec 27(7) of the Act became the decision of the Council. The resolution was generally to the effect that the employers had not introduced any unfair labour practices and that the dismissal of the dismissed employees had been justified.

On 25 March 1985 the attorneys for SAAWU and the dismissed employees wrote to the Industrial Council claiming that the action taken by it had been "entirely without statutory warrant and therefore unlawful"; and stating that in view of the Council's attitude the dispute, which

still existed, would be referred to the Industrial Court for determination.

In August 1985 and on application to the Eastern Cape Division appellant, as applicant, obtained a rule nisi calling upon the President of the Industrial Court, as first respondent, and SAAWU and the dismissed employees as "second and further respondents" to show cause why an order should not be granted -

> "(a) declaring that the National Industrial Council for the Textile Manufacturing Industry of the Republic of South Africa has settled the disputes referred to it by H K V Siwisa and Company on behalf of the 2nd and Further Respondents under cover of their letter to the secretary of the said Industrial Council dated 2 November 1984, as contemplated by Section 43(6)(a) of the Labour Relations Act, 1956 as amended, and accordingly that the 1st Respondent has no jurisdiction to entertain proceedings in terms of Section 46(9) of the said Act for the determination of the said disputes;
>
> (b) interdicting and restraining the 1st

Respondent from exercising or purporting to exercise jurisdiction with regard to the said disputes;

(c) that the costs of this application be paid by those respondents who opposes this application, jointly and severally, the one paying the other/s to be absolved."

On the return day the confirmation of the rule was opposed and argument was heard. In the circumstances described in the reported judgment at p 670 I - 671 H the hearing was postponed, the Industrial Council was given leave to intervene and a new point relating to the validity of the extension of time granted by Olivier was argued at the postponed hearing. The application for leave to intervene was to enable the Industrial Council to seek an order -

"declaring that the National Industrial Council for the Textile Manufacturing Industry of the Republic of South Africa is entitled and obliged, with the requisite majority, itself to settle disputes between employers or employers' organisations and employees or trade unions referred to it

> for settlement, regardless of whether the parties to the dispute agree to such settlement and without the necessity of an agreement as defined in the Labour Relations Act, 1956 being negotiated."

In its judgment the Court a quo decided two points: (a) that the Industrial Council's authority to settle the dispute between the parties terminated when the 30-day period expired - in other words, that the purported determination of a further period by Olivier was not a valid one; and (b) that having regard to the meaning of the word "settle" in, inter alia, secs 23(1) and 46(9)(a)(i) of the Act, the intervening applicant, the Industrial Council, was entitled to the declaratory order sought. In the result the rule nisi was discharged and the declaratory order granted. Appropriate orders were made in regard to costs.

The appellant applied for leave to appeal against decision (a) above and SAAWU sought leave to

"cross-appeal" against decision (b) above. The Court a quo granted both applications and ordered that the costs thereof be costs in the appeal or "cross-appeal", as the case may be. In the end only appellant pursued its appeal, and that was noted against the part of the judgment discharging the rule nisi with costs. No "cross-appeal" was noted or pursued by SAAWU, but it and the dismissed employees oppose the appeal. The President of the Industrial Court does not participate in the appeal and abides the judgment of the Court. Consequently, the position at present is that this Court is seized only of the appeal, ie the question as to whether or not the rule nisi should have been discharged, and has no jurisdiction in regard to the intervening application, and the order made thereon, as such. As pointed out in counsel's heads of argument, however, if this Court should come to a different conclusion from the Court a quo on point (a) above, ie decide that a further period had validly been deter-

mined by Olivier in terms of sec 46(9)(a)(i), it would be necessary for us to resolve point (b) as well, as part of the process of adjudicating upon the correctness of the Court a quo's order discharging the rule nisi. On the other hand, it is clear that should we decide that the Court a quo was correct in respect of point (a), then point (b) falls away.

I turn now to consider point (a). The crucial issue is whether sec 46(9)(a)(i), which has been quoted above, empowers the Minister, or his delegate (in terms of sec 46(9)(b)), to determine a further period for the settlement of a dispute by an industrial council after the expiry of the initial period of 30 days, or whether the determination of the further period must be done before the expiry of the 30-day period. This issue is dealt with at pages 672 B to 677 E of the reported judgment of the Court a quo.

As is pointed out in the judgment a quo, there are a number of sections of the Act in which a period is specified for the doing of a certain act and provision is made for some person or body, such as the Minister or the Industrial Court or an industrial council, to fix a further period or periods within which the act may be done. In a number of these (see sec 35(3), sec 43(3)(b), sec 49(6)(g), sec 49(6)(h)) the formula used makes it quite clear that the Minister or other authority, as the case may be, is empowered to fix the further period or periods either before or after the expiry of the original specified period. The standard form of words used in these sections is -

> ".... or (within) such further periods as the... (Minister or other authority) may fix from time to time either before or after the expiry of any such period....."

The only variations are the authority in whom the power is vested and the position of the word "fix" in the word order (in one case it comes at the end of the formula). In contrast to this, in a number of other sections dealing with the power to fix a further period or periods for the doing of the act, including the subsection now under consideration (see sec 45(8)(a), sec 45(8)(b), sec 46(2)(a), sec 46(3)(b), sec 46(9)(a)(i) and sec 46(9)(a)(ii)) the formula used follows much the same wording, but with the important difference that it omits the words "either before or after the expiry of any such period". Typical is sec 45(8)(a) which contains the words -

> "has failed within a period of fourteen days from the date of such decision or <u>within such further period or periods as the Minister may from time to time fix</u>, to decide....."(My emphasis.)

In <u>R v Sisilane</u> 1959 (2) SA 448 (A), at p 453 F-G, Schreiner JA stated the following:

> "It is a general rule in the construction of statutes that a deliberate change of expression is prima facie taken to import a change of intention. (See Barrett, N.O. v Macquet, 1947 (2) S.A. 1001 (A.D.) at p 1012; Port Elizabeth Municipal Council v. Port Elizabeth Electric Tramway Co. Ltd., 1947 (2) S.A. 1269 (A.D.) at p 1279). That principle should operate particularly clearly where, as here, Parliament was dealing with two parts of a single provision and cannot be supposed to have lost sight of the one when dealing with the other."

(See also Read v SA Medical and Dental Council 1949 (3) SA 997 (T), at pp 1008-9.)

In the present case the difference in wording, in relation to a granted power to fix a further period or periods for the doing of an act, occurs not only once, but in a considerable number of provisions of the Act. In one instance (sec 43(3)(b)) both formulae appear in the same subsection; in the other instances they are in analogous provisions of the same Act. Furthermore, in

sec 48(4)(a), which deals with industrial agreements and notices given by the Minister in regard thereto fixing periods of operation, it is provided that the Minister may from time to time at the request of the industrial council concerned and if he deems it expedient to do so -

> "(i) extend the period fixed in such notice by such further period as he may fix in the new notice; or
>
> (ii) if the period fixed in such notice has expired, declare that the provisions of such notice shall be effective from a date and for a further period fixed by him in the new notice."

This subsection thus draws the distinction between the extension of such a period and its replacement, after expiry, by a further period.

The differences in the wording of the two formulae used for fixing, or determining, a further period or periods for the doing of the act in question must, in my view, be taken to have been deliberate; and this deliberate change of wording must represent a difference of in-

tention. The only possible explanation seems to me to be that where it is not expressly stated that the fixing of the further period or periods may be before or after the expiry of the original period, then the intention was that such fixing has to take place before the expiry of this period; and, of course, where it is so expressly stated, then such fixing may take place before or after such expiry.

Other rules of statutory interpretation point in the same direction. There is, generally speaking, a presumption that the same words and expressions in the same Act are intended to bear the same meaning (see Steyn, Die Uitleg van Wette, 5 ed, p 126 and the authorities there cited); and it is also a well-established canon of construction that a statute should be so construed that, if it can be prevented, no clause, sentence or word should be superfluous, void or insignificant (CIR v Shell

Southern Africa Pension Fund 1984 (1) SA 672 (A), at p 678 C). The two formulae have the following words in common -

> "such further period or periods as the .... may fix from time to time".

In accordance with the first-mentioned rule of statutory interpretation one would expect those words to bear the same meaning in each formula. If that is so and if it be postulated, as argued on appellant's behalf in relation to sec 46(9)(a)(i), that those words mean that the fixing of the further period can occur either before or after the expiry of the original period, then in those cases where the words "either before or after the expiry of any such period" were expressly added, such words would be totally redundant. This would run counter to the second canon of construction referred to above. This impels one to the view that, where these additional words do not appear, the power to fix a further period or periods is not so ex-

tensive: and this points obviously to the power being exercisable only before the expiry of the original period.

This interpretation does, of course, prompt the question: why should the Legislature have wished to draw this distinction - to allow an ex post facto fixing of a further period in some situations and not in others? It was suggested by respondents' counsel that the following general pattern was discernible: where ex post facto fixing was permitted, this related to purely procedural matters, such as the time for filing written representations; whereas where it is not permitted, the period in question was of more serious significance in that it determined the jurisdiction of a particular party to conduct an arbitration (sec 45(8)(a) and (b)) or of an industrial council or a conciliation board to settle a dispute (sec 46(2)(a), 46(9)(a)(i) and (ii)). There is some cogency in this argument, although sec 43(3)(b) does not readily

conform to the suggested pattern.

Respondents' counsel also pointed to the uncertainty which could arise if sec 46(9)(a)(i) were interpreted to mean that the Minister (or his delegate) could determine a further period after the expiry of the original, specified period. He emphasized that, on this interpretation, there being no time limit, a further period might be fixed after the matter had in the meanwhile and on the lapse of the original period, been referred to the Industrial Court; and that this anomaly could cause wasted expense and confusion. Appellant's counsel countered this argument by arguing that in such circumstances the Minister would refuse to grant a further period. There is some force in the argument of respondents' counsel and, it does in my opinion, tend to reinforce what appears to me to be the correct interpretation, as derived from a consideration of the language of sec 46(9)(a)(i), read

in the context of the Act as a whole.

Appellant's counsel quoted the same cases as were referred to in the Court a quo; and in addition to the English case of The King v Lewis [1906] 2 KB 307. None of these cases, which all turned on their own particular facts and instruments to be interpreted, is, in my view, at all helpful. In none does one find the same language or the same compelling contextual considerations as exist in the present case.

For these reasons I hold that the Court a quo came to the correct conclusion in regard to the interpretation of sec 46(9)(a)(i) and as to whether the period for the settlement of the dispute between appellant and the respondents by the Industrial Council had been validly extended by Olivier on 14 December 1984. Consequently, the further question canvassed in the Court a quo (point (b)) does not arise for decision by this Court.

In regard to costs, there is one point to be noted. It will be recalled that the Court a quo, when granting leave to respondents to "cross-appeal", ordered that the costs of the application for leave to "cross-appeal" be costs in the "cross-appeal". Because respondents have not "cross-appealed" this order has become ineffective. It was agreed by counsel for respondents that in the circumstances this Court could and should make an order that the respondents pay the costs of this application.

The following order is accordingly made:

(1) the appeal is dismissed with costs;

(2) the respondents are ordered to pay the costs of the application to the Court a quo for leave to "cross-appeal" jointly and severally, the one paying the others to be absolved.

M M CORBETT

HOEXTER, JA)
SMALBERGER, JA)
STEYN, JA) CONCUR.
EKSTEEN, JA)